

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

IN RE: ANGEL SANTIAGO and NILDA  
SANTIAGO

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SUNCOAST CREDIT UNION,

Appellant,

v.

Case No: 2:14-cv-598-FtM-38

ANGEL SANTIAGO and NILDA  
SANTIAGO,

Appellees.

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**ORDER**<sup>1</sup>

This matter comes before the Court on the Appellant, Suncoast Credit Union's Motion to Lift Stay and for Summary Reversal (Doc. #11) filed on July 1, 2015. The issue presented here is whether this Court should summarily reverse the Bankruptcy Court's Order stripping off the junior lien from the property in this case.

**FACTS**

On June 26, 2013, the Debtors, Angel and Nilda Santiago filed a voluntary Chapter 13 petition in the United States Bankruptcy Court for the Middle District of Florida. The Chapter 13 was converted to a Chapter 7 on March 7, 2014. The Debtors own real

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property located at 3818 Southwest 7th Place, Cape Coral, Florida 33914 (Property). The Property was subject to two mortgage liens. The first-priority mortgage lien held by Chase Home Mortgage is in the approximate amount of \$117,925.00. The second mortgage lien (junior lien) issued by the Appellant is in the approximate amount of \$4,802.48.

After the conversion to Chapter 7, the Debtors moved to strip the junior lien from the Property. On August 28, 2014, the Bankruptcy Court held a hearing on the Motion to Strip Junior Lien. On September 3, 2014, the Bankruptcy Court issued an Order granting the Motion and stripped the Junior Lien from the Property. As grounds for granting the Motion, the Bankruptcy Court relied on the Eleventh Circuit's holding in [McNeal v. GMAC Mortgage, LLC](#), 735 F. 3d 1263 (11th Cir. 2012), and [Folendore v. Small Business Administration](#), 862 F. 2d 1537 (11th Cir. 1989).

Suncoast appealed the Bankruptcy Court's decision to this Court. After the appeal was before the Court, Suncoast moved to stay the appeal until the United States Supreme Court ruled on the same issue pending before it in [Bank of America v. Caulkett](#), 575 --- U.S.---(2015). The stay was granted pending the Supreme Court's decision. On June 1, 2015, the Supreme Court issued a ruling in [Caulkett](#), overturning [McNeal](#) and [Folendore](#).

### **STANDARD OF REVIEW**

Pursuant to 28 U.S.C. § 158(a). The United States District Court functions as an appellate court in reviewing decisions of the United States Bankruptcy Court. [In re Fish](#), 2013 WL 1104884, \*2 (M.D. Fla. March 18, 2013) (citing [In re Colortex Indus., Inc.](#), 19 F.3d 1371, 1374 (11th Cir.1994)). This Court reviews de novo the legal conclusions of the bankruptcy court. [In re Fish](#), 2013 WL 1104884 at \*2 (citing [In re JLJ, Inc.](#), 988 F.2d 1112, 1116 (11th Cir.1993)).

The standard of review employed by this Court in reviewing the bankruptcy court's findings of fact is the clearly erroneous standard of review described in [Federal Rule of Bankruptcy Procedure 8013](#): “Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.” [In re Fish, 2013 WL 1104884 at \\*2](#) (citing [In re Thomas, 883 F.2d 991, 994 \(11th Cir.1989\)](#)). A finding of fact is clearly erroneous when, “although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed.” [Crawford v. W. Elec. Co., Inc., 745 F.2d 1373, 1378 \(11th Cir.1984\)](#) (citing [United States v. United States Gypsum Co., 333 U.S. 364, 68 S. Ct. 525, 92 L. Ed. 746 \(1948\)](#)).

### **DISCUSSION**

Based upon the Supreme Court’s decision in [Caulkett](#), Suncoast now moves the Court to lift the stay and reverse the Bankruptcy Court’s decision. The Bankruptcy Court’s decision was based upon the Eleventh Circuit’s holdings in [McNeal](#) and [Folendore](#). In [McNeal](#) and [Folendore](#), the Eleventh Circuit held that a junior lien may be stripped off or voided when the junior lien is completely underwater because a senior lien exceeds the value of the property. The Eleventh Circuit stated in such circumstances the junior lien may be stripped off pursuant to [11 U.S.C. § 506\(d\)](#).

The [Caulkett](#) decision overturned both [McNeal](#) and [Folendore](#) holding “... that a debtor in a Chapter 7 bankruptcy proceedings may not void a junior mortgage lien under [§506\(d\)](#) when the debt owed on a senior mortgage lien exceeds the current value of the collateral.” [Caulkett](#), 575 --- U.S. ---, at 7 (2015). Since the Bankruptcy Court’s decision

to strip the junior lien was based on an earlier judgment that has been reversed, the case will be remanded to the Bankruptcy Court for further proceedings consistent with the Supreme Court's ruling in Caulkett.

Accordingly, it is now

**ORDERED:**

The Appellant, Suncoast Credit Union's Motion to Lift Stay and for Summary Reversal (Doc. #11) is **GRANTED** to the extent the case will be remanded to the Bankruptcy Court.

(1) The stay is hereby **LIFTED**.

(2) The case is **REMANDED** to the United States Bankruptcy Court for the Middle District of Florida for entry of an order consistent with the United States Supreme Court's holding in Bank of America v. Caulkett, 575 ---U.S.--- (2015).

(3) The Clerk of the Court shall send a copy of this Order to the Clerk of the Bankruptcy Court for the Middle District of Florida and close the file.

**DONE** and **ORDERED** in Fort Myers, Florida this 2nd day of July, 2015.

  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record  
The Honorable Caryl E. Delano,  
United States Bankruptcy Judge