

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK  
-----

In re

ANNETTE BEAMAN

Case No. 96-12848 K

Debtor  
-----

By Order dated October 29, 1996, the Court gave Old Republic Insurance FAC until November 12, 1996, to respond in writing as to why its amended claim should not be stripped down. It has not responded.

The Court feels no warmer today towards the merits of the Debtor's arguments than it felt in the case of *Brunson v. Wendover Funding, Inc. (In re Brunson)*, 201 B.R. 351 (Bankr. W.D.N.Y. 1996) when it said, in dictum, "Often a homeowner is transferred for a period of a year or two and rents out [her] house. By no means, in this Court's view, should a boilerplate lien on such rents permit stripdown." *Id.* at 353. Surely condemnation proceeds are no different.

But Old Republic has once, twice and thrice ignored the proper means of responding to the Debtor's Motion and the Court's Order.

The Debtor shall prevail not on the merits, but by default. Although the Amended Claim is "prima facie evidence of the validity and amount of the claim," Fed.R.Bankr.P. 3001(f), this Court's Order placed the burden of going forward on Old Republic in light of the Debtor's two prior motions upon which Old Republic defaulted (other than by communicating its opposition to the Chapter 13 Trustee and filing the Amended Claim).

Old Republic has not gone forward. The Debtor's Motion of September 9, 1996, is denied as moot. Her Motion of October 9, 1996, is granted by default. The lien of Old Republic on the real property located at 1629 Michigan Avenue, Niagara Falls, New York, shall be void under 11 U.S.C. § 506(d) upon the payment of \$8,405.07 (plus 9% present-value adjustment) and 5% of the balance of the claim, over the life of the Debtor's Plan.

Upon completion of the Plan the Debtor may apply to this Court for a recordable Order clearing title of Old Republic's lien, and the Order will be granted.

This Decision shall not constitute nor be cited as precedent for any matter in any other case.

The Debtor's counsel shall serve this Order by certified mail, return receipt requested, on Old Republic Insurance FAC, Attn. R.M. Basinski, V.P., P.O. Box 2390, Bloomfield, N.J. 07003-0996, and shall thereafter file an affidavit of service and the returned receipt.

SO ORDERED.

Dated: Buffalo, New York  
November 22, 1996

/s/Michael J. Kaplan

---

Michael J. Kaplan, U.S.B.J.