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10 UNITED STATES BANKRUPTCY COURT
11 DISTRICT OF NEVADA

12 In re:)
13) BK-S-12-23910-BAM
14 ROBERT ALLAN GATLIN,) Chapter 13
15)
16 Debtor(s).)
17) Date of Hearing: 3/7/13
18) Time of Hearing: 3:15 p.m.
19 _____)

20 **MOTION TO VALUE COLLATERAL, "STRIP OFF" AND MODIFY RIGHTS OF BANK**
21 **OF AMERICA, N.A., PURSUANT TO 11 U.S.C. §506(a) AND §1322**

22 COMES NOW, ROBERT GATLIN (hereinafter referred to as "Debtor"), by and through his
23 attorney R. NATHAN GIBBS, ESQ., of the law firm of R. NATHAN GIBBS, LTD., and moves this
24 Court for the following relief:

- 25 1. Debtor filed the instant Chapter 13, Case Number 12-23910 on December 21, 2012.
- 26 2. On the petition date, Debtor owned real property located at 1521 Ravanusa Drive,
27 Henderson, Nevada, 89052 (hereinafter referred to as "Subject Property").
- 28 3. The value of the Subject Property was \$302,000.00 at the time the instant petition was filed.
4. At the time of filing the instant petition, the Subject Property was subject to a priority lien held by NATIONSTAR MORTGAGE, (ACCT ENDING IN 9516) in the amount of \$361,931.00.
5. Therefore, on the date the instant bankruptcy was filed, no equity existed in the Subject Property above the claims of NATIONSTAR MORTGAGE, (ACCT ENDING IN 9516).
6. BANK OF AMERICA, N.A.'S claim was wholly unsecured on the petition date and if the Subject Property was sold at auction BANK OF AMERICA, N.A. would receive nothing.

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1 7. Accordingly, the Debtor requests that Your Honor find that BANK OF AMERICA, N.A.’s
2 is wholly unsecured and BANK OF AMERICA, N.A.’s rights to foreclose on the Subject
3 Property are hereby extinguished.

4 **LEGAL ARGUMENT**

5 In *In re Zimmer*, 313 F.3d 1220 (9th Cir.2002), the Court stated that a wholly unsecured lien
6 holder’s claim can be modified and reclassified as a general unsecured claim pursuant to 11 U.S.C.
7 §506(a), despite the anti-modification language in §1322(b)(2). Specifically, the Court held:

8 Section 506(a) divides creditor’s claims into “secured...claims” and
9 “unsecured claims.” Although the conventional interpretation of
10 “secured” might include any claim in which the creditor has a security
11 interest in the Debtor’s property, §506(a) makes clear that the status
12 of a claim depends on the valuation of the property. An allowed
13 claim of a creditor secured by a lien on property in which the estate
14 has an interest ... is a secured claim to the extent of the value of such
15 creditor’s interest in the estate’s interest in such property ... and is an
16 unsecured claim to the extent that the value of such creditor’s interest
17 ... is less than the amount of such allowed claim

18 To put it more simply, a claim such as a mortgage is not a “secured
19 claim” to the extent that it exceeds the value of the property that
20 secures it. Under the Bankruptcy Code, “secured claim” is thus a
21 term of art; not every claim that is secured by a lien on property will
22 be considered a “secured claim.” Here, it is plain that PSB Lending’s
23 claim for the repayment of its loan is an unsecured claim, because its
24 deed of trust is junior to the first deed of trust, and the value of the
25 loan secured by the first deed of trust is greater than the value of the
26 house.

19 Accordingly, since BANK OF AMERICA, N.A.’s claim is wholly unsecured (in that there
20 is no extant equity above the first mortgage in the Subject Property), BANK OF AMERICA, N.A.
21 should be stripped of its secured rights under State law since no maintainable security interest in
22 the Subject Property exists.

23 Further, the Debtor is not required to file an adversary proceeding to achieve the requested
24 relief herein. Debtor may bring a motion to “strip off” BANK OF AMERICA, N.A.’s consensual
25 lien by motion. See *In re Williams*, 166 B.R. 615 (Bankr.E.D.Va.1994), *In re Fuller*, 255 B.R. 300
26 (Bankr.W.D.Mich.2000), *In re Hoskins*, 262 B.R. 693 (Bankr.E.D.Mich.2001), *In re King*, 290 B.R.
27 641 (Bankr.C.D.Ill.2003), *In re Millspaugh*, 302 B.R. 90 (Bankr.D.Idaho 2003), *Dickey v. Ben. Fin.*
28 (*In re Dickey*) 293 B.R. 360 (Bankr.M.D.Pa.2003), *In re Hill*, 304 B.R. 800 (Bankr.S.D.Ohio 2003),

1 *In re Sadala*, 294 B.R. 180 (Bankr.M.D.Fla.2003), *In re Fisher*, 289 B.R. 544
2 (Bankr.W.D.N.Y.2003), *In re Robert*, 313 B.R. 545 (Bankr.N.D.N.Y.2004), *In re Bennett*, 312 B.R.
3 843 (Bankr.W.D.Ky.2004).

4 WHEREFORE, Debtor prays that this court:

- 5 1. Find that BANK OF AMERICA, N.A., is not a holder of a lien on the Subject
6 Property;
- 7 2. Immediately avoid, “strip off”, cancel and extinguish BANK OF AMERICA, N.A.’s
8 lien from the Subject Property pursuant to 11 U.S.C. Section 506(a);
- 9 3. Such other relief the Court finds appropriate.

10 DATED this 30th day of January, 2012.

11 R. NATHAN GIBBS, LTD.

12 /s/ R. Nathan Gibbs
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17 Attorney for Debtor
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CERTIFICATE OF MAILING

I hereby certify that I am an employee of R. NATHAN GIBBS, LTD., and that on the 30th day of January, 2013, I served a true and correct copy of the MOTION TO VALUE COLLATERAL, "STRIP OFF" AND MODIFY RIGHTS OF BANK OF AMERICA, N.A., PURSUANT TO 11 U.S.C. §506(a) AND §1322 by regular first class mail at Las Vegas, NV with 1st class postage prepaid and addressed as follows:

Robert A. Gatlin
1521 Ravanusa Drive
Henderson, NV 89052
Debtor

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Chapter 13 Trustee

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/s/Stacey L. Stirling
An Employee of R. Nathan Gibbs, Ltd.