NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	)	BAP No. EC-05-1261-PaNMa
	)	
JAMES R. EATON and JANICE L. EATON,	)	Bk. No. 01-13146-A13
	)	
Debtors,	)	
	)	
CALIFORNIA FIDELITY, INC.,	)	
	)	
Appellant,	)	
	)	
v.	)	**M E M O R A N D U M**[1]
	)	
JAMES R. EATON; JANICE L. EATON; M. NELSON ENMARK, Chapter 13 Trustee,	)	
	)	
Appellees.	)	

Argued and Submitted on January 19, 2006
at Sacramento, California

Filed - February 28, 2006

Appeal from the United States Bankruptcy Court
for the Eastern District of California

Honorable Whitney Rimel, Bankruptcy Judge, Presiding.

Before: PAPPAS, NAUGLE,[2] and MARLAR, Bankruptcy Judges.

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[1] This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel. See 9th Cir. BAP Rule 8013-1.

[2] Hon. David N. Naugle, United States Bankruptcy Judge for the Central District of California, sitting by designation.

A creditor appeals a final order of the bankruptcy court in a chapter 13 case valuing the security for its claim under 11 U.S.C. § 506(a)[3] and determining that the claim was wholly unsecured and had been discharged in a prior chapter 7 bankruptcy case. We REVERSE and REMAND to the bankruptcy court with instructions to enter an order consistent with this decision.

Facts

The material facts are undisputed.[4]

James and Janice Eaton ("Appellees") filed a voluntary chapter 7 petition on October 6, 2000; the bankruptcy court issued a discharge in that case on January 18, 2001.

On April 2, 2001, Appellees filed for relief under chapter 13. Appellees filed a chapter 13 plan on April 13, 2001, that proposed to pay 100% of unsecured creditors' claims, which they believed totaled $1,780 (presumably all of which had been incurred since their chapter 7 filing). Under the plan, Appellees committed to make monthly payments to the trustee of $105 for 36 months.

Two motions to value collateral were attached to the plan. The motions were directed at Compulink (owed, according to the motion, $36,664.77) and The Money Store (owed $22,113), the two creditors holding claims secured by second and third priority

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[3] Unless otherwise indicated, all references to chapter or section are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and references to Rules are to the Federal Rules of Bankruptcy Procedure.

[4] According to the transcript of the hearing conducted by the bankruptcy court, the parties elected to forgo submission of evidence and testimony and proceeded solely upon written declarations.

deeds of trust on Appellees' residence. In the motions, Appellees alleged that, as of March 2001, the residence had a value of $70,000, which was roughly equal to the amount they owed on Wells Fargo Bank's first priority deed of trust on their home.[5] Therefore, according to Appellees' motions, the claims of Compulink and The Money Store were both completely unsecured. Other than in the attached motions, Appellees' plan did not refer to treatment of these claims.

On April 23, 2001, United National Bank[6] filed a proof of claim for $39,864, asserting that its claim was secured by Appellees' residence. On May 25, 2001, HomEq/The Money Store filed its proof of claim for $22,113, also asserting that Appellees' residence secured its claim. Appellees never objected to either proof of claim.

On May 16, 2001, Appellees filed two notices directed at Creditors[7] informing them that Appellees had filed a chapter 13 plan accompanied by motions that sought to value the collateral securing their claims, and advising them if they objected to Appellees' proposed $70,000 value, Creditors should file a written response within the time specified in the notice. Neither Creditor filed a response. However, when Appellees sought

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[5] Appellant does not dispute this value.

[6] The relationship between United National Bank and Compulink is not entirely clear from the record. The parties seem to agree, however, that United National Bank is the entity that holds the claim secured by the second deed of trust on Appellees' residence.

[7] For ease of reference, Compulink/United National Bank and HomEq/The Money Store will be referred to collectively as "Creditors."

confirmation of their plan and entry of an order granting their motions, the bankruptcy court concluded that the notices of Appellees' motion to value claims filed with the bankruptcy court (and presumably served on Creditors) did not include a copy of the plan, which was contrary to the bankruptcy court's local procedural requirements, General Order 01-02 ¶2(b). Consequently, the bankruptcy court entered a June 27, 2001, order that confirmed Appellees' chapter 13 plan but struck the language of the order purporting to value the residence. Apparently, neither Appellees nor their attorney realized that the bankruptcy court's order confirming the plan did not also value the secured creditors' claims on the house.

