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OF THE NINTH CIRCUIT

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

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In re:)	BAP No.	AZ-14-1483-KiPaJu
)		
SERGE MICHEL BOUKATCH and)	Bk. No.	2:14-bk-04721-EPB
LORI JEAN BOUKATCH,)		
)		
Debtors.)		
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SERGE MICHEL BOUKATCH; LORI)		
JEAN BOUKATCH,)		
)		
Appellants,)		
)		
v.)	O P I N I O N	
)		
MIDFIRST BANK; RUSSELL A.)		
BROWN, Chapter 13 Trustee,)		
)		
Appellees.)		
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Argued and Submitted on June 19, 2015
at Phoenix, Arizona

Filed - July 9, 2015

Appeal from the United States Bankruptcy Court
for the District of Arizona

Honorable Eddward P. Ballinger, Jr., Bankruptcy Judge, Presiding

Appearances: Lawrence D. Hirsch of Parker Schwartz, PLLC, argued
for appellants; Craig Lawrence Friedrichs argued
for appellee Chapter 13 Trustee Russell A. Brown.

Before: KIRSCHER, PAPPAS and JURY, Bankruptcy Judges.

1 KIRSCHER, Bankruptcy Judge:

2
3 Chapter 13¹ debtors, Serge M. Boukatch and Lori J. Boukatch
4 ("Debtors"), appeal an order denying their motion to avoid a lien
5 on their principal residence.² The bankruptcy court determined
6 that, as a matter of law, a "chapter 20"³ debtor is not entitled
7 to avoid a wholly unsecured junior lien under §§ 506(a) and
8 1322(b)(2) against the debtor's principal residence when no
9 discharge will be entered in the pending chapter 13 case. On this
10 issue of first impression, we REVERSE and REMAND.

11 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

12 Debtors filed a chapter 13 bankruptcy case on February 8,
13 2011. They valued their residence located in Phoenix, Arizona at
14 \$187,500. Debtors identified two liens against the residence:
15 Wells Fargo Bank NA ("Wells Fargo") held a first lien, amounting
16 to \$228,300; and MidFirst Bank ("MidFirst") held a second lien,
17 amounting to \$67,484.96. The bankruptcy court converted the case
18 to a chapter 7 case on November 21, 2012. The chapter 7 trustee
19 abandoned the residence, given it was burdensome and of
20 inconsequential value to the estate. Debtors received a chapter 7
21 discharge on March 25, 2013.

22 Debtors filed the instant chapter 13 bankruptcy case on
23

24 ¹ Unless specified otherwise, all chapter, code and rule
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

26 ² Appellee MidFirst Bank has not appeared in this appeal.

27 ³ We understand the term "chapter 20" debtor is a chapter 13
28 debtor who has received a chapter 7 discharge within the four-year
time period set forth in § 1328(f) prohibiting further discharge.

1 April 2, 2014, less than four years after the filing of Debtors'
2 case in which they received their chapter 7 discharge. Debtors
3 again valued their residence at \$187,500. In addition to Wells
4 Fargo's first lien for \$228,300, Debtors identified MidFirst's
5 second, wholly unsecured junior lien for \$67,484, contending that
6 MidFirst held a lien only; their personal liability on this debt
7 had been discharged in the prior chapter 7 case.

8 Debtors filed an amended chapter 13 plan on June 27, 2014,
9 which provided the following regarding MidFirst's junior lien:

10 **LIEN STRIPPING:**

11 **SECOND LIEN:** The claim of MidFirst Bank was discharged
12 on 3/25/13 (dkt #89) in Debtors' Chapter 7 case (2:11-bk-
13 03143 RJH) and this second place lien is totally
14 unsecured. The property is encumbered by a first lien in
15 favor of Wells Fargo in the amount of \$228,300 and the
16 fair market value of the property is \$187,500. Debtors'
counsel shall file a separate motion to set aside the
MidFirst Bank lien prior to confirmation of the plan
pursuant to 11 U.S.C. § 506(a) and the lien of creditor,
MidFirst Bank shall be stripped from the property. No
payments shall be made to MidFirst Bank.

17 Am. Ch. 13 Plan, Dkt. no. 20 at 6. Debtors conceded they were
18 ineligible for a chapter 13 discharge under § 1328(f)(1). Id.
19 Appellee, Chapter 13 Trustee Russell A. Brown ("Trustee"), who
20 supports Debtors on appeal, filed a motion to deny entry of
21 discharge; the bankruptcy court granted that motion.

