

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

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|----------------------|---|-------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| BRADLEY ALAN BAEHR & |) | CASE NO. BK10-43541-TJM |
| KELLY LYNN BAEHR, |) | A12-4023-TJM |
| |) | |
| Debtor(s). |) | CHAPTER 13 |
| <hr/> |) | |
| BRADLEY ALAN BAEHR & |) | |
| KELLY LYNN BAEHR, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | |
| |) | |
| BANK OF THE WEST, |) | |
| |) | |
| Defendant. |) | |

ORDER

This matter is before the court on the plaintiff debtors' motion for summary judgment (Fil. No. 6). No resistance was filed. Dennis Fricks represents the debtors. No appearance was made for the defendant. Pursuant to the court's authority under Nebraska Rule of Bankruptcy Procedure 7056-1, the motion was taken under advisement without oral arguments.

The motion is denied.

This adversary proceeding was filed to avoid a junior lien on the debtors' real property. There are two consensual liens on the debtors' home. The first is evidently held by CitiMortgage, Inc. CitiMortgage filed a motion for leave to file its proof of claim out of time, which was granted on March 12, 2012 (Fil. No. 66 in Case No. BK10-43541). To date, CitiMortgage has not filed a claim or any evidence of its note or deed of trust. The Chapter 13 trustee filed a general unsecured claim on CitiMortgage's behalf in the amount of \$10,000.

Bank of the West holds the second lien, in the amount of \$10,309.96, secured by a deed of trust recorded on October 28, 2002.

The debtors value the property at no more than \$250,000, based on the Gage County Assessor's 2011 valuation of \$245,335.

The debtors assert that, based on a lack of equity in the property, the second lien is wholly unsecured under 11 U.S.C. § 506(a) and is void under § 506(d). This assertion presumably is based on the amount of the first lien, which is not part of the record. On the evidence provided by the movant, there is plenty of equity to secure the junior lien.

IT IS ORDERED: The plaintiff debtors' motion for summary judgment (Fil. No. 6) is denied.

DATED: June 6, 2012

BY THE COURT:

/s/ Timothy J. Mahoney
United States Bankruptcy Judge

Notice given by the Court to:

*Dennis Fricks
U.S. Trustee

Movant (*) is responsible for giving notice to other parties if required by rule or statute.