UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

ADD ON July 13, 2017 at 1:30 p.m.

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1. 12-20033-A-13 DANIEL/LINDA PENDERGRAFT — MOTION TO VALUE COLLATERAL O.S.T. 7-7-17 [90]
MJD-2
VS. BMO HARRIS BANK, N.A.

Tentative Ruling: The motion will be granted in part.

This case was filed on January 3, 2012. A plan was confirmed on March 16, 2012. In connection with that plan, the debtors moved to value real property securing the claim of BMO Harris Bank, which held a second priority mortgage on the debtors' home. Without opposition, that motion was granted at a hearing on February 13. In the written ruling appended to the minutes of the hearing, the court provided in relevant part:

"*The debtor seeks to value the debtor's residence at a fair market value of $267,500 as of the date the petition was filed. It is encumbered by a first deed of trust held by Ally Bank. The first deed of trust secures a loan with a balance of approximately $364,882 as of the petition date. Therefore, BMO Harris Bank's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).*

. . .

. . . The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(i). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(i).

. . . [T]he court is merely valuing the respondent's collateral."

Docket 37 [Underlined emphasis in original].

However, the order lodged by the debtors provided: "[BMO Harris Bank, NA] holds "a judicial lien that impairs the debtors in property [sic]. . . [T]he lien of the creditor is hereby extinguished. . . ."

This order did not reflect either the motion filed or the ruling of the court. The motion was a valuation motion under 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012. It was not a motion to avoid a judicial lien pursuant to 11 U.S.C. § 522(f)(1). Further, the ruling expressly provided that the court was not avoiding any lien, but was merely valuing the real property securing the respondent's lien.

While the court should not have entered the order lodged by counsel for the debtor, it did so. Nevertheless, that order was no assistance to the debtors nor prejudice to the respondent. It avoids a nonexistent judicial lien. It

has no effect on the deed of trust securing the claim of the respondent.

Therefore, the order entered on February 10, 2012 will be vacated.

The debtors have refiled their valuation motion and it is now before the court. Their reason for filing the valuation motion a second time has nothing to do with the problem discussed above. They seem to think that because the February 10 order fails to identify the county in which the real property is located and fails to identify the recording information for the respondent's deed of trust, they must modify the prior order.

If this were the only reason for revisiting the valuation motion, the court would deny the refiled motion. In order to alter or amend an order, a motion must be filed within 28 days of entry of the order. See Fed. R. Civ. P. 59(e) as incorporated by Fed. R. Bankr. P. 9023. And, to the extent the refiled motion is asking for relief from the order on the original motion due to counsel's neglect pursuant to Fed. R. Civ. P. 60(b)(1) as incorporated by Fed. R. Bankr. P. 9024, such motion had to be filed no later than one year after entry of the order. The refiled motion comes more than 5 years after the original order was entered. It is untimely.

Instead, the court will grant the motion to correct its clerical mistake in entering the original order which did not conform with its findings and conclusions. See Fed. R. Civ. P. 60(a) as incorporated by Fed. R. Bankr. P. 9024 Counsel shall lodge an order that values the respondents collateral as having no value and therefore disallowing its secured claim. No other relief, such as lien avoidance will be granted. The findings and conclusions stated in the ruling appended to the minutes of the first motion, Docket 37, are incorporated by reference.