22 On July 7, 2014, Debtors filed a motion to determine the
23 value of the residence, seeking to avoid or "strip off" MidFirst's
24 wholly unsecured junior lien under §§ 506(a) and 1322(b)(2) (the
25 "Lien Strip Motion"). MidFirst did not object to Debtors' amended
26 chapter 13 plan or the Lien Strip Motion; Trustee did not object
27 to the "Lien Stripping" provision in Debtors' amended plan.

28 On July 28, 2014, Debtors filed a Notice of No Objection as

1 to the Lien Strip Motion. Despite the lack of any objection, the
2 bankruptcy court denied the Lien Strip Motion on October 1, 2014.
3 The bankruptcy court did not conduct a hearing. The court's order
4 sets forth its limited findings and conclusions:

5 The question presented is whether a "chapter 20" debtor
6 can invoke § 506 and § 1322 to permanently strip unsecured
7 liens, in the absence of a discharge. Under the analysis
of *Victorio v. Billingslea*, 470 B.R. 545 (S.D. Cal. 2012),
the answer is no. For this reason, the motion is denied.

8 Order, Dkt. no. 40. Debtors timely filed their notice of appeal
9 on October 7, 2014.

10 II. JURISDICTION

11 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
12 and 157(b)(2)(K). We have jurisdiction under 28 U.S.C. § 158.

13 III. ISSUE

14 Is a "chapter 20" debtor entitled to avoid a wholly unsecured
15 junior lien against the debtor's principal residence when no
16 discharge will be entered?

17 IV. STANDARD OF REVIEW

18 The bankruptcy court's conclusions of law, including its
19 interpretation of the Bankruptcy Code, are reviewed de novo.
20 Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom,
21 Inc.), 503 F.3d 933, 940 (9th Cir. 2007).

22 V. DISCUSSION

23 **A. The Ninth Circuit Court of Appeals has a pending appeal that**
24 **may address, in part, whether a lien may be stripped off a**
principal residence in the absence of a discharge.

25 The question before us is whether a chapter 20 debtor can
26 avoid or "strip off" a wholly unsecured junior lien against the
27 debtor's principal residence in the absence of a discharge. More
28 specifically, can a debtor, who has been discharged of personal

1 liability for a home mortgage debt by receiving a chapter 7
2 discharge, modify the in rem rights of the holder of the mortgage
3 debt by avoiding the lien through a chapter 13 plan, even though
4 the debtor is ineligible for discharge? The Ninth Circuit has not
5 yet addressed this issue; however, the Circuit may consider this
6 issue, among others, in the In re Blendheim appeal, No. 13-35354.
7 In an earlier order which is not on appeal to the Circuit, the
8 bankruptcy court in Blendheim held that a debtor need not be
9 eligible for a chapter 13 discharge to file a chapter 13 plan that
10 proposes to strip off a wholly unsecured lien from the debtor's
11 principal residence. In re Blendheim,⁴ 2011 WL 6779709, at *5
12 (Bankr. W.D. Wash. Dec. 27, 2011). Other facts and issues may
13 distinguish Blendheim from the appeal before us. The issue raised
14 in Blendheim involves a default order disallowing a secured
15 lender's proof of claim and the subsequent process to avoid that
16 lender's first lien. In Blendheim, the Circuit, after oral
17 argument, requested additional briefing on whether it "should
18 require, consistent with Dewsnup v. Timm, 502 U.S. 410 (1992),
19 that a bankruptcy court first determine that a lien is
20 substantively invalid before voiding that lien under [] § 506(d)."
21 Order, Ninth Circuit Court of Appeals No. 13-35354, Dkt. no. 49,
22 Dec. 22, 2014. The strip off of a junior wholly unsecured lien in
23 a chapter 13 case that we address in our present appeal is far
24 more common than the issues before the Ninth Circuit in Blendheim.

25 Two other Circuit Courts of Appeals and two Bankruptcy
26

27 ⁴ Sometimes "Blendheim" is spelled with a "d" and sometimes
28 without ("Blenheim," as it is on Westlaw), but the correct
spelling is with a "d."