Several years later, in 2004, Appellant California Fidelity, Inc. acquired Creditors' interests under the second and third deeds of trust. On February 9, 2004, Appellant filed a request in the bankruptcy case that all notices be directed to its attorney, David Leventhal. It also filed a proof of claim asserting a claim secured by Appellees' residence in the total amount of approximately $54,000 secured by the deeds of trust on Appellee's home.

Learning of these events, and now realizing that the confirmation order did not value the secured claims on their residence, on May 19, 2004, Appellees filed three new motions to value collateral, this time directed to the two original Creditors and to Appellant. The motion directed to Appellant was served upon Mr. Leventhal, among others, at the address set forth in Appellant's proof of claim and in the February 9, 2004, request

for notice.[8]

After receiving no response to the motions, at Appellees' request, the bankruptcy court entered separate orders granting all three motions on June 24, 2004, effectively deeming Appellant's claim unsecured. Appellees completed all plan payments some time prior to August 20, 2004.[9] On September 24, 2004, Appellees received a chapter 13 discharge, and on September 28, 2004, the bankruptcy case was closed.

In the period since Appellees' bankruptcy case was filed, the value of their residence dramatically increased. In connection with a refinance application completed on November 9, 2004, Countrywide Home Loans valued Appellees' residence at $186,000 and funded a loan to Appellees in the amount of $153,000. The second and third trust deeds, which remained of record at the time of the refinancing, were not paid by Countrywide because it understood those deeds of trust had been avoided in Appellees' chapter 13 case. The new loan closed on November 29 or 30, 2004,[10] resulting in a payout to Appellees of about $74,000.

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[8] The bankruptcy court made detailed factual findings concerning where Appellees sent notice of these motions to Creditors and Appellant. The record does not include any of the certificates of service attached to Appellees' motions. This is of no moment, however, because Appellant is not contesting the adequacy of Appellees' service of the May 2004, motion to value.

[9] We cannot be sure, based on this record, of the precise date Appellees made their final plan payment to the trustee. But in reviewing the bankruptcy court's docket, we find that the trustee's Preliminary Final Report, filed the date indicated above, reflects that all payments were complete and that the case "concluded" on July 29, 2004. Trustee's Final Report was filed on September 24, 2004.

[10] The bankruptcy court found that the Countrywide escrow closed November 29, 2004. However, the Settlement Statement and the Closing Statement indicate the loan closed on November 30, 2004.

At about the same time, Appellant's attorney notified Appellees' attorney that Appellant had acquired the notes secured by the second and third deeds of trust, and that its position was it had not been properly served with Appellees' May 19, 2004, motion to value collateral. After further communication, Appellees executed a stipulation with Appellant that provided the chapter 13 bankruptcy case would be reopened, the bankruptcy court's June 24 order granting Appellees' motion to value Appellant's secured claim would be vacated and that a hearing would be scheduled on Appellee's motion to value Appellant's claim.[11]

Consistent with the stipulation, the bankruptcy court entered a November 30, 2004, order reopening the case and vacating its earlier June 24 orders. However, rather than scheduling a hearing on Appellees' May motions, the court's order required Appellees to file a new motion to value Appellant's collateral in accordance with local rules. On January 19, 2005, Appellees filed their third Motion to Value Collateral directed to Appellant. After an April 21, 2005, hearing, the bankruptcy court took the issues under advisement and on June 6, 2005, entered a Memorandum Decision granting Appellees' Motion to Value Collateral.

In its decision, the bankruptcy court rejected Appellant's contention that Appellees' valuation motion sought to revoke the order confirming their plan or to modify that plan. Instead, the bankruptcy court characterized the motion as one to value Appellant's collateral, and that under the parties' stipulation,

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[11] From the record, it appears that the stipulation sought to vacate the orders relating to Appellant and HomEq/The Money Store, but not United National Bank.

Appellees were merely re-noticing and litigating the issues raised in their May 2004 motions.

Moving to the merits, the bankruptcy court concluded that Appellees' house should be valued in connection with the original plan confirmation as of the petition date for several reasons.

