NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. EC-09-1241-MkHDu
ROBERT M. MEAD,	Bk. No. 09-25735
Debtor.	
ROBERT M. MEAD,	
Appellant,	
v.	**MEMORANDUM**[*]
LAWRENCE J. LOHEIT, Chapter 13 Trustee; CAROLYN WILLIAMS,	
Appellees.	

Argued and Submitted on March 17, 2010
at San Francisco, California

Filed: June 15, 2010

Appeal From The United States Bankruptcy Court
for the Eastern District of California

Honorable Robert S. Bardwil, Bankruptcy Judge, Presiding

Before: MARKELL, HOLLOWELL and DUNN, Bankruptcy Judges.

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[*]This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

INTRODUCTION

Debtor and appellant Robert Mead ("Mead") engaged in a long-running and unsuccessful battle in state court with his former spouse, appellee Carolyn Williams ("Williams"). Mead sought to withhold from Williams a portion of their marital assets, to which the state court said she was entitled. When he exhausted his state court options, Mead filed a chapter 13[1] bankruptcy petition and plan, listing Williams as his only unsecured creditor and proposing to pay her a 4% dividend on her claim.

These and other militating factors led the bankruptcy court to find that Mead had filed both his petition and his plan in bad faith. The bankruptcy court further determined that Williams' claim was secured, and that Mead's plan improperly treated her claim as unsecured. For these reasons, the bankruptcy court denied confirmation of Mead's plan, and Mead appealed. We AFFIRM.

FACTS

On December 9, 2004, Mead and Williams orally stipulated in open court to the terms of their dissolution. Almost immediately, problems arose in reducing this oral stipulation to writing; Mead only signed the written stipulation (the "Dissolution Stipulation") after being ordered to do so by the state court. After Mead signed the Dissolution Stipulation, the state court issued, on March 8, 2005, its judgment of dissolution

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

(the “Dissolution Judgment”), which attached and incorporated the Dissolution Stipulation.

For several years Mead unsuccessfully attempted in state court to invalidate the Dissolution Judgment as a whole as well as some of its terms. Much of the dispute centered on paragraph 8 of the Dissolution Stipulation, which required Mead to make a $50,000 equalization payment to Williams (the “Equalization Payment Provision”). Mead has not made this payment, and it has been accruing interest.

For her part, Williams has attempted to enforce the Dissolution Judgment and particularly the Equalization Payment Provision. She filed an enforcement motion in state court, which was heard on November 29, 2005, and ruled upon on January 10, 2006. In the meantime, Williams obtained and recorded an abstract of judgment in Sacramento County, California, in December 2005 (the “Abstract of Judgment”).

The state court’s January 10, 2006, ruling on Williams’ enforcement motion gives some indication of the bad blood between the parties. Among other things, the state court found that Mead “deliberately obstructed and delayed” a transfer of a portion of the funds from his 401k retirement plan, as required by paragraph 7 of the Dissolution Stipulation, and that Mead had “unreasonably exacerbated” the amount of attorneys’ fees incurred by Williams to enforce the terms of a judgment that had been agreed to in open court. State Court Findings and Order After Hearing (Jan. 10, 2006), at ¶¶ 1, 3.

Mead nevertheless continued with a series of motions to vacate the Dissolution Judgment. Each of his motions was denied, and his appeal therefrom also was unsuccessful.

On March 30, 2009, as his state court litigation efforts were winding down, Mead commenced his chapter 13 bankruptcy case. In his bankruptcy schedules, Mead listed only two secured creditors – both mortgage creditors. He scheduled Williams as his sole unsecured creditor. At no point did Mead amend his bankruptcy schedules to list Williams either as a secured creditor or as a disputed secured creditor.[2]

Mead's proposed chapter 13 plan, filed shortly after he filed his bankruptcy petition, does not impair or otherwise affect the rights of the two listed secured creditors. According to the plan, Mead would continue to pay them directly, and they

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[2]There is no significant dispute between the parties regarding the amount of Williams' claim. Whereas Mead scheduled the claim in the amount of $73,800, Williams asserted in her proof of claim, filed on June 8, 2009, a secured claim in the amount $72,531.43.

