UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

In re:	)	
	)	Chapter 13
SELFRIS GUERRA and ELIZABETH GUERRA,	)	Case No. 16-40121-CJP
Debtors	)	

MEMORANDUM OF DECISION

Before the Court is the *Objection to Confirmation of Debtors['] Second Amended Chapter 13 Plan* (the "Objection") filed by Qualitas Properties, LLC ("Qualitas"). The Objection requires the resolution of two questions. First, does the Supreme Court's decision in *Bank of Am. v. Caulkett*, -- U.S. --, 135 S. Ct. 1995, 192 L.Ed.2d 52 (2015) affect established law in this Circuit that permits a chapter 13 debtor to "strip off"[1] a wholly unsecured mortgage lien? Second, if lien stripping is still available to chapter 13 debtors, as of what date should the real property subject to the lien be valued?

I. FACTS AND POSITIONS OF THE PARTIES

Selfris and Elizabeth Guerra (the "Debtors") commenced this case on January 29, 2016 ("Petition Date") by filing a voluntary petition under chapter 13 of the United States Bankruptcy Code.[2] In their bankruptcy schedules, the Debtors claimed that their principal residence, located

[1] In this context, "strip off" means the entry of a confirmation order that discharges a creditor's mortgage lien on real property where that creditor's mortgage is determined to have no value because the amount of senior liens and encumbrances exceeds the value of the property.
[2] *See* 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code" or the "Code"). Unless otherwise specified, all statutory references herein are to the provisions of the Bankruptcy Code.

in Lawrence, Massachusetts (the "Property"), had a fair market value of $180,000.00. The Property is subject to two mortgages held by JPMorgan Chase Bank, N.A. ("Chase") and Qualitas, respectively. According to the proofs of claim filed by the mortgage holders, to which no objections have been filed, as of the Petition Date, the outstanding amount of the first mortgage held by Chase was $251,160.48 and the outstanding amount of the second mortgage held by Qualitas was $88,195.97.

Believing the second mortgage to be wholly unsecured, as the balance of the first mortgage was greater than the Debtors' valuation of the Property, the Debtors proposed to strip off Qualitas's second mortgage through their amended chapter 13 plan (the "Plan")– i.e., the Plan treats the second mortgage as a wholly unsecured claim subject to discharge under § 1328(a).

Qualitas objects to confirmation of the Debtors' Plan on two grounds. First, Qualitas argues that *Caulkett* prohibits a debtor from treating a wholly "underwater" second mortgage as an unsecured claim in a chapter 13 plan and from stripping off that creditor's lien. Second, Qualitas disputes the Debtors' value of the Property, asserting that its second mortgage is not wholly unsecured. The appraisal of the Property submitted by Qualitas reflects a value of $276,000.00 as of September 13, 2016. While the parties have stipulated that Qualitas's claim was wholly unsecured as of the Petition Date, it appears that the value of the Property may have increased since that time. If the Property is to be valued at confirmation, the second mortgage may be partially secured and not wholly unsecured. If that were the case, then even under pre-*Caulkett* law, the second mortgage could not be treated as an unsecured claim through the Debtors' Plan. Accordingly, if this Court holds that the Debtors may strip off a wholly unsecured mortgage lien post-*Caulkett*, the Court must determine the appropriate date for

valuing the Property.

After a hearing on the Objection and the Debtors' response thereto, the Court took the matter under advisement.

II. DISCUSSION

A. Lien Stripping

The issues presented in this case primarily implicate two Bankruptcy Code provisions and related case law interpreting those provisions. The first is § 506(a), which defines what constitutes a "secured claim." Under § 506(a), a creditor's claim is only a secured claim "to the extent of the value of such creditor's interest in the estate's interest in the property." 11 U.S.C. § 506(a). The second relevant provision is § 1322(b)(2), which addresses the permissible treatment of allowed secured claims in chapter 13 plans. While that section provides that a chapter 13 debtor may modify the rights of holders of allowed secured claims through a plan, it prohibits the modification of the rights of a holder of a secured claim if the "claim [is] secured only by a security interest in real property that is the debtor's principal residence." 11 U.S.C. § 1322(b)(2).[3]