1 Appellate Panels have considered the issue before us, each holding
2 that such liens may be stripped, regardless of the debtor's
3 eligibility for a discharge. See Wells Fargo Bank, N.A. v.
4 Scantling (In re Scantling), 754 F.3d 1323, 1325 (11th Cir. 2014),
5 abrogating In re Gerardin, 447 B.R. 342 (Bankr. S.D. Fla. 2011)
6 (holding that chapter 20 debtors could not permanently strip off
7 wholly unsecured junior liens) and In re Quiros-Amy, 456 B.R. 140
8 (Bankr. S.D. Fla. 2011) (same)); Branigan v. Davis (In re Davis),
9 716 F.3d 331, 337-38 (4th Cir. 2013); In re Cain, 513 B.R. 316,
10 322 (6th Cir. BAP 2014); Fisette v. Keller (In re Fisette), 455
11 B.R. 177, 186-87 (8th Cir. BAP 2011). As we explain below, we
12 agree that a chapter 20 debtor can strip off a wholly unsecured
13 junior lien against the debtor's principal residence in the
14 absence of a discharge.

15 **B. Lien stripping in a typical chapter 13 case.**

16 In a chapter 13 case in which the debtor is eligible for
17 discharge, §§ 506(a) and 1322(b) enable the debtor to strip off a
18 wholly unsecured lien against the debtor's principal residence.
19 Zimmer v. PSB Lending Corp. (In re Zimmer), 313 F.3d 1220 (9th
20 Cir. 2002). The lien strip procedure in a chapter 13 case is a
21 two-step process. Id. at 1226-27 (following Nobelman v. Am. Sav.
22 Bank (In re Nobelman), 508 U.S. 324, 328-29 (1993) (court must
23 first engage in the § 506(a) valuation process before determining
24 the claim's status for purposes of § 1322(b)(2))). Section
25 506(a),⁵ which is applied first, provides a valuation procedure

27 ⁵ Section 506(a)(1) provides, in relevant part, that an
28 allowed claim of a creditor secured by a lien on property in which
(continued...)

1 and bifurcates creditors' claims into "secured claims" and
2 "unsecured claims." Id. at 1222-23. "'Secured claim' is a term
3 of art within the Bankruptcy Code, and means something different
4 than it does for a creditor to have a security interest or lien
5 outside of bankruptcy." In re Okosisi, 451 B.R. 90, 93 (Bankr. D.
6 Nev. 2011). Whether a creditor who has a security interest in the
7 debtor's property is considered a "secured" creditor under the
8 Bankruptcy Code depends upon the valuation of the property. In re
9 Zimmer, 313 F.3d at 1223 (citing § 506(a)). A claim is not a
10 "secured claim" to the extent that it exceeds the value of the
11 property that secures it. Id.

12 Section 1322(b)(2)⁶ allows chapter 13 debtors to modify the
13 rights of creditors holding both secured and unsecured claims.
14 See § 1322(b)(2) (directing that a chapter 13 plan may "modify the
15 rights of holders of secured claims . . . or of holders of
16 unsecured claims"). But, a chapter 13 debtor may not modify the
17 rights of "holders of secured claims" who only hold a security
18 interest in real property that is the debtor's principal
19 residence. Id. This subsection is commonly known as the
20 "antimodification" provision. "However, the antimodification
21

22 ⁵(...continued)
23 the estate has an interest is a secured claim to the extent of the
24 value of such creditor's interest in the estate's interest in such
25 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.

26 ⁶ Section 1322(b)(2) provides that a chapter 13 plan may
27 "modify the rights of holders of secured claims, other than a
28 claim secured only by a security interest in real property that is
the debtor's principal residence, or of holders of unsecured
claims, or leave unaffected the rights of holders of any class of
claims."

1 protection of [§] 1322(b)(2) only operates to benefit creditors
2 who may be classified as secured creditors **after** operation of
3 [§] 506(a).” In re Okosisi, 451 B.R. at 93 (citing In re Zimmer,
4 313 F.3d at 1226) (emphasis in original); Frazier v. Real Time
5 Resolutions, Inc. (In re Frazier), 469 B.R. 889, 898 (E.D. Cal.
6 2012) (citing In re Zimmer) aff’g 448 B.R. 803 (Bankr. E.D. Cal.
7 2011).