On September 28, 2009, Williams filed a motion to supplement the designation of record in this appeal to include her proof of claim. In his response filed on October 1, 2009, Mead asserted that the proof of claim was not formally part of the bankruptcy court record because it does not appear as an item on the bankruptcy court's electronic docket. In a reply filed on October 2, 2009, Williams pointed out that proofs of claim ordinarily are not listed on a bankruptcy court's docket, but rather are listed in the bankruptcy court's claims register. Williams also provided a printout from the electronic claims register from Mead's bankruptcy case, which references the filing of Williams' proof of claim on June 8, 2009. We agree with Williams' position. The June 8, 2009 proof of claim is properly part of the bankruptcy court record, and thus Williams' motion to supplement the designation of record is hereby ordered granted.

would continue to enjoy the same entitlements to enforce their rights in the event of default as they enjoyed prior to Mead's bankruptcy filing.

The only other claim covered by Mead's plan was Williams' claim. The plan treated it as a class 7 unsecured claim, which would have entitled her to a recovery of four cents on the dollar over the plan's five-year life. In spite of the judgment lien arising from her Abstract of Judgment and her later filing of a proof of claim asserting a secured claim against Mead, Mead never amended his plan to treat Williams as a secured creditor.

Both the chapter 13 trustee (the "Trustee") and Williams filed objections to confirmation of the plan. The Trustee essentially had two concerns: (1) according to the Trustee's calculation of Mead's disposable income, Mead should have been able to pay in his plan over $40,000 on account of unsecured claims, instead of the roughly $3,000 he proposed to pay; and (2) Mead had not proposed his plan in good faith. Williams' objection, on the other hand, focused on the fact that Williams held a secured claim and was entitled to full payment of the allowed amount of her secured claim.[3]

By way of his reply to Williams' objection, Mead attempted to attack the validity of the Dissolution Judgment and the Abstract of Judgment. But Mead never commenced an adversary

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[3]Williams also asserted that the debt Mead owed to her was nondischargeable under § 523(a)(15), as a debt incurred to a spouse in connection with a divorce decree, but Mead correctly pointed out in his reply to Williams' objection that, while a debt of the kind described in § 523(a)(15) is nondischargeable in chapters 7, 11 and 12, the expanded discharge provided for in chapter 13 cases covers debts of this type.

proceeding under Rule 7001(2) seeking to invalidate Williams' lien, nor did he ever file a formal objection to Williams' secured proof of claim.

Mead separately replied to the Trustee's objection, attempting to reconcile his calculation of disposable income with the Trustee's, and further attempting to explain why his voluntary 401k plan deductions of over $1,700.00 per month did not constitute bad faith.[4]

The bankruptcy court held a hearing on the plan objections on July 14, 2009. The court concluded that it could not confirm Mead's plan because it treated Williams' claim as unsecured. The court ruled that Williams qualified as a lien creditor, holding that her recording of the Abstract of Judgment created a judgment lien. As a result, the court stated that Williams was a secured creditor, and the plan's treatment of her secured claim had to comply with §§ 1322 and 1325. While the court acknowledged that Mead had raised issues regarding the validity of Williams' lien, the court correctly pointed out that Mead could not litigate the validity of Williams' lien through the plan confirmation process. Rather, the court indicated that he should have commenced a separate adversary proceeding seeking to invalidate the lien.

The bankruptcy court also found that Mead had not established that he had proposed his plan in good faith. After considering the overall effect of the plan and the litigation

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[4]Each party filed another round of papers in which they refined their arguments. For his part, Mead filed evidentiary objections to certain evidence offered by Williams and the Trustee. However, none of the evidence that Mead objected to played a significant part in the bankruptcy court's decision.

history between the parties, the court found that the sole purpose of the plan was to circumvent the state court's division of the parties' property. Accordingly, the court sustained Williams' plan objection and denied as moot the Trustee's plan objection, without expressly considering the specific points raised by the Trustee's objection.