Relying on § 506(a)'s definition of a "secured claim," many chapter 13 debtors attempted to bifurcate an undersecured mortgage claim into its component "secured" and "unsecured" parts, discharging the unsecured portion and treating the secured amount in accordance with the anti-modification provisions of § 1322(b)(2), before the Supreme Court foreclosed such treatment in *Nobelman v. Am. Savings Bank*, 508 U.S. 324 (1993). In *Nobelman*, the Court addressed the relationship between § 506(a) and § 1322(b)(2), holding that an undersecured

[3] For ease of discussion, the Court will refer to secured claims secured only by a lien on a debtor's principal residence as a "mortgage claim," excluding those mortgages secured by other properties that are subject to modification under § 1322(b)(2).

creditor "is still the 'holder' of a 'secured claim.'" 508 U.S. at 329. Noting that § 1322(b)(2) addresses the modification of "rights of holders" of secured claims, and not modification of the claim itself, the Court held that, pursuant to § 1322(b)(2), a chapter 13 plan could not bifurcate and strip down[4] an undersecured mortgage claim. *Id.* at 332.

The debate over the treatment of mortgage claims in chapter 13 plans did not end there. While the *Nobelman* Court had held that an *under*secured mortgage holder was protected by the anti-modification provision of § 1322(b)(2), the Court did not decide whether a *wholly* unsecured mortgage may be treated as an unsecured claim consistent with § 1322(b)(2). Following *Nobelman*, a majority of courts, including courts in the First Circuit, have concluded that, "[p]ursuant to § 506(a) and § 1322(b)(2), and notwithstanding the anti[-]modification provision in the latter, [c]hapter 13 plans may void residential real property liens that are wholly unsecured." *In re Mann*, 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000); *see also In re LaFata*, 483 F.3d 13, 21 (1st Cir. 2007) (citing *Mann* favorably); *TD Bank, N.A. v. Landry*, 479 B.R. 1, 4 (D. Mass. 2012) (holding that "a wholly unsecured claim on a principal residence—that is, a home mortgage where there is insufficient value in the home to support even a penny of the claim—may be modified (and possibly avoided in full) in the Chapter 13 plan"); *In re Pelosi*, 382 B.R. 582, 585 (Bankr. D. Mass. 2008).[5]

[4] "Strip down" means reducing the value of the creditor's mortgage lien to value of the real property in excess of senior liens and encumbrances.

[5] *See also, Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220, 1226-27 (9th Cir. 2002); *Lane v. W. Interstate Bancorp. (In re Lane)*, 280 F.3d 663, 665 (6th Cir. 2002); *Pond v. Farm Specialist Realty (In re Pond)*, 252 F.3d 122, 126 (2d Cir. 2001); *Tanner v. FirstPlus Fin., Inc. (In re Tanner)*, 217 F.3d 1357, 1360 (11th Cir. 2000); *Bartee v. Tara Colony Homeowners Ass'n (In re Bartee)*, 212 F.3d 277, 295 (5th Cir. 2000); *McDonald v. Master Fin., Inc. (In re McDonald)*, 205 F.3d 606, 611 (3d Cir. 2000); *Fisette v. Keller (In re Fisette)*, 455 B.R. 177, 182 (B.A.P. 8th Cir. 2011); *Griffey v. U.S. Bank (In re Griffey)*, 335 B.R. 166, 170 (B.A.P. 10th Cir. 2005) (all permitting strip offs of wholly unsecured mortgage claims in chapter 13 cases). *But see e.g., American Gen. Fin., Inc. v. Dickerson (In re Dickerson)*, 222 F.3d 924, 926 (11th Cir. 2000).