8 If, after applying § 506(a), the creditor’s claim is
9 determined to be “secured,” which includes partially secured
10 claims (i.e., undersecured claims), the creditor is still the
11 “holder of a secured claim” and the debtor is unable to reduce or
12 “strip down” the undersecured claim to the principal residence’s
13 fair market value. See In re Nobelman, 508 U.S. at 329-332; In re
14 Okosisi, 451 B.R. at 93. However, if “the claim is determined to
15 be wholly unsecured, the rights of the ‘creditor holding only an
16 unsecured claim may be modified under § 1322(b)(2),’ and the
17 creditor’s lien may be avoided, notwithstanding the
18 antimodification protection provided for in [§] 1322(b)(2).”
19 In re Okosisi, 451 B.R. at 93-94 (quoting In re Zimmer, 313 F.3d
20 at 1227); Lam v. Investors Thrift (In re Lam), 211 B.R. 36, 40
21 (9th Cir. BAP 1997) (antimodification provision protecting a loan
22 secured by an interest in debtor’s principal residence does not
23 apply if no value exists to which the security interest can
24 attach).

25 The question, therefore, becomes whether a chapter 20 debtor
26 is entitled to strip off such liens when no chapter 13 discharge
27 will be entered. Courts across the nation are split on the issue.
28 ////

1 **C. Split of authority on lien stripping in chapter 20 cases.**

2 The Bankruptcy Code allows debtors to file chapter 20 cases.
3 Johnson v. Home State Bank, 501 U.S. 78, 87 (1991). The Supreme
4 Court held in Johnson that nothing in the Code forecloses the
5 benefit of chapter 13 reorganization to a debtor who previously
6 has filed for chapter 7 relief. Id. Before BAPCPA, chapter 20
7 debtors could obtain a chapter 13 discharge after having received
8 a discharge in chapter 7 without restriction. The Bankruptcy
9 Abuse Prevention and Consumer Protection Act ("BAPCPA") enacted in
10 2005 imposed a restriction by adding § 1328(f), which states that
11 a court cannot grant debtors a discharge in a chapter 13 case
12 filed within four years of the filing of a case wherein a
13 discharge was granted in chapter 7. § 1328(f)(1).

14 As stated earlier, the two Circuit Courts and two Bankruptcy
15 Appellate Panels that have addressed this issue have held that a
16 chapter 20 debtor may strip a wholly unsecured junior lien in the
17 absence of a discharge. This is one of three approaches courts
18 have adopted. See In re Jennings, 454 B.R. 252, 256-57 (Bankr.
19 N.D. Ga. 2011).

20 **1. The first approach**

21 Courts utilizing the first approach hold that stripping off
22 wholly unsecured liens in chapter 20 cases is not permissible
23 because it amounts to a "de facto discharge," which is prohibited
24 by § 1328(f). Lindskog v. M & I Bank FSB (In re Lindskog), 451
25 B.R. 863, 865-66 (Bankr. E.D. Wis. 2011) (permitting chapter 20
26 debtor to strip off lien would create an "end run" around
27 § 1328(f)), aff'd, 480 B.R. 916 (E.D. Wis. 2012); In re Fenn, 428
28 B.R. 494, 500 (Bankr. N.D. Ill. 2010) (allowing permanent strip

1 off of junior mortgage lien after chapter 20 debtor completes plan
2 "results in a de facto discharge"); In re Mendoza, 2010 WL 736834,
3 at *4 (Bankr. D. Colo. Jan. 21, 2010) (allowing avoidance of
4 second mortgage lien through subsequent chapter 13 filing would be
5 tantamount to granting debtor a discharge as to that debt and
6 would render § 1328(f) inoperable), abrogated by Zeman v. Waterman
7 (In re Waterman), 469 B.R. 334 (D. Colo. 2012); In re Winitzky,
8 2009 WL 9139891, at *3 (Bankr. C.D. Cal. May 7, 2009) ("a lien
9 strip would allow a debtor to simply do indirectly what the
10 Supreme Court has ruled he may not do directly"); Blosser v. KLC
11 Fin., Inc. (In re Blosser), 2009 WL 1064455, at *1 (Bankr. E.D.
12 Wis. Apr. 15, 2009) ("[A]llowing a debtor to file Chapter 7,
13 discharge all dischargeable debts and then immediately file
14 Chapter 13 to strip off a second mortgage lien would not be much
15 different than simply avoiding the mortgage lien in the Chapter 7
16 itself. But Chapter 7 debtors are not allowed to use § 506 to
17 avoid liens.").