First, the bankruptcy court read § 502(b) and § 506(a) to require that all claims be determined as of the date the petition is filed and that valuation of a secured creditor's claim should occur in conjunction with consideration of a plan affecting that creditor's interest. The only plan in this case, according to the court, was Appellees' 2001 confirmed plan.

Second, the bankruptcy court reasoned that § 1325(a)(5)(B) requires that a chapter 13 plan should pay the present value of a secured claim calculated as of the "effective date of the plan." The bankruptcy court noted that Appellees' plan, which conformed to the standard plan adopted in the district, provided that its effective date was the date of filing, and it observed that the majority of courts to consider the timing of valuation have concluded that collateral should be valued at the time of confirmation or upon the effective date of the plan.

Based upon the evidence before it, the bankruptcy court found that the value of Appellant's collateral at the time of Appellees' chapter 13 filing was $70,000. Consequently, because of the amount owed on the first deed of trust at that time, the bankruptcy court concluded there was no value to secure Appellant's second and third deeds of trust on the residence.

The bankruptcy court also concluded that § 1322(b)(2) did not apply to bar the modification of Appellant's claim secured by

Appellees' residence when there was no value to secure its claims after deducting senior liens. Since Appellant's claim was not secured, the bankruptcy court held it had been discharged in Appellees' chapter 7 case. Therefore, the court concluded Appellant held no enforceable unsecured claim in Appellees' chapter 13 case.

An order granting Appellees' valuation motion was entered by the bankruptcy court on June 21, 2005. Appellant timely filed this appeal.

Jurisdiction

The bankruptcy court had jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b). This Panel has jurisdiction over the appeal pursuant to 28 U.S.C. § 158(a)(1) and (b).

Issue Presented

Did the bankruptcy court err in determining the allowed value of Appellant's claim under § 506(a) as of the date Appellees filed their bankruptcy petition in 2001?

Standard of Review

This issue involves a question of law concerning statutory interpretation, and the bankruptcy court's conclusions are therefore subject to de novo review. Chevron USA Inc. v. Bronster, 363 F.3d 846, 855 (9th Cir. 2004).

Discussion

The bankruptcy court viewed Appellees' January 2005 motion to value Appellant's claim as simply taking the place of Appellees' earlier motions filed in May 2004. Since the May 2004 motions were filed prior to closure of the case, the bankruptcy court considered them timely filed. The bankruptcy court then concluded

that Appellant's collateral should be valued as of the 2001 petition date at $70,000. When it did so, because there was no value in the house over and above the amount owed on the first deed of trust, the bankruptcy court concluded Appellant's claim was unsecured and had been discharged in Appellees' chapter 7 case. We disagree with the bankruptcy court's analysis in several respects.

In effect, § 506(a) provides that an allowed claim[12] secured by a lien on property of the estate is a secured claim to the extent of the amount owed to the creditor, or the value of the collateral, whichever is less. If the value of the collateral is less than the amount owed, the creditor's claim is unsecured for that difference. In other words, § 506(a) operates to bifurcate a secured creditor's claim into allowed secured and unsecured claims based upon the court's valuation of the property securing the claim. Gold Coast Asset Acquisition, L.P. v. 1441 Veteran St. Co. (In re 1441 Veteran St. Co.), 144 F.3d 1288, 1292 (9th Cir. 1998). And "[t]o the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void . . . ." § 506(d).

In a chapter 13 case, normally, claims secured by a security interest in a debtor's principal residence may not be modified.

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[12] A prerequisite to application of § 506(a) is that the secured creditor's claim be "allowed." Section 502(a) provides that if a creditor files a proof of claim, the claim is "deemed allowed." In this case, Creditors and Appellant all filed proofs of claim to which Appellees never objected. Thus, Creditors' and Appellant's claims are "deemed allowed." Moreover, Rule 3001(f) provides that a proof of claim filed and executed according to the rules constitutes prima facie evidence of the claim's validity and amount. Appellees do not challenge the validity or amount of Appellant's claim.