In *In re Mann*, the Bankruptcy Appellate Panel for the First Circuit concluded that *Nobelman* did not render § 506(a) meaningless in the context of § 1322(b)(2); "[r]ather, the Supreme Court assigned to § 506(a) an important role in determining whether a junior mortgage holds an 'allowed secured claim' in any amount." *Mann*, 249 B.R. at 836-37 (quoting *Nobelman*, 508 U.S. at 328-29 ("Petitioners were correct in looking to § 506(a) for a judicial valuation of the collateral to determine the status of the bank's secured claim.")). The *Mann* Court concluded that, as a threshold issue, the bankruptcy court must first look to § 506(a) to determine whether the claim holder is at least partially secured. If so, the claimant holds a "secured" claim "protected from modification under § 1322(b)(2)." *See id.* at 837. If there is no value in the property beyond senior liens and other encumbrances, § 506(a) operates to establish the claim as an "unsecured" claim, not subject to the anti-modification provisions of § 1322(b)(2). *Id.* (citing *Wright v. Commercial Credit Corp.*, 178 B.R. 703, 707 (E.D. Va. 1995)); *see also McDonald v. Master Fin., Inc. (In re McDonald)*, 205 F.3d 606, 612 (3d Cir. 2000) (finding that "[i]f a mortgage holder's claim is wholly unsecured, then after the valuation that Justice Thomas said that debtors could seek under § 506(a) [in *Nobelman*], the bank is not in any respect a holder of a claim secured by the debtor's residence. The bank simply has an unsecured claim and the antimodification clause does not apply").

In 2015, the Supreme Court addressed "whether a debtor in a *Chapter 7* bankruptcy proceeding may void a junior mortgage under § 506(*d*) when the debt owed on a senior mortgage exceeds the present value of the property." *Caulkett*, 135 S. Ct. at 1995 (emphasis added). The Court held that a chapter 7 debtor may not use § 506(d) to void and render unsecured a wholly underwater lien. In reaching its conclusion, the *Caulkett* court relied on *Dewsnup v. Timm*, 502 U.S. 410, 416-17 (1992), where the Court had determined that the definition of a secured claim

in § 506(d) included all claims "supported by a security interest in property, regardless of whether the value of that property would be sufficient to cover the claim." *Id.* at 1999 (citing *Dewsnup*, 502 U.S. at 416-17).

Qualitas argues that, contrary to *Mann* and similar cases, *Caulkett* should be read to prohibit a chapter 13 plan from treating a wholly unsecured junior mortgage as a dischargeable unsecured claim. But *Caulkett* did not address subparagraph (a) of § 506 of the Bankruptcy Code and certainly did not address the interplay between that section and § 1322(b)(2) in the chapter 13 context. In fact, the *Caulkett* Court explicitly rejected the application of *Nobelman* to the case before it, noting that "*Nobelman* said nothing about the meaning of the term 'secured claim' in § 506(d). Instead, it addressed the interaction between the meaning of the term 'secured claim' in § 506(a) and . . . § 1322(b)(2)." *Caulkett*, 135 S. Ct. at 2000.

This Court joins with the majority of courts that have concluded that the converse is also true – namely, that *Caulkett* has no bearing on the interpretation of § 506(a) and its interplay with § 1322(b)(2).[6] Having disclaimed *Nobelman*'s relevance to its treatment of § 506(d), there is no reason to believe that the Supreme Court intended *Caulkett* to have any impact on *Nobelman* and the line of cases, such as *Mann*, that have focused on the meaning of § 506(a). Accordingly, the ability to strip off and discharge a wholly unsecured mortgage lien in a chapter 13 plan under §§ 506(a) and 1322(b)(2) remains available to debtors.