18 To support their position that the Code prohibits lien
19 stripping in chapter 20 cases, these courts rely on an
20 interpretation of Dewsnup v. Timm, 502 U.S. 410, 417 (1992),⁷
21 which ended the practice of stripping undersecured consensual
22 liens in chapter 7 cases using § 506(d), and on the discharge

23
24 ⁷ On June 1, 2015, the Supreme Court extended Dewsnup in
25 chapter 7 cases to wholly unsecured junior liens in Bank of
26 America, N.A. v. Caulkett, 135 S. Ct. 1995 (2015). Nobelman
27 "addressed the interaction between the meaning of the term
28 'secured claim' in § 506(a) and an entirely separate provision,
§ 1322(b). Nobelman offers no guidance on the question presented
in these [chapter 7] cases because the Court in Dewsnup already
declined to apply the definition in § 506(a) to the phrase
'secured claim' in § 506(d)." Caulkett, 135 S. Ct. at 2000
(citation omitted).

1 requirement in § 1325(a)(5). In re Cain, 513 B.R. at 320; In re
2 Frazier, 469 B.R. at 895. The argument continues that
3 § 1325(a)(5)(B)(i)⁸ requires a chapter 13 plan to provide that the
4 holder of a secured claim retain the lien securing the claim until
5 either the underlying debt is paid or a discharge is entered
6 pursuant to § 1328. In re Fenn, 428 B.R. at 500. See also In re
7 Jarvis, 390 B.R. 600, 605-06 (Bankr. C.D. Ill. 2008). If the
8 debtor is not eligible for a chapter 13 discharge due to a
9 previous chapter 7 discharge, the lien strip cannot occur, because
10 the "strip off/avoidance occurs at discharge." In re Fenn, 428
11 B.R. at 500; accord In re Jarvis, 390 B.R. at 607. In other
12 words, these courts hold that a chapter 20 lien strip is not
13 allowed because a chapter 13 discharge is required to strip the
14 lien.

15 **2. The second approach**

16 Courts adopting the second approach allow chapter 20 lien

17 ⁸ Section 1325(a)(5) provides in part that

18 with respect to each allowed secured claim provided
19 for by the plan –

20 (A) the holder of such claim has accepted the plan; [or]

21 (B) (i) the plan provides that –

22 (I) the holder of such claim retain the lien
23 securing such claim until the earlier of –

24 (aa) the payment of the underlying debt
determined under nonbankruptcy law; or

25 (bb) discharge under section 1328; and

26 (II) if the case under this chapter is
27 dismissed or converted without completion of
28 the plan, such lien shall also be retained by
such holder to the extent recognized by
applicable nonbankruptcy law[.]

1 stripping but hold that the parties' prebankruptcy rights are
2 reinstated by operation of law after the plan has been consummated
3 absent discharge or payment in full; therefore, the lien avoidance
4 can never be permanent. In re Victorio, 454 B.R. 759, 781 (Bankr.
5 S.D. Cal. 2011) (chapter 20 debtor cannot permanently avoid a
6 wholly unsecured junior lien without discharge or paying it in
7 full during the course of chapter 13 plan), aff'd sub nom.
8 Victorio v. Billingslea, 470 B.R. 545 (S.D. Cal. 2012); Grandstaff
9 v. Casey (In re Casey), 428 B.R. 519 (Bankr. S.D. Cal. 2010)
10 (same); In re Jarvis, 390 B.R. at 605-06 (discharge is a necessary
11 prerequisite to permanency of lien avoidance); In re Trujillo,
12 2010 WL 4669095, at *2 (Bankr. M.D. Fla. Nov. 10, 2010) (absent a
13 discharge any modifications to creditor's rights are not permanent
14 and have no binding effect once plan ends), aff'd sub nom.
15 Trujillo v. BAC Home Loan Servicing, L.P. (In re Trujillo), 2012
16 WL 8883694 (M.D. Fla. Aug. 10, 2012), abrogated by In re
17 Scantling, supra; In re Lilly, 378 B.R. 232, 236 (Bankr. C.D. Ill.
18 2007) ("Where a debtor does not receive a discharge, however, any
19 modifications to a creditor's rights imposed in the plan are not
20 permanent and have no binding effect once the term of the plan
21 ends."). In this bankruptcy case, the bankruptcy court adopted
22 this approach, relying on Victorio.