Based on Mead's written request, the bankruptcy court issued written findings of fact and conclusions of law on August 10, 2009. The bankruptcy court's written findings and conclusions largely mirror its oral findings and conclusions. The court recounted the plan's key terms, the treatment of Mead's two secured creditors and the treatment of his one allegedly unsecured creditor. The court also recounted the litigation history between Mead and Williams and incorporated by reference the narrative account of that history contained in some of the papers filed by Williams. The court expressly found that, "[t]he sole reason [Mead] filed his bankruptcy, and the sole purpose of the Plan, [was] to circumvent and avoid payment of the obligations imposed under the Dissolution Orders." Findings of Fact and Conclusions of Law (Aug. 10, 2009), at 3:25-27.

The court also noted that Mead disputed the secured status of Williams' claim, but that Mead did not file an objection to Williams' proof of claim, nor did he commence an adversary proceeding seeking to invalidate Williams' lien.

The court, again, concluded that Mead's plan was unconfirmable because the plan's treatment of Williams' claim did not satisfy § 1325(a)(5). As a separate basis for denying confirmation, the court expressly concluded, after "considering

the totality of the circumstances," that Mead had not established that either his bankruptcy case or his proposed plan had been filed in good faith.

The bankruptcy court entered a minute order sustaining Williams' objection to Mead's plan, and Mead timely appealed.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(L), and we have jurisdiction under 28 U.S.C. § 158, subject to the resolution of the jurisdictional issues discussed immediately below.

An order denying confirmation of a chapter 13 plan is an interlocutory order, and an appeal to the BAP from an interlocutory order only may be taken if we grant leave. See Giesbrecht v. Fitzgerald (In re Giesbrecht), ___ B.R. ___, 2010 WL 1956618 *2 (9th Cir. BAP Apr. 28, 2010); Ransom v. MBNA Am. Bank, N.A. (In re Ransom), 380 B.R. 799, 802, 809 n.21 (9th Cir. BAP 2007), aff'd, 577 F.3d 1026 (9th Cir. 2009), cert. granted, 2010 WL 333672 (Apr. 19, 2010).

When an order denying chapter 13 plan confirmation also dismisses the bankruptcy case, there is no finality defect because the case dismissal fully disposes of the entire matter. In re Giesbrecht, 2010 WL 1956618 *2.

Here, the bankruptcy court's order denying plan confirmation did not dismiss the bankruptcy case; rather, the bankruptcy court subsequently dismissed the case several months later, by order entered October 28, 2009. The record suggests that the dismissal of Mead's bankruptcy case might have been founded upon

the prior denial of confirmation of Mead's plan. Significantly, Mead did not appeal the case dismissal order.

The October 28, 2009, case dismissal order cured any finality defect with respect to Mead's appeal from the order denying plan confirmation. See Cato v. Fresno City, 220 F.3d 1073, 1074-75 (9th Cir. 2000) (holding that entry of subsequent order fully and finally disposing of the matter "cured" the finality defect associated with the prior interlocutory order). However, the entry of the order dismissing the bankruptcy case raises a different jurisdictional issue: whether Mead's appeal from the order denying plan confirmation has been rendered moot because Mead did not also appeal the case dismissal order. See Omoto v. Ruggera (In re Omoto), 85 B.R. 98, 99-100 (9th Cir. BAP 1988).

