

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 14-11290
Non-Argument Calendar

D.C. Docket No. 6:14-cv-00186-GAP,
Bkcy No. 6:13-bk-09954-CCJ

In re: KIMBERLEY COLETTE NEMCIK,

Debtor.

BANK OF AMERICA, NA,

Plaintiff-Appellant,

versus

KIMBERLEY COLETTE NEMCIK,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(September 3, 2014)

Before MARCUS, MARTIN, and ANDERSON, Circuit Judges.

PER CURIAM:

Bank of America appeals from the district court's order affirming an order from the bankruptcy court voiding Bank of America's lien on Kimberley Nemcik's property in a Chapter 7 bankruptcy proceeding she initiated. Nemcik's property was subject to two mortgage liens at the time she filed for bankruptcy. The debt owed on the first mortgage exceeded the fair market value of the property.

Because the debt secured by the first lien exceeded the value of the property, Bank of America's junior lien was considered to be wholly "underwater." This being the case, Nemcik moved the bankruptcy court to "strip off" or "void"—that is, extinguish in its entirety—Bank of America's lien.

Bank of America's response to Nemcik's motion acknowledged that under binding Eleventh Circuit precedent holding that a wholly underwater junior lien is voidable, the motion should be granted. See Folendore v. U.S. Small Bus. Admin., 862 F.2d 1537, 1538–39 (11th Cir. 1989); see also McNeal v. GMAC Mortg., LLC, 735 F.3d 1263, 1265–66 (11th Cir. 2012) (per curiam). For that reason, the bankruptcy court granted Nemcik's motion. Bank of America appealed to the district court, but moved for summary affirmance in light of this Court's binding precedent. The district court granted the motion, and Bank of America now seeks

the appellate review that its motion for summary affirmance was intended to expedite.

Bank of America maintains that Folendore and McNeal should be overturned in light of Dewsnup v. Timm, 502 U.S. 410, 112 S. Ct. 773 (1992), which held that a chapter 7 debtor could not “strip down” a creditor’s lien on real property where the value of the property is less than what is due to be paid to the creditor. Id. at 417, 112 S. Ct. at 778. But in McNeal, we reaffirmed Folendore despite the holding in Dewsnup. McNeal, 735 F.3d at 1265–66. As Bank of America concedes, we are bound as a panel to follow our Court’s decision in McNeal. We therefore **AFFIRM**.