§ 1322(b)(2) (providing a plan may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence . . . .") (emphasis added). However, despite § 1322(b)(2), such a lien may be "stripped off" and avoided under § 506(d) if the bankruptcy court determines under § 506(a) that there is no value in the residence to secure the claim such that the creditor's claim is rendered entirely unsecured. In re Lam, 211 B.R. 36, 40 (9th Cir. BAP 1997) appeal dismissed 192 F.3d 1309 (9th Cir. 1999).[13]

Procedurally, Rule 3012 allows a debtor to file a motion to determine the allowed value of a secured creditor's claim. However, it is § 506(a) that prescribes the context in which such a valuation should occur, and requires that such value

> be determined [by the bankruptcy court] in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

(Emphasis added.) Simply put, § 506(a) instructs that a secured creditor's status be determined in a chapter 13 case in conjunction with either the disposition of the property, or the hearing on any plan affecting the creditor's interest. See In re Wilkins, 71 B.R. 665, 669 (Bankr. N.D. Ohio 1987) (interpreting

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[13] By contrast, the U.S. Supreme Court, in Dewsnup v. Timm, 502 U.S. 410 (1992), held that § 506(d) cannot be used to void a creditor's lien in a chapter 7 liquidation case. Also, in a recent decision, Concannon v. Imperial Capital Bank (In re Concannon and Concannon), __ B.R. ___ (9th Cir. BAP February 7, 2006), this Panel concluded that Dewsnup prohibits stripping off of both consensual and nonconsensual liens. Thus, Appellees' argument that the liens were discharged in the chapter 7 case is without merit.

§ 506(a) to require valuation hearings to be in conjunction with plan confirmation).

In this case, Appellees proposed, and the bankruptcy court in 2001 confirmed, a plan that did not even mention the secured claims in question other than in the attached valuation motions. In its confirmation order, the bankruptcy court expressly declined to value the creditors' claims secured by Appellees' house because Appellees had not properly served the motions and plan. It was not until May 2004 that Appellees finally took further steps to value the claims secured by the liens on the house, including Appellant's claim. While an order was entered by the bankruptcy court on the May 2004 motions, Appellees later stipulated that order could be vacated. Instead of adopting the parties' approach of simply rescheduling the hearing on the May 2004 motion, the bankruptcy court ordered that new valuation motions be filed. That was not done until January, 2005, long after Appellees had completed payments under their plan, they had received a discharge, and the case was closed.

Even assuming under these odd facts that Appellees' motions to value Appellant's collateral are timely for purposes of § 506(a),[14] when read fairly, we conclude that those motions effectively sought to modify the terms of Appellees' confirmed plan. Because the motion to value sought to modify Appellees' original plan, for the reasons discussed below, we believe that

[14] We doubt, but need not decide under these facts, whether the bankruptcy court can, consistent with § 506(a), value a secured claim "in conjunction with any hearing on . . . a plan affecting such [secured] creditor's interest" when that plan was confirmed years before, and the debtors have completed their performance of that plan and received a discharge.

any valuation of Appellant's claim should have been done as of the effective date of the proposed modified plan.

Appellees are bound by the terms of their plan confirmed on June 27, 2001. § 1327(a) ("The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan . . . ."); Enewally v. Washington Mut. Bank (In re Enewally), 368 F.3d 1165, 1172 (9th Cir. 2004). To extinguish a creditor's lien, a chapter 13 plan must "provide for" the creditor's claim secured by that lien. § 1327(c) (providing that "Except as provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of [§ 1327] is free and clear of any claim or interest of any creditor provided for by the plan.") (emphasis added). To "provide for" a claim, the plan must make express provision for, deal with, or refer to a claim. Shook v. CBIC (In re Shook), 278 B.R. 815, 823 (citing Rake v. Wade, 508 U.S. 464, 474 (1993) and Lawrence Tractor Co. v. Gregory (In re Lawrence Tractor Co.), 705 F.2d 1118, 1122 (9th Cir. 1983)). Absent a clear provision in a plan dealing with a secured creditor's claim, the debtor cannot extinguish the creditor's lien and that lien passes through bankruptcy unaffected. Shook, 278 B.R. at 820, 824 (citing Long v. Bullard, 117 U.S. 617, 620-21 (1886)). If, as here, a plan is silent about the fate of a secured claim and does not provide clear notice to the secured creditor concerning its treatment under the plan, that plan cannot effectively avoid a lien or determine its value. Shook, 278 B.R. at 824 (citing Great Lakes Higher Ed. Corp. v. Pardee (In re Pardee), 193 F.3d 1083, 1085-86 (9th Cir. 1999)).