Before we can address the merits of Mead's appeal, there must be some possibility that we could afford meaningful relief if Mead were to prevail on appeal. See Lowenschuss v. Selnick (In re Lowenschuss), 170 F.3d 923, 933 (9th Cir. 1999). The dismissal of the bankruptcy case, which Mead did not appeal, makes it a close call as to whether we could grant Mead any meaningful relief. However, it does not appear that all potential relief has been foreclosed. If, as the record suggests, dismissal of Mead's case was based on his failure to confirm a plan, and if we were to reverse the order denying plan confirmation, Mead might be able to obtain relief under Rule 9024 from the case dismissal order. See Educ. Credit Mgmt. Corp. v. Bernal (In re Bernal), 223 B.R. 542, 546 & n.8 (9th Cir. BAP 1998), aff'd, 207 F.3d 595 (9th Cir. 2000). Thus, it is

appropriate for us to consider the merits of Mead's appeal. See id.

ISSUES

1. Did the bankruptcy court err when it denied confirmation of Mead's plan based on its finding that Mead had not demonstrated that his petition and his plan were filed in good faith?
2. Did the bankruptcy court err when it denied confirmation of Mead's plan based on the plan's treatment of Williams' claim as an unsecured claim?

STANDARDS OF REVIEW

We review de novo the bankruptcy court's construction of the statutory requirements for confirmation of a chapter 13 plan. Villanueva v. Dowell (In re Villanueva), 274 B.R. 836, 840 (9th Cir. BAP 2002). A determination of good faith is a factual finding reviewed for clear error. Ho v. Dowell (In re Ho), 274 B.R. 867, 870 (9th Cir. BAP 2002). To the extent the appellant challenges whether the bankruptcy court correctly applied the facts to the proper test for determining good faith, it is a mixed issue of fact and law, subject to de novo review. Villanueva, 274 B.R. at 840.

A factual finding is clearly erroneous, when there is evidence to support it, only if we have a definite and firm conviction that a mistake has been committed. Banks v. Gill Distribution Ctrs., Inc. (In re Banks), 263 F.3d 862, 869 (9th Cir. 2001)(quoting Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 573 (1985)). We must affirm the bankruptcy court's findings of fact unless those findings are "illogical,

implausible, or without support in inferences that may be drawn from the record." U.S. v. Hinkson, 585 F.3d 1247, 1263 (9th Cir. 2009).

DISCUSSION

A. Good Faith.

A chapter 13 plan is confirmable only if the plan has been proposed in good faith under § 1325(a)(3), and if the underlying chapter 13 petition was filed in good faith under § 1325(a)(7).[5]

Initially, Mead argues that the issue of his good faith is not properly before the court. Mead points out that only the Trustee objected to his plan on the basis of lack of good faith. But the court did not rule on the merits of the Trustee's objection, denying that objection as moot after it sustained Williams' objection.

Mead's argument lacks merit. The good faith of Mead's plan was at issue regardless of the ultimate ruling on the Trustee's objection. The bankruptcy court had an independent duty under § 1325(a)(3) to assess whether Mead had proposed his plan in good faith. In re Villanueva, 274 B.R. at 841; Fid. & Cas. Co. of New

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[5]Section 1325(a)(7) was added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, Apr. 20, 2005, 119 Stat. 23 ("BAPCPA"). As a practical matter, the addition of § 1325(a)(7) to the Bankruptcy Code does not under the circumstances presented here alter the outcome of this appeal, and thus our analysis focuses on the application of § 1325(a)(3). In light of the vast breadth of the pre-existing good faith inquiry under § 1325(a)(3), at least one commentator has expressed doubt as to how much § 1325(a)(7) can add under any set of circumstances to a bankruptcy court's good faith analysis. See KEITH M. LUNDIN & WILLIAM H. BROWN, CHAPTER 13 BANKRUPTCY § 496.1, at ¶ 2 (4th ed. & online supp. at www.chapter13online.com)(§ 496.1 last revised Mar. 28, 2006).

York v. Warren (In re Warren),89 B.R. 87, 90 (9th Cir. BAP 1988). Cf. United Student Aid Funds, Inc. v. Espinosa, __ U.S. __, 130 S.Ct. 1367, 1379 (2010) (stating that, before confirming chapter 13 plan, bankruptcy court has independent duty to consider "undue hardship" issue when the plan proposes to discharge a student loan debt).

