

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

Case No. 3:14-bk-2004-PMG

Richard James Whiting
Tammy Lynette Whiting,

Debtors.

Chapter 13

ORDER ON CONFIRMATION OF SECOND AMENDED CHAPTER 13 PLAN

THIS CASE came before the Court for an evidentiary hearing to consider confirmation of the Second Amended Chapter 13 Plan filed by the Debtors, Richard James Whiting and Tammy Lynette Whiting. (Doc. 44). The Chapter 13 Trustee objects to confirmation of the Plan. (Doc. 58).

Under §506(a) of the Bankruptcy Code, a lienholder's claim is a secured claim to the extent of the value of the property, and an unsecured claim to the extent that the value of the property is less than the amount of the claim. Under §502(b) of the Bankruptcy Code, an unsecured claim is not allowable in a bankruptcy case if it is otherwise unenforceable against the debtor or estate under applicable law.

In this case, the Debtors obtained a Judgment "stripping" SunTrust Bank's second mortgage from their homestead real property, and determining that the claim is unsecured pursuant to §506(a). SunTrust's unsecured claim is unenforceable against the Debtors in this Chapter 13 case, however, because the Debtors' personal liability to SunTrust was discharged in a prior Chapter 7 case.

Consequently, SunTrust's unsecured claim is not allowable in this case pursuant to §502(b), and the Debtors' Chapter 13 Plan may provide that "the Trustee shall make no payments" to SunTrust on account of the claim. The Trustee's Objection to confirmation should be overruled, and the Debtors' Chapter 13 Plan should be confirmed.

Background

On October 30, 2013, the Debtors filed a petition under Chapter 7 of the Bankruptcy Code, and listed SunTrust as a creditor holding a second mortgage on their homestead. On February 13, 2014, the Debtors received their Discharge of Joint Debtors in the Chapter 7 case. (Case No. 3:13-bk-6479-PMG).

On April 25, 2014, the Debtors filed the petition that commenced their current Chapter 13 case. On their schedule of assets filed in the Chapter 13 case, the Debtors listed their homestead real property in Green Cove Springs, Florida, with a scheduled value of \$233,145.00. On their schedule of liabilities, the Debtors listed NationStar Mortgage as a creditor holding a first mortgage on their homestead in the amount of \$246,540.09, and SunTrust as a creditor holding a second mortgage on the homestead in the amount of \$64,447.00. (Doc. 9).

On November 6, 2014, the Debtors filed a Notice of Mortgage Modification Mediation with NationStar, and on April 22, 2015, the Debtors filed a Motion for Approval of Debtors' Permanent Modification of NationStar's first mortgage. (Docs. 27, 45).

On April 22, 2015, the Debtors also filed their Second Amended Chapter 13 Plan. With respect to SunTrust, paragraph 2.B.(2) of the Plan provides:

(2) SUNTRUST MORTGAGE INC holds a second mortgage on the Debtors' homestead property located at **5924 County Road 209 South, Green Cove Springs, FL 32043**. The Debtors will file an adversary proceeding against this creditor to value

its lien against the homestead property at \$0.00. The Trustee shall make no payments to this creditor.

(Doc. 44)(Emphasis supplied).

On May 14, 2015, the Debtors filed a Complaint against SunTrust “pursuant to 11 U.S.C. §506(a) to value collateral and determine the status of Defendants lien and/or claim” against the Debtors’ property. (Adv. Pro. 3:15-ap-156-PMG).

On September 10, 2015, a Default Judgment was entered against SunTrust in the adversary proceeding. The Judgment provides that SunTrust’s second mortgage “shall be deemed void and extinguished automatically upon completion of the Chapter 13 plan,” and also provides:

(5) The Plaintiffs are not eligible for a discharge in this matter, and the promissory note related to the subject mortgage has been previously discharged in a prior Chapter 7 case, therefore, this creditor’s unsecured claim shall be zero.

(Adv. Pro. 3:15-ap-156-PMG, Doc. 12)(Emphasis supplied).

Discussion

The Chapter 13 Trustee filed a written Objection to confirmation of the Debtors’ Second Amended Chapter 13 Plan. (Doc. 58). Specifically, the Trustee asserts that the Plan violates §1325 of the Bankruptcy Code by failing to provide for payments to SunTrust, and that SunTrust’s stripped lien should be allowed and paid as an unsecured claim under the Plan.

The Trustee’s Objection should be overruled.

A. Section 506(a)

SunTrust was the holder of a second mortgage on the Debtors’ homestead real property.

Section 506(a)(1) of the Bankruptcy Code “bifurcates a secured creditor’s allowed claim into secured and unsecured portions based on the underlying collateral’s value.” In re Brown, 746 F.3d 1236, 1239 (11th Cir. 2014). The section provides:

11 USC §506. Determination of secured status

(a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, . . . is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property, . . . and is an unsecured claim to the extent that the value of such creditor’s interest . . . is less than the amount of such allowed claim. . . .