Appellees' 2001 confirmed plan did not "provide for" the claims secured by their residence. Recall, in the confirmation order, the bankruptcy court struck the proposed language valuing the house. Therefore, to determine Appellant's rights, Appellees must rely solely upon the language contained in the plan. But that plan made no mention of the claims Appellant eventually acquired (or, for that matter, that of Wells Fargo, which held the first deed of trust on their residence). By failing to "provide for" the Creditors' claims, their liens were not affected by Appellees' confirmed plan, and the Creditors' claims continued to be secured by Appellees' residence. Because Appellees' 2004 and 2005 valuation motions sought to alter that result, and to significantly affect Appellant's rights as a secured creditor, the motions can only be seen as a proposal by Appellees to modify their confirmed plan.[15]

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[15] When viewed in this light, we question whether Appellees' proposal can be allowed under the Bankruptcy Code. Under § 1329(a), a confirmed plan may be modified to "increase or reduce the amount of payments on claims of a particular class provided for by the plan"; "extend or reduce the time for payments"; or "alter the amount of the distribution to a creditor whose claim is provided for by the plan." (emphasis added) This provision seems to limit proper modifications to those aimed at changing the treatment of claims expressly provided for by the confirmed plan. As explained above, since Appellant's claim was not "provided for" in the confirmed plan, it is difficult to see how § 1329(a) allows the sort of drastic modification of rights occasioned by a post-confirmation lien-stripping motion when the creditors' claims had previously been allowed. See Ruskin v. DaimlerChrysler Servs. N. Am. (In re Adkins), 425 F.3d 296, 302-03 (6th Cir. 2005), and Chrysler Fin. Corp. v. Nolan (In re Nolan), 232 F.3d 528, 532 (6th Cir. 2000) (both holding that § 1329(a) does not allow a debtor to alter, reduce or reclassify a previously allowed secured claim once a plan has been confirmed); but see In re Zieder, 263 B.R. 114, 117 (Bankr. D.Ariz. 2001) (considering Nolan, and holding that § 502(j) would permit reconsideration of a previously allowed secured claim, provided adequate cause was shown, in the context of a request to modify a confirmed plan). Because we deem the bankruptcy court to have otherwise erred in its application of the Code, we need not resolve this question.

There is an additional reason why, contrary to the bankruptcy court's decision, we think Appellees' 2004 and 2005 motions must be treated as motions to modify their confirmed plan. If Appellant's liens were avoided, Appellant would presumably be left with unsecured claims. However, it is clear that Appellees do not intend to pay Appellant, despite the confirmed plan's provision that 100% of unsecured creditors' claims would be paid. This constitutes yet another feature of the confirmed plan which Appellees seek to modify by way of their motions, and another manner in which Appellees' rights would be affected by that modification.

We disagree with the bankruptcy court's conclusion that Appellant's potential unsecured claim had already been discharged in Appellees' chapter 7 case. This reasoning contravenes § 506(a) and the reach of Appellees' chapter 7 discharge. Because the record contains nothing to indicate otherwise, presumably Appellant's predecessors' claims, as secured claims, emerged unscathed by the chapter 7 discharge, which only impacted creditors' in personam rights against Appellees. See Dewsnup v. Timm, 502 U.S. at 417 (holding that, in chapter 7, § 506(d) does not allow a debtor to "strip down" a creditor's lien secured by real property, and that the lien passes through bankruptcy unaffected). Appellant's predecessors held secured, not unsecured, claims in the chapter 7 case. It is only through their chapter 13 filing that Appellees could conceivably use § 506(a) to strip the deeds of trust on their residence securing Appellant's claims. In re Lam, 211 B.R. at 41. And if the lien is stripped, the "would-be secured creditor whose claim is allowed only as

unsecured gets paid as an unsecured creditor." Shook, 278 B.R. at 823 (quoting Laskin v. First Nat'l Bank of Keysotone (In re Laskin), 222 B.R. 872, 876 (9th Cir. BAP 1998)).