We also note that Mead had a full and fair opportunity to be heard on the good faith issue. Because the good faith of Mead's plan was challenged in the Trustee's objection, Mead was on notice that the good faith of his plan was at issue. See Espinosa, 130 S.Ct. at 1378-1380 (holding that terms of confirmation order bound creditor because creditor had adequate notice of plan's terms before confirmation). Further, Mead bore the burden of proof to establish by a preponderance of the evidence that his plan was proposed in good faith, and thus he had every incentive to submit evidence to establish his good faith. See Chinichian v. Campolongo (In re Chinichian), 784 F.2d 1440, 1443-44 (9th Cir. 1986); Warren, 89 B.R. at 93.

In short, even though the court ultimately denied the Trustee's objection as moot, the good faith of Mead's plan was properly at issue, and we reject Mead's argument to the contrary.

We thus turn to the merits. The seminal Ninth Circuit case on good faith under § 1325(a)(3) is Goeb v. Heid (In re Goeb), 675 F.2d 1386 (9th Cir. 1982). Goeb noted that neither the Bankruptcy Code nor its predecessor defined good faith, and that there was no controlling case law on the issue at that time. In light of the equitable nature of bankruptcy court proceedings, the Goeb court concluded that the good faith issue should, in

essence, ask whether the debtor acted equitably in proposing a plan. Id. at 1390. According to Goeb, the bankruptcy court needed to ask, "whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner." Id. Goeb further emphasized that, in considering whether the plan was proposed in good faith, bankruptcy courts needed to engage in a "case-by-case" analysis of the "particular features of each Chapter 13 Plan," and needed to consider "all militating factors." Id.

In Leavitt v. Soto (In re Leavitt), 171 F.3d 1219 (9th Cir. 1999), the Ninth Circuit elaborated on the good faith issue. To paraphrase Leavitt, bankruptcy courts need to consider: (1) whether the debtor misrepresented facts, unfairly manipulated the code, or otherwise acted inequitably in filing a petition or plan; (2) any past history of bankruptcy filings; (3) whether the sole purpose of debtor's petition or plan was to defeat state court litigation; and (4) whether egregious behavior was present. Id. at 1224. While the issue of good faith in Leavitt arose in a slightly different context – a dismissal of a chapter 13 case for cause based on a finding of bad faith – the Ninth Circuit considers the meaning of good faith to be analogous in both contexts. See Eisen v. Curry (In re Eisen), 14 F.3d 469, 470 (9th Cir. 1994). As in Goeb, both Leavitt and Eisen stated that, in evaluating whether the plan and the petition had been filed in good faith, the bankruptcy court needed to consider the "totality of the circumstances." See Leavitt, 171 F.3d at 1224 (citing Eisen, 14 F.3d at 470).

More recently, we emphasized the case-by-case nature of the good faith analysis, and cautioned against formulaic reliance on any particular laundry list of factors. See Nelson v. Meyer (In re Nelson), 343 B.R. 671, 677 n.10 (9th Cir. BAP 2006). In so stating, we advocated for a return to the roots of the good faith analysis. Going back to Goeb, the bankruptcy court must consider all militating factors in order to determine whether the debtors acted equitably in proposing their plan. Goeb, 675 F.2d at 1390; see also Chinichian, 784 F.2d at 1444 (stating that the good faith inquiry "should examine the intentions of the debtor and the legal effect of the confirmation of a Chapter 13 plan in light of the spirit and purposes of Chapter 13.").

With this guidance in mind, we must evaluate the bankruptcy court's analysis of the good faith issue; that is, we must determine whether it correctly applied the right standard, and whether the findings it made in support of its holding were clearly erroneous. Here, the bankruptcy court unequivocally identified the right standard. It referenced the "totality of the circumstances" test from Goeb, Leavitt and Eisen, and recited that it had considered the totality of circumstances before ruling on the good faith issue. While the bankruptcy court did not render written or oral findings on each circumstance it considered, we need not remand for entry of further findings, where as here the record provides a "complete understanding" of the basis for the bankruptcy court's ruling. See Leavitt, 171 F.3d at 1223; Jess v. Carey (In re Jess), 169 F.3d 1204, 1208-09 (9th Cir. 1999); Swanson v. Levy, 509 F.2d 859, 860-61 (9th Cir. 1975).