11 U.S.C. §506(a)(1). By this section, “the Code expressly dictates that the portion of a claim secured by a debtor’s property that exceeds the value of that property is an unsecured claim.” In re Hoffman, 2015 WL 5464668 (Bankr. D. Idaho). “In bankruptcy cases, ‘a completely valueless lien is classified as an unsecured claim under section 506(a).’” In re Dolinak, 497 B.R. 15, 19 (Bankr. D. N.H. 2013)(quoting In re Davis, 716 F.3d 331, 335 (4th Cir. 2013)).

B. Section 502(b)

Section 506(a), however, functions only to determine the status of a claim as secured or unsecured based on the value of the collateral.

The purpose of §506(a)(1) is to determine whether a secured claim exists and how it should be treated. It does not address the merits of the unsecured claim. As stated in In re Hill, 440 B.R. 176 (Bankr. S.D. Cal. 2010), §506(a) “only prescribes how a secured claim is to be treated, not whether the underlying claim is allowed or disallowed.” *Id.* at 184.

In re Rosa, 521 B.R. 337, 339-40 (Bankr. N.D. Cal. 2014). In other words, §506(a) determines the secured status of a claim, but not the allowance or disallowance of the claim for purposes of distribution in the bankruptcy case.

The allowance or disallowance of claims is governed by §502 of the Bankruptcy Code. Section 502(b)(1) provides:

11 USC §502. Allowance of claims or interests

...

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured.

11 U.S.C. §502(b)(1)(Emphasis supplied). Under this provision, a claim is not allowed in a bankruptcy case if it is rendered unenforceable by “applicable law.” See In re Mazyck, 521 B.R. 726 (Bankr. D.S.C. 2014).

C. Chapter 20 cases

The term “Chapter 20” refers to multiple filings where the same debtor follows a Chapter 7 case with a Chapter 13 case. In re Montes, 526 B.R. 397, 400 (Bankr. D.N.M. 2015).

In Chapter 20 cases, the debtor may use §506(a) to “strip” a wholly unsecured junior lien in the second case (the Chapter 13 case) after receiving a discharge in the prior Chapter 7. In re Scantling, 754 F.3d 1323, 1326 (11th Cir. 2014). After the lien has been stripped in the Chapter 13 case, the lienholder is left with an unsecured claim pursuant to §506(a). See In re Dolinak, 497 B.R. 15, 19 (Bankr. D.N.H. 2013)(quoting In re Davis, 716 F.3d 331, 335 (4th Cir. 2013))(In Chapter 20 cases, “a completely valueless lien is classified as an unsecured claim under section 506(a).”).

The unsecured claim is then evaluated under §502(b) to determine whether it is an allowed claim in the Chapter 13 case. Section 502(b) “controls whether the unsecured claim resulting from bifurcation or a lien-strip is allowed (or not).” In re Hoffman, 2015 WL 5464668.

As shown above, a claim is not allowed under §502(b) if it is unenforceable under applicable law. In Chapter 20 cases, the debtor’s personal liability on the lienholder’s claim was discharged in the first bankruptcy case (the Chapter 7 case). Because the unsecured debt was discharged in the prior Chapter 7, it is unenforceable in the subsequent Chapter 13 within the meaning of §502(b) of the Bankruptcy Code. See Johnson v. Home State Bank, 501 U.S. 78, 84-85, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991)(A bankruptcy discharge extinguishes a creditor’s right to enforce a debtor’s personal liability on a claim.); and In re Shen, 2011 WL 3236182, at 1 (Bankr. N.D. Cal.)(A debt that was discharged in a prior Chapter 7 case was unenforceable as a personal liability of the debtors under the Bankruptcy Code’s discharge provisions.).

Consequently, the claim resulting from a Chapter 20 lien-strip is classified as an unsecured claim under §506(a), but the unsecured claim is not allowed in the Chapter 13 case under §502(b)(1) because it is not enforceable against the debtor.

In In re Rosa, 521 B.R. 337 (Bankr. N.D. Cal. 2014), for example, the debtor filed a Chapter 13 petition after receiving a Chapter 7 discharge, and stripped a junior lien on her residence in the second case. Her proposed Chapter 13 plan did not provide for any distributions on account of the resulting unsecured claim, and the Chapter 13 Trustee objected to confirmation of the Plan.

The Court overruled the Trustee’s objection, first noting that the debtor’s personal liability to the stripped lienholder was discharged in the prior Chapter 7 case. Consequently, the unsecured claim was

unenforceable under §524 of the Bankruptcy Code, which provided the “applicable law” under §502(b), and the claim was not allowable in the Chapter 13 case.

Simply, if a Chapter 7 discharge and Bankruptcy Code §524 limit a lienholder to its *in rem* rights, what Bankruptcy Code section resurrects its *in personam* rights in a subsequent Chapter 13 case? No one disputes that the *Akram* junior lienholders held a secured claim as of the Chapter 13 petition date. Yet the court does not cogently explain why, after eliminating their *in rem* rights through a motion to value, these lienholders held allowed, unsecured claims for discharged debts. Disallowing their unsecured claims does not undermine in any sense the *Dewsnup* or *Johnson v. Home State Bank* holdings.