23 These courts posit that chapter 13 cases can end in only one
24 of three ways: conversion, dismissal or discharge. This is true
25 whether it be pre- or post-BAPCPA. See In re Victorio, 454 B.R.
26 at 775, 778 (citing Leavitt v. Soto (In re Leavitt), 171 F.3d
27 1219, 1223 (9th Cir. 1999)); In re Casey, 428 B.R. at 522-23.
28 They further point out that actions taken to avoid a lien are

1 undone if the case is dismissed or converted prior to the
2 successful completion of all plan payments. The argument
3 continues that because the debtor is ineligible for a chapter 13
4 discharge, the only way to make the lien avoidance "permanent" is
5 by paying the debt in full during the course of the chapter 13
6 plan. See § 1325(a)(5)(B)(i)(I)(aa), (bb). Thus, without
7 discharge, the only way to conclude the case is dismissal or
8 conversion, either of which reinstates the avoided lien. See
9 §§ 1325(a)(5)(B)(i)(II), 348(f)(1)(C)(I).

10 The bankruptcy court in In re Victorio rejected the notion
11 that § 1328(f), added by BAPCPA, created what courts have referred
12 to as the "fourth option" for permanency of lien avoidance: the
13 completion of all plan payments and closing the case without
14 discharge. 454 B.R. at 775-76, 778-80 (discussing In re Okosisi
15 and the "court-invented 'fourth option'"); Victorio, 470 B.R. at
16 555-56 (district court rejecting the fourth option as a
17 "fallacy").

18 **3. The third approach**

19 Courts adopting the third approach allow chapter 20 lien
20 stripping "because nothing in the Bankruptcy Code prevents it."
21 In re Jennings, 454 B.R. at 257. These courts contend the
22 mechanism that voids the lien is plan completion and that chapter
23 20 cases end in administrative closing rather than dismissal.
24 Section 350(a) provides: "After an estate is fully administered
25 and the court has discharged the trustee, the court shall close
26 the case." Rule 5009(a) provides: "If in a . . . chapter 13 case
27 the trustee has filed a final report and final account and has
28 certified that the estate has been fully administered, . . . ,

1 there shall be a presumption that the estate has been fully
2 administered." As discharge is not available in a chapter 20 case
3 pursuant to § 1328(f), after the debtor completes all payments and
4 complies with the terms of the confirmed plan, the bankruptcy case
5 will be closed without entry of a discharge. See In re Okosisi,
6 451 B.R. at 99. Given closure and not dismissal after plan
7 completion, "the code sections that reverse any lien avoidance
8 actions contained within a chapter 13 plan upon conversion or
9 dismissal are not implicated, and, thus, do not act to prevent the
10 permanence of the lien avoidance. Once a debtor successfully
11 completes all plan payments . . . , the provisions of the plan
12 become permanent, and the lien avoidance is, similarly,
13 permanent." Id. at 100 (citations omitted).

14 A confirmed plan is binding on the debtor and the creditor
15 and vests all property of the estate in the debtor "free and clear
16 of any claim or interest of any creditor provided for by the
17 plan." § 1327(c). Provided the confirmed plan remains in effect,
18 avoided liens remain avoided, as the plan is binding and through
19 "res judicata precludes a creditor from bringing a collateral
20 attack of that order." In re Okosisi, 451 B.R. at 100. Only
21 revocation of the confirmed plan or case conversion or dismissal
22 can undo the res judicata effect of a confirmed plan. Id. If all
23 confirmed plan payments are made and plan terms are satisfied,
24 confirmation of the plan will not be revoked and the case will not
25 be converted or dismissed; the case will be closed leaving the res
26 judicata effect of the order confirming the plan in place. Id.