[6] *See, e.g., Larson v. Nationstar Mortgage LLC (In re Larson)*, 544 B.R. 883 (Bankr. W.D. Wis. 2016); *Green Tree Servicing LLC v. Wilson (In re Wilson)*, 532 B.R. 486 (S.D.N.Y. 2015); *In re Travers*, 541 B.R. 639 (Bankr. E.D. Ky. 2015); *In re Lopez*, 2015 WL 5920666 (Bankr. D.P.R. Oct. 9, 2015); *Roman v. CitiMortgage, Inc. (In re Roman)*, Adv. Pro. No. 14-0255, 2015 WL 7924761 (Bankr. D.P.R. Oct. 8, 2015); *Kresl v. Beneficial Neb., Inc. (In re Kresl)*, 2015 WL 5667069 (Bankr. D. Neb. Sept. 24, 2015); *In re Ricci-Breen*, 2015 WL 5156617 (Bankr. S.D.N.Y. Aug. 31, 2015); *Young v. Green Tree Servicing, LLC (In re Young)*, 2015 WL 4940090 (Bankr. D. Neb. Aug. 18, 2015); *Rivera v. Banco Popular de P.R. (In re Rivera)*, 2015 WL 3932381 (Bankr. D.P.R. June 25, 2015). *But see, e.g., Burkhart v. Cmty. Bank of Tri-Cnty.*, No. 14-315, 2016 WL 4013917 (D. Md. July 27, 2016).

purpose of the valuation at issue "is critical to the analysis," *Landry*, 479 B.R. at 5, the lack of explicit statutory guidance has resulted in well-reasoned decisions concluding the appropriateness of different valuation dates. *See e.g., In re Sarno*, 463 B.R. 163, 166 (Bankr. D. Mass. 2011) (petition date); *In re Roach*, Adv. Pro. No. 09-2051, 2010 WL 234959 (Bankr. W.D. Mo. Jan. 15, 2010) (confirmation date); *Crain v. PSB Lending Corp. (In re Crain)*, 243 B.R. 75, 85 (Bankr. C.D. Ca. 1999) (effective date of the plan). After considering the statute and relevant case law, this Court adopts the flexible approach to valuation depending on a debtor's proposed use or disposition of the property at issue in accordance with § 506(a)(1), but concludes that, absent unusual circumstances regarding such proposed use or disposition, the petition date is the proper date to value real estate in order to determine whether a claim is wholly unsecured for purposes of lien stripping under a chapter 13 plan and not subject to the anti-modification provisions of § 1322(b)(2).

For many purposes, the petition date is the "watershed date of a bankruptcy proceeding." *In re Johnson*, 165 B.R. 524, 528 (S.D. Ga. 1994). The Bankruptcy Rules require a chapter 13 debtor to file financial schedules and statements (which include statements regarding the value of the debtor's property and amount of claims) either with the petition itself or shortly thereafter. *See* Fed. R. Bankr. P. 1007(c) (required financial schedules and statements must be filed with the petition or within 14 days thereafter). The chapter 13 plan must also be filed with the petition or within 14 days of filing. *See* Fed. R. Bankr. P. 3015(b).[8] Property to be included in the bankruptcy estate, the amount of a creditor's claim, and a debtor's allowable exemptions are all determined as of the petition date. *See* 11 U.S.C. §§ 502(b), 522, 541; *see also In re Hegeduis*,

[8] While the Court does routinely allow extensions beyond the 14 days, it is rare that any extension is granted beyond the date set for the first meeting of creditors, which must be scheduled within 50 days (less than 2 months) from the petition date. *See* Fed. R. Bankr. P. 2003(a).

B. Valuation Date

Whether the Debtors in this case may strip off Qualitas's second mortgage claim through their Plan turns on whether there is any value in the Property remaining to provide security for the second mortgage after deducting the amount of the first mortgage. The parties have stipulated that the value of the Property was less than the amount owed on the first mortgage as of the Petition Date, and that, therefore, Qualitas's claim was wholly unsecured as of the commencement of the case. Qualitas asserts that the Property appreciated in value during the pendency of the case such that equity now exists to at least partially secure its claim. Accordingly, the Court must determine whether the value of the Property should be measured as of the Petition Date or at some later date, such as the date of confirmation or the effective date of the Plan, to conclude whether the mortgage claim of Qualitas may be stripped off.