The entirety of the record establishes that the only effect of Mead's proposed plan was to improperly deprive Williams of the rights conferred upon her under state law. Mead vigorously challenged Williams' rights in state court for several years, but when these challenges failed, he filed bankruptcy seeking to accomplish in bankruptcy court what he could not in state court. And then he continued his challenge, not by objecting to Williams' secured claim and/or seeking invalidation of her lien, but by improperly mischaracterizing her claim as an unsecured claim in his schedules and in his plan.

While Mead apparently has no prior history of bankruptcy filings, Mead's conduct easily satisfies the other three criteria identified by Leavitt as essential to evaluating good faith. Using the same phraseology offered in Goeb, the record amply establishes that Mead misrepresented facts in his plan, attempted to unfairly manipulate the Bankruptcy Code, and proposed his plan in an inequitable manner. Borrowing from Chinichian, if one considers the debtor's intent (as can be inferred from his conduct), and the legal effect of his proposed plan, the bankruptcy court could not reasonably have concluded that either Mead's intent or his proposed plan were consistent with the spirit and purposes of chapter 13.

We once again acknowledge that Goeb requires the consideration of "all militating factors." On the other hand, Mead bore the burden of proof before the bankruptcy court to establish his good faith, see Chinichian, 784 F.2d at 1443-44, and on appeal it was incumbent upon Mead to point us to the parts of the record showing militating factors tending to demonstrate

his good faith. See generally Tevis v. Wilke, Fleury, Hoffelt, Gould & Birney, LLP (In re Tevis), 347 B.R. 679, 686-87 (9th Cir. BAP 2006) (noting appellant's duty to reference in his brief the relevant portions of the record and stating that the court is not obliged to search the entire record unaided for error).

Mead has not, however, pointed us to any favorable militating factors. We have carefully reviewed Mead's opening brief and reviewed the factors he suggests tend to show his good faith. The factors Mead references all refer to his alleged inability to pay more than a 4% dividend to unsecured creditors. At various points, he refers to: his age; his payments for his health care insurance; his long-term care insurance; his 401k retirement plan; his means test calculations; and the absence from chapter 13 of a substantial repayment requirement.

However, there is a fatal flaw in Mead's attempt to show he is paying as much as he can for unsecured creditors: he essentially has none. The only unsecured creditor that Mead purported to schedule or classify was Williams, who actually should have been scheduled and classified as a secured creditor, as discussed in section B of this decision, below. Simply put, the extent of Mead's efforts to pay his unsecured creditors is irrelevant to the good faith inquiry here, because the record before us establishes that he has identified no unsecured creditors.[6]

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[6]Regardless of the record, it is hard to accept that Mead had no other creditors at the time of his bankruptcy filing. If nothing else, any credit cards that Mead was using presumably had a balance at that time. To the extent Mead ignored the existence (continued...)

In the remainder of Mead's good-faith argument, he challenges the bankruptcy court's application of the totality of the circumstances test, and the bankruptcy court's express findings concerning his lack of good faith. According to the bankruptcy court:

> In considering the totality of the circumstances, which includes that the debtor's sole purpose for filing his chapter 13 case and the Plan is to circumvent and avoid the obligations imposed by the Dissolution Orders, the court concludes that the debtor has not demonstrated that the case, or the Plan, were filed in good faith.

On the record before us, and based on our analysis set forth above, we cannot conclude that the bankruptcy court committed reversible error in its application of the totality of the circumstances test, or that it clearly erred in making its good faith findings.