27 In other words, under this approach, the propriety of a lien
28 strip is not dependent upon discharge. See, e.g., In re

1 Scantling, 754 F.3d at 1329-30 (chapter 20 debtors can permanently
2 strip off wholly unsecured junior liens; ineligibility for a
3 discharge is "irrelevant"); In re Davis, 716 F.3d at 337-38 (Code
4 allows chapter 20 debtors to strip off wholly unsecured junior
5 liens; eligibility for discharge is "not determinative"); In re
6 Cain, 513 B.R. at 322 (holding same and reasoning that the wholly
7 unsecured status of the creditor's claim, rather than the debtor's
8 eligibility for a discharge, is determinative); In re Waterman,
9 469 B.R. at 339-40 (same); In re Frazier, 469 B.R. at 895-96
10 (same); In re Fisette, 455 B.R. at 186-87 (same); In re Fair, 450
11 B.R. 853, 857-58 (E.D. Wis. 2011) (nothing in the Code ties the
12 modification of an unsecured lien to obtaining a discharge under
13 chapter 13); In re Blendheim, 2011 WL 6779709, at *5 (same); In re
14 Jennings, 454 B.R. at 257; In re Okosisi, 451 B.R. at 103 (holding
15 same and reasoning that lien avoidance under In re Zimmer is
16 independent of the granting of a discharge, and the permanence of
17 such avoidance is assured by § 1327); In re Hill, 440 B.R. 176,
18 181-82 (Bankr. S.D. Cal. 2010) (chapter 20 lien strips are
19 permitted absent discharge so long as plan otherwise complies with
20 Code requirements); In re Tran, 431 B.R. 230, 235 (Bankr. N.D.
21 Cal. 2010), aff'd, 814 F. Supp. 2d 946 (N.D. Cal. 2011).

22 **D. The bankruptcy court erred in denying the Lien Strip Motion**
23 **on the basis that Debtors were not eligible for a chapter 13**
24 **discharge.**

24 We join the "growing consensus of courts" that have followed
25 the third approach and hold that nothing in the Code prevents
26 chapter 20 debtors from stripping a wholly unsecured junior lien
27 against the debtor's principal residence, notwithstanding their
28 lack of eligibility for a chapter 13 discharge. This approach is

1 consistent with Nobelman and Zimmer, because it starts by
2 determining the status of the claim under § 506(a). See In re
3 Scantling, 754 F.3d at 1326-27, 1329 (citing Nobelman and Tanner
4 v. FirstPlus Fin., Inc, (In re Tanner), 217 F.3d 1357 (11th Cir.
5 2000), the Eleventh Circuit's equivalent to Zimmer); In re Davis,
6 716 F.3d at 338 (citing Nobelman to hold that § 506(a) valuation
7 must be done first to determine claim's status before analyzing
8 whether § 1322(b) (2) bars its modification); In re Cain, 513 B.R.
9 at 322 (citing Nobelman and Lane v. W. Interstate Bancorp (In re
10 Lane), 280 F.3d 663, 669 (6th Cir. 2002), the Sixth Circuit's
11 equivalent to Zimmer, to hold that by failing to first determine
12 the proper classification of the creditor's claim under § 506(a),
13 the bankruptcy court disregarded the "road map" set forth in
14 Nobelman and Lane).

15 No one disputes that under § 506(a) MidFirst's lien has no
16 value because the senior lien held by Wells Fargo exceeds the
17 value of the property by approximately \$40,000. Consequently,
18 Nobelman and Zimmer dictate that MidFirst's claim is "unsecured"
19 under § 506(a). See In re Zimmer, 313 F.3d at 1223 (for creditor
20 to have a "secured claim" there must be value for the creditor's
21 interest in the collateral). Therefore, MidFirst holds only an
22 "unsecured claim" for purposes of § 1322(b) (2); the claim is not
23 subject to its antimodification protections. See § 1322(b) (2)
24 (protecting holders of "secured claims" secured only by a security
25 in a debtor's principal residence).

26 Contrary to those courts adopting the second approach,
27 because MidFirst's claim is unsecured, we determine § 1325(a) (5)
28 (protecting the holder of a secured claim until the debt is paid

1 or the debtor is discharged) does not apply. This is because
2 wholly unsecured liens are not "allowed secured claims" as the
3 opening language to that section specifies. See In re Scantling,
4 754 F.3d at 1329-30 (§ 1325(a)(5) does not involve unsecured
5 claims and debtor's ineligibility for a discharge is "irrelevant"
6 for lien strip in chapter 20 case); In re Davis, 716 F.3d at 338
7 ("Because the liens in these cases have no value, they are wholly
8 unsecured claims, which leaves no role in the analysis for section
9 1325(a)(5)."); In re Cain, 513 B.R. at 322 (same); In re Frazier,
10 469 B.R. at 898 n.10 ("Section 1325(a)(5) has no applicability to
11 unsecured allowed claims, which are separately governed by the
12 confirmation requirements of § 1325(a)(4)."); In re Fisette, 455
13 B.R. at 186 (the requirements of § 1325(a)(5) apply only to an
14 **"allowed secured claim,"** not a claim which has been classified
15 unsecured via § 506(a)) (emphasis in original); In re Okosisi, 451
16 B.R. at 97 (for § 1325(a)(5) to apply, the claim would first have
17 to be classified as "an allowed secured claim" within the meaning
18 of § 1325(a)(5)); In re Hill, 440 B.R. at 183.

