

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

IN RE: JERRY AND SCIELINDA MUSTEEN, Debtors

No. 5:15-bk-73093

Ch. 13

JERRY AND SCIELINDA MUSTEEN

PLAINTIFFS

v.

5:16-ap-7078

CARRINGTON MORTGAGE SERVICES, LLC

DEFENDANT

ORDER

Before the Court is the debtors' *Adversary Complaint to Determine Validity of Secured Status Under 11 U.S.C. § 506; Objection to Proof of Claim* filed on October 31, 2016, and Carrington Mortgage Services, LLC's [Carrington] *Answer to Complaint to Determine Validity of Secured Status Under 11 U.S.C. § 506; Objection to Proof of Claim* filed on December 13, 2016. Prior to trial on February 28, 2019, Carrington filed two motions for summary judgment, both of which the Court denied. For the reasons stated below, the Court denies the debtors' complaint.

The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2). The following opinion constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

The debtors' complaint states two causes of action. First, they allege that the Deed of Trust they executed on January 8, 2009, to secure a promissory note executed by Scielinda Musteen on January 8, 2009, did not secure the mobile home in which they live.¹ This is because the Deed of Trust references a mobile home with the VIN 4622E;

¹ The Court notes that the date reflected on the notary's acknowledgment is January 8, 2008, not January 8, 2009. The Court believes this to be a scrivener's error.

the VIN of the mobile home that is on the debtors' property is 3885E. According to the debtors, this misidentification results in the note only being secured by the debtors' real property, not the mobile home. Their second cause of action is based on the delayed booking of a modification of the loan by the previous servicer of the note, Bank of America. The debtors argue that as a result of the delayed booking, the Proof of Claim that Carrington filed is not accurate and does not include the information required to allow the debtors to determine if Carrington's accounting is correct. The Court will address each argument in turn.

The debtors' first argument fails for a number of reasons. First, and probably most indicative, Carrington introduced a certified copy of a verification from the Arkansas Department of Finance and Administration of the cancellation of the mobile home title for the mobile home in which the debtors reside: VIN 3885E. It appears that the title was cancelled on August 20, 2000. In this case, the debtors do not dispute they granted a security interest in the real property on which the mobile home with VIN 3885E is located. According to Arkansas law, a security interest in a mobile home for which the title has been cancelled is obtained in the same manner as a security interest is obtained against other real property. Ark. Code Ann. § 27-14-807 (Repl. 2014). Ms. Musteen testified that when they signed the Deed of Trust, she intended to grant a lien on the mobile home in which they reside and she did not know what a VIN was or where it was located. Based on the cancelled title, the Court finds that the debtors' mobile home with VIN 3885E is part of the real property in which the debtors granted a security interest and is included in the Deed of Trust.

Ms. Musteen also testified that their home was "tied-down" and bricked like a real home up to the steel framework of the mobile home. She referred to the foundation as "permanent" with no axles or wheels. Likewise, Mr. Musteen testified that he had to remove bricks from the foundation that surrounds the mobile home to locate the VIN. Arkansas law is clear that,

[w]hether personal property becomes a fixture by annexation to the land

depends upon the annexer's manifested intention, which can be shown by material considerations such as the character of the fixture as related to the use to which the land is being put and the manner in which the property is attached to the land.

Sanders v. Putman, 866 S.W.2d 827, 828 (Ark. 1993). Even if the cancellation of title was insufficient to treat the mobile home as a fixture, the Court finds that, based on the debtors' testimony, the mobile home is affixed to the real property in such a way as to deem it a fixture. According to the debtors' Deed of Trust, all "fixtures now or hereafter a part of the property" are covered by the debtors' security agreement. The Court finds that the mobile home with VIN 3885E is a fixture and a part of the debtors' security agreement.

The debtors' second argument that Carrington's Proof of Claim as filed is not accurate and does not include the information required to allow the debtors to determine if Carrington's accounting is correct fails under the testimony of the debtors' forensic accounting expert. When a party in interest objects to a proof of claim, "the court, after notice and a hearing, shall determine the amount of such claim . . . and shall allow such claim in such amount" 11 U.S.C. § 502(b). Having first determined that Carrington's claim is enforceable against the debtors in accord with its security interest, the Court's remaining obligation is to determine the amount of Carrington's claim. According to Carrington's Proof of Claim, as of the date the debtors filed their petition, Carrington was owed \$93,680.47, which included an arrearage of \$12,716.84. Carrington's Proof of Claim was reviewed by Jay Patterson, a certified fraud examiner the debtors hired to review the debtors' previous loan servicing. Mr. Patterson testified unequivocally that all of the figures on Carrington's Proof of Claim reconcile, including the arrearage amount. Based on the debtors' expert witness, the Court finds that Carrington's Proof of Claim is accurate and overrules the debtors' objection to the claim.

For the above reasons, the Court denies the debtors' *Adversary Complaint to Determine Validity of Secured Status Under 11 U.S.C. § 506; Objection to Proof of Claim* in its entirety.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Ben Barry". The signature is written in a cursive style and is positioned above a horizontal line.

Ben Barry
United States Bankruptcy Judge
Dated: 03/18/2019

cc: Todd F. Hertzberg
William Clark
Amy Clemmons Brown
Coleman Braun
Joyce B. Babin