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[6](...continued)
of his unsecured creditors, that would only reinforce the bankruptcy court's finding that the sole purpose of Mead's petition and plan was to circumvent the Dissolution Judgment and the Abstract of Judgment.

Even if Mead had scheduled some unsecured creditors, and provided for them in his plan, it is quite doubtful that his efforts to pay his unsecured creditors would have altered our good faith analysis. We long ago held that the good faith inquiry and the best efforts inquiry are distinct, and that satisfaction of the best efforts test does not by itself resolve the issue of good faith. In re Warren, 89 B.R. at 95. For our purposes here, it suffices for us to say that Mead cannot establish his good faith by referencing his efforts to pay his unsecured creditors, when he did not identify any unsecured creditors in his schedules or his plan.

B. Treatment of Williams' Claim As An Unsecured Claim.

We also agree with the bankruptcy court that Mead's plan was unconfirmable because of its treatment of Williams' claim as unsecured. Before the confirmation hearing, Williams had established that she was the holder of an allowed secured claim. She had filed a proof of claim, to which she attached a copy of the Dissolution Judgment, the Abstract of Judgment, and the state court's January 10, 2006 ruling. As pointed out by the bankruptcy court, the recordation of the Abstract of Judgment created a judgment lien in William's favor against Mead's real property located in Sacramento County, California. See Cal.Civ.Proc.Code § 697.310.

Mead never objected to Williams' proof of claim. Pursuant to § 502(a), Williams' claim is deemed allowed as a secured claim. Thus, her claim should have been treated as a secured claim in Mead's plan, and should have received the treatment required by § 1325(a)(5). Instead, the plan treated Williams as if she had no lien.

The plan's treatment of Williams' claim was not consistent with any of the three alternative types of treatment allowed under § 1325(a)(5). Pursuant to § 1325(a)(5), a court may confirm a chapter 13 plan only if: (1) the lienholder accepts the plan, (2) the lienholder retains her lien and is paid under the plan the allowed amount of her secured claim, or (3) the debtor surrenders to the lienholder the property securing the lienholder's allowed claim. See 11 U.S.C. § 1325(a); Trejos v. VW Credit, Inc. (In re Trejos), 374 B.R. 210, 214 (9th Cir. BAP 2007).

While we understand that Mead disputed the validity of both the Dissolution Judgment and the Abstract of Judgment, he never filed an objection to Williams' claim, nor did he file an adversary proceeding under Rule 7001(2) seeking to invalidate her lien. He simply ignored her secured status in his plan.

Simply filing a plan that assumes a desired result does not achieve that result. The plan confirmation process cannot be used to contest the secured status of claims; rather, the debtor must commence and prosecute an adversary proceeding to achieve that end. Brady v. Commercial W. Fin. Corp. (In re Commercial W. Fin. Corp.), 761 F.2d 1329, 1337-39 (9th Cir. 1985) (reversing order confirming chapter 11 plan because plan proponent attempted to invalidate liens through plan confirmation process, rather than by filing required adversary proceeding); In re McMillan, 251 B.R. 484, 488-90 (Bankr. E.D. Mich. 2000)(following Brady and holding that debtor could not invalidate mortgage through chapter 13 plan confirmation process); see also Expeditors Int'l of Wash., Inc. v. Citicorp N. Am., Inc. (In re Colortran, Inc.), 218 B.R. 507, 510-11 (9th Cir. BAP 1997) (following Brady, and declaring void bankruptcy court's order denying compromise motion to the extent the order purported to invalidate creditor's lien). Cf. Espinosa, 130 S.Ct. at 1376.

In sum, the bankruptcy court did not err when it denied confirmation of Mead's plan based on the plan's treatment of Williams' claim. Williams' claim should have been treated as a secured claim in compliance with § 1325(a)(5), but instead the plan proposed to treat her claim as unsecured.

CONCLUSION

For all of the foregoing reasons, the bankruptcy court's order denying confirmation of Mead's plan is AFFIRMED.