In re Rosa, 521 B.R. at *341. Accordingly, the stripped lienholder’s unsecured claim was disallowed, and the Plan was confirmed with no distribution on account of the claim.

In reaching this conclusion, the Court relied on an earlier decision in In re Sweitzer, 476 B.R. 468 (Bankr. D. Md. 2012). Under similar circumstances in a Chapter 20 case, the Court in Sweitzer found:

Real Time’s *in personam* rights and claims against the debtors were discharged in their prior Chapter 7 case. Those *in personam* rights and claims cannot now be resurrected and allowed as an unsecured claim in this case in contravention of that discharge simply because Real Time’s *in rem* rights were stripped off in this case. As stated in *Scantling*, for purposes of this case Real Time is now left with neither *in personam* nor *in rem* rights against the debtor, and thus holds no allowable claim against the debtors or their property that would entitle them to receive distributions under the Chapter 13 plan in this case.

In re Sweitzer, 476 B.R. at 473(citing In re Scantling, 465 B.R. 671, 680 (Bankr. M.D. Fla. 2012))(The “pro-lien stripping courts recognize that upon confirmation of a plan in a chapter 20 case, the holder of a wholly unsecured junior mortgage lien holds neither a secured claim – by virtue of the §506 valuation – nor an unsecured claim enforceable against the debtor – by virtue of the prior discharge.”).

In the case before the Court, as in Rosa and Sweitzer, the Debtors received a Chapter 7 discharge before filing the current Chapter 13 case. In the current case, the Debtors obtained a Judgment stripping SunTrust’s second lien from their homestead real property pursuant to §506(a) of the

Bankruptcy Code, and their Chapter 13 Plan does not provide for any distribution to SunTrust on account of SunTrust's resulting unsecured claim.

The Plan is confirmable, because the Debtors' personal liability to SunTrust was discharged in the prior Chapter 7 case. SunTrust's unsecured claim is therefore unenforceable against the Debtors under applicable law, and is not an allowed claim in the current Chapter 13 case pursuant to §502(b) of the Bankruptcy Code.

D. Dang

In In re Dang, the Court previously determined that a creditor whose lien has been stripped may assert an unsecured claim in a Chapter 13 case, even if the debtor's personal liability for the claim had been discharged in a prior Chapter 7 case. In re Dang, 467 B.R. 227, 237 (Bankr. M.D. Fla. 2012)(quoting In re Gounder, 266 B.R. 879, 881 (Bankr. E.D. Cal. 2001)). The practice of lien-stripping in Chapter 20 cases has evolved significantly since the issuance of the Dang decision. See In re Scantling, 754 F.3d 1323 (11th Cir. 2014).

Additionally, unlike the Debtors in this case, who oppose any distribution to SunTrust, the debtor in Dang actually requested authorization to pay the junior lienholder's unsecured claim through her Chapter 13 plan. In the adversary proceeding to strip the lien, for example, the debtor asked for treatment of the lien as an unsecured claim in her Chapter 13 plan, and the plan provided that any claim filed by the lienholder would be an unsecured claim. (Adv. Pro. 3:11-ap-232-PMG, Doc 1; Case No. 3:10-bk-2970-PMG, Doc. 10).

In Dang, the Chapter 13 Trustee primarily objected to the plan's lien-stripping provision in the context of a Chapter 20 case, rather than to payment of the lienholder's unsecured claim if the lien-strip were ultimately approved. In other words, the debtor did not object to allowance of the unsecured

claim, and the Court's determination regarding the claim related to the confirmation requirement of §1325(a)(4) of the Bankruptcy Code.

For these reasons, the Court is persuaded that the outcome of the current case should be determined by §506(a) and §502(b) of the Bankruptcy Code, and the analysis set forth in Rosa and Sweitzer, rather than the Court's prior decision in Dang.

Conclusion

Under §506(a) of the Bankruptcy Code, a lienholder's claim is a secured claim to the extent of the value of the property, and an unsecured claim to the extent that the value of the property is less than the amount of the claim. Under §502(b) of the Bankruptcy Code, an unsecured claim is not allowable in a bankruptcy case if it is otherwise unenforceable against the debtor or estate under applicable law.

In this case, the Debtors obtained a Judgment stripping SunTrust's second mortgage from their homestead real property, and determining that the claim is unsecured pursuant to §506(a). SunTrust's unsecured claim is unenforceable against the Debtors in this Chapter 13 case, however, because the Debtors' personal liability to SunTrust was discharged in a prior Chapter 7 case.

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Accordingly:

IT IS ORDERED that:

1. The Chapter 13 Trustee's Amended Objection to Confirmation of Debtors' Chapter 13 Plan is overruled.

2. Within fourteen (14) days of this Order, the Chapter 13 Trustee shall submit an Order Confirming the Second Amended Chapter 13 Plan of the Debtors, Richard James Whiting and Tammy Lynette Whiting.

DATED this 8 day of October, 2015.

BY THE COURT

Paul M. Glenn

PAUL M. GLENN
United States Bankruptcy Judge