Appellant's status as an unsecured creditor would therefore be governed by the terms of Appellees' plan. See In re Akram, 259 B.R. 371, 377 (Bankr. C.D. Cal. 2001) (holding that a stripped-off claim under Lam in a chapter 13 case was not to be valued as a general unsecured claim of zero by virtue of a previous chapter 7 discharge, but became a general unsecured claim entitled to distribution under the confirmed plan). See also Shook, 278 B.R. at 825-26 (explaining that the debtors' failure to re-characterize a deemed allowed secured claim as unsecured prevented them from treating it as a general unsecured claim under its "zero payout" plan); In re Rascon, 321 B.R. 48, 53 (Bankr. N.D. Cal. 2005) (holding that, after its lien was stripped, the creditor's general unsecured claim was provided for in the debtor's plan and would, under the terms of the plan, go unpaid); In re Gounder, 266 B.R. 879, 881 (Bankr. E.D. Cal. 2001) (following Akram, and holding that § 506(a) allows a general unsecured claimant stripped of its lien to pursue its unsecured claim against the chapter 13 estate despite a previous chapter 7 discharge).

We decline to elevate the form of Appellees' 2004/2005 "valuation" motions over their substance of the relief sought. Because those motions proposed not only to change Appellant's treatment as a secured creditor, but also to treat Appellant's resulting unsecured claim differently than other unsecured creditors under the confirmed plan (*i.e.*, 100% payment vs. no payment), clearly the motions sought to modify Appellees'

confirmed plan.

And because we conclude that Appellees' motions to value Appellant's claim proposed to modify the confirmed plan, the bankruptcy court incorrectly valued Appellant's collateral as of the date of the filing of the petition. "A modified plan is essentially a new plan." In re Profit, 283 B.R. 567, 574 (9th Cir. BAP 2002). Section 1329(b)(1) requires that a modified plan satisfy the confirmation standards of § 1325(a). Section 1325(a)(5)(B)(ii) dictates that, with respect to "each allowed secured claim provided for by the plan," "the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim" must not be less than the allowed amount of such claim. Since the plan as modified becomes the new plan, its "effective date" is the date of the plan as modified. In re Barbosa, 236 B.R. 540, 552 (Bankr. D.Mass. 1999) (citing Keith M. Lundin, CHAPTER 13 BANKRUPTCY, § 6.44 at 6-133 (2nd ed. 1994 & Supp. 1996)), aff'd, Barbosa v. Soloman, 253 F.3d 31, 41 (1st Cir. 2000). See also In re Jefferson, 299 B.R. 468, 471 (Bankr. D.Ohio 2003) (holding that the appropriate date for performing liquidation analysis is the effective date of the modified plan); In re Stinson, 302 B.R. 828, 832 (Bankr. D.Md. 2003) (holding that valuation analysis is done as of the effective date of the modified plan); In re Walker, 153 B.R. 565, 568 (Bankr. D.Ore. 1993) (holding that liquidation value must be redetermined at the time of confirmation of the modified plan).

In other words, Appellees could not simply ignore Appellant's allowed secured claim under their original plan, then years later modify the plan to strip Appellant's liens using 2001 values. The

bankruptcy court, assuming it concluded a modification was allowed by the Code,[16] should have required that Appellant's claim be valued as of the proposed effective date of the modified plan. Had it done so, presumably Appellees' house would have been valued at $186,000 and Appellant's claims would be fully secured. In short, had the proper legal analysis been employed by the bankruptcy court, Appellant's liens could not have been stripped.

CONCLUSION

In summary, Appellees' January 2005 motion to value Appellant's claim, strip its liens, and to pay Appellant nothing on its resulting unsecured claim, should have been treated by the bankruptcy court as a motion to modify the terms of their 2001 confirmed plan. In disposing of the motion, the bankruptcy court should have determined the amount of Appellant's allowed secured claim "as of the effective date" of the proposed modified plan using 2005 values. The only evidence submitted to the bankruptcy court showed the value of Appellee's house was at least $186,000. The bankruptcy court instead valued Appellant's claim as of 2001. The bankruptcy court's interpretation and application of the Code was therefore erroneous.

The judgment of the bankruptcy court is REVERSED and this case is REMANDED to the bankruptcy court with instructions to enter an order consistent with this decision.

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[16] Refer to our concerns expressed in note 15, supra. In addition, as we observe in note 9, supra, the record does not show when Appellees completed their plan payments. If they did so prior to the filing of their May, 2004, motion, their proposed modification to the plan may be time-barred under § 1329(a) (requiring, subject to certain exceptions, that plan modifications occur "before completion by the debtor of all payments under the plan . . . .").