19 To remain true to the holding of In re Zimmer, MidFirst's
20 unsecured claim cannot logically be treated differently under
21 § 1325 than it is treated under § 1322. In re Hill, 440 B.R. at
22 183 (citing United States v. Snyder, 343 F.3d 1171, 1179 (9th Cir.
23 2003) which held that a creditor who did not hold a secured claim
24 under § 506(a) had no right to other benefits of "secured status
25 in the bankruptcy proceeding"). Under In re Zimmer, the wholly
26 unsecured status of MidFirst's claim, rather than Debtors'
27 eligibility for a discharge, is determinative. BAPCPA did not
28 change this outcome. In re Okosisi, 451 B.R. at 103.

1 Moreover, we also disagree with the view that a lien strip in
2 a "no discharge" chapter 20 case amounts to a "de facto"
3 discharge. In rejecting this view, one court stated:

4 Simply put, stripping off a lien is not the same thing as
5 being discharged from personal liability for the debt
6 underlying that lien. As the Supreme Court has explained,
7 a bankruptcy discharge "extinguishes only one mode of
8 enforcing a claim – namely, an action against the debtor
9 in personam – while leaving intact another – namely, an
action against the debtor in rem." Johnson v. Home State
Bank, 501 U.S. 78, 84 (1991). Thus, a discharge releases
a debtor from in personam liability, whereas a strip off
affects a creditor's ability to proceed against the debtor
in rem. Fisette, 455 B.R. at 187 n.9.

10 In re Waterman, 469 B.R. at 340. By seeking to strip off a wholly
11 unsecured junior lien, Debtors seek to do just that: avoid the
12 lien. They do not seek a discharge. In re Fisette, 455 B.R. at
13 186-87. See In re Fair, 450 B.R. at 857 ("Congress did not intend
14 to prevent lien stripping through § 1328(f)(1), and it is
15 inaccurate to characterize lien stripping as a de facto discharge
16 under the bankruptcy code."); In re Okosisi, 451 B.R. at 101
17 (§ 1328(f) only prohibits discharge and court would not read any
18 further restrictions into the Code); In re Hill, 440 B.R. at 182
19 ("Since the [creditor's] debt was already discharged, or changed
20 to non-recourse status in the Chapter 7 case, a second discharge
21 for the Debtors in this Chapter 13 case would be redundant.").
22 The discharge imposes a statutory injunction preventing the
23 creditor from enforcing the discharged debt against the debtor
24 personally or against specified assets; it does not release the
25 lien from the debtor's property. In re Frazier, 448 B.R. at 809
26 (citing Johnson, 501 U.S. 78).

27 We conclude that § 1328(f)(1) does not prevent Debtors'
28 ability to strip off MidFirst's wholly unsecured junior lien in

1 their chapter 13 plan, because nothing in the Bankruptcy Code
2 prevents chapter 20 debtors from stripping such liens off their
3 principal residence under §§ 506(a)(1) and 1322(b)(2). We further
4 conclude that plan completion is the appropriate end to Debtors'
5 chapter 20 case. Unlike a typical chapter 13 case, the lien
6 avoidance will become permanent not upon a discharge, but rather
7 upon completion of all payments as required under the plan. In re
8 Davis, 716 F.3d at 338; In re Frazier, 469 B.R. at 900; In re
9 Blendheim, 2011 WL 6779709, at *6; In re Okosisi, 451 B.R. at 99-
10 100; In re Frazier, 448 B.R. at 810; In re Tran, 431 B.R. at 235.

11 We conclude that the bankruptcy court erred when it denied
12 the Lien Strip Motion on the basis that Debtors were not eligible
13 for a chapter 13 discharge.

14 VI. CONCLUSION

15 For the foregoing reasons, we REVERSE the decision of the
16 bankruptcy court and REMAND for further proceedings consistent
17 with this opinion.

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