The statutory language provides minimal guidance on this issue. Section 506(a) of the Bankruptcy Code "governs the determination of the secured status of a claim," *Nobelman*, 508 U.S. at 328, but "simply states that 'the value of [a] creditor's interest' in the collateral 'shall be determined in light of the purpose of the valuation and of the proposed disposition of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.'" *Landry*, 479 B.R. at 4 (quoting 11 U.S.C. § 506(a)([1])).[7]

There is a general consensus that § 506(a)(1) "requires that courts adopt a flexible approach to the determination of secured status," *Landry*, 479 B.R. at 4, but "[c]ourts have not reached a consensus on the proper valuation date of property when a debtor attempts to strip off a wholly unsecured lien." *In re Dean*, 319 B.R. 474, 477 (Bankr. E.D. Va. 2004). While the

[7] While subparagraph (a)(2) of § 506 expressly states that if the debtor is an individual in a Chapter 13 case the value with respect to personal property shall be determined "as of the date of the filing of the petition," § 506 fails to establish a similar express date for determining the value of real property. 11 U.S.C. § 506(a)(2).

525 B.R. 74, 86 (Bankr. N.D. Ind. 2015) (holding that the critical event point in a Chapter 13 case around which the 11 U.S.C. § 1322(b)(2) consequence of valuation of residential real estate relatively revolves is the date of the petition).

The chapter 13 plan process requires a threshold determination of whether the creditor holds an allowed secured claim at all. *See, e.g.*, *In re Boisvert*, 156 B.R. 357, 359 (Bankr. D. Mass. 1993) ("[T]he extent of a creditor's collateral should be evaluated at the commencement of the case"); *In re Wetherbee*, 164 B.R. 212, 215 (Bankr. D.N.H. 1994) (holding "[a] 'claim' is a term of art in a bankruptcy proceeding" that defines a creditor's right of payment and "arises at the date of the filing of the petition") (citations omitted). This valuation typically must occur early in the case to allow the court and the parties to adequately assess a debtor's proposed treatment of secured creditors in a chapter 13 plan. *See Sarno*, 463 B.R. at 166; *Landry*, 479 B.R. at 5-6. As the Court in *Landry* explained:

> [B]ecause § 1322(b)(2) limits the types of claims that may be modified through bankruptcy plans before determining how the property should be treated under such a plan (that is, before determining how the claim should be modified), the Court must first determine whether the claim is protected by § 1322(b)(2) (that is, whether it may be modified at all).

Landry, 479 B.R. at 6. Given the importance of this determination at the outset of a chapter 13 bankruptcy case, the petition date is commonly the most logical point to establish the value of the debtor's property and the status of a creditor's claim. Moreover, valuing a debtor's property on the petition date does not deprive a debtor the means to determine the proposed use or disposition of the property.

Furthermore, the bankruptcy process can often delay confirmation of a debtor's plan for a substantial period of time. *See Hegeduis*, 525 B.R. at 82. Using the petition date for determining whether the anti-modification provisions of § 1322(b)(2) apply also "discourage[s] [parties] from

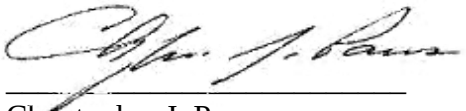
improperly delaying or accelerating the proceeding (or using other improper tactics) to change their substantive legal rights." *Landry*, 479 B.R. at 7. Valuing property on the petition date to determine whether a mortgage claim may be treated as unsecured in a debtor's chapter 13 plan prevents unpredictable and inconsistent outcomes that could arise by tying valuation to the date of confirmation.

In sum, the Court concludes that in this case the Petition Date is the most appropriate date to value the Debtors' Property in order to determine Qualitas's secured status under § 506(a) and in connection with evaluating the applicability of the anti-modification protections of § 1322(b)(2). As the parties have stipulated that as of the Petition Date the value of the Property was less than the debt secured by the mortgage that was senior to Qualitas's second mortgage, the Court finds that the Qualitas's claim may be treated as unsecured and its lien discharged pursuant to the Debtors' Plan.

III. CONCLUSION

For the reasons set forth above, the Court will OVERRULE Qualitas's objection to confirmation of the Debtors' chapter 13 plan and will issue an order consistent with this memorandum.

By the Court,



Christopher J. Panos
United States Bankruptcy Judge

Dated: March 29, 2017