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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

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ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. CC-14-1334-PaKiTa
)
JAMES HARRY SALAMON; JEANNE FIXLER) Bk. No. SA 12-17145-ES
SALAMON,)
)
Debtors.)

_____)
)
PETER J. MASTAN, chapter 7 trustee)
for the estate of David J. Behrend,)
)
Appellant,)

v.) O P I N I O N
)
)

JAMES HARRY SALAMON; JEANNE FIXLER)
SALAMON,)
)
Appellees.)
_____)

Argued and Submitted on March 19, 2015
at Pasadena

Filed - April 6, 2015

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

Hon. Erithe A. Smith, U.S. Bankruptcy Judge, Presiding

Appearances: John N. Tedford, IV, of Danning, Gill, Diamond, and
Kollitz, LLP, argued for appellant Peter J. Maston.
Michael R. Totaro of Totaro & Shanahan argued for
appellees James Harry Salamon and Jeanne Fixler
Salamon.

Before: PAPPAS, KIRSCHER, and TAYLOR, Bankruptcy Judges.

1 PAPPAS, Bankruptcy Judge:

2

3 Creditor Peter J. Mastan ("Mastan"), the chapter 7¹ trustee
4 in the bankruptcy case of David J. Behrend ("Behrend"), appeals
5 the order of the bankruptcy court disallowing his claim in the
6 chapter 11 bankruptcy case of debtors James Harry Salamon
7 ("James")² and Jeanne Fixler Salamon ("Jeanne" and, together with
8 James, "the Salamons"). We AFFIRM.

9

I. FACTS

10 The material facts in this case are undisputed.

11

The Property and the Liens

12 In 2009, Jeanne purchased a 28-unit apartment building in Los
13 Angeles (the "Property") from 716 S. Westlake Avenue Trust, a
14 self-settled trust created and controlled by Behrend.³ At the
15 time, there were liens securing two preexisting loans secured by
16 the Property, both dating back to 2005: (1) a loan of \$829,575.00
17 secured by a first priority deed of trust in favor of United
18 Commercial Bank ("First Loan"); and (2) a loan of \$135,000 secured
19 by a second priority deed of trust in favor of Frank McHugh

20

21 ¹ Unless otherwise indicated, all chapter and section
22 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all
23 Rule references are to the Federal Rules of Bankruptcy Procedure,
24 Rules 1001-9037, all Civil Rule references are to the Federal
25 Rules of Civil Procedure 1-86, and all Appellate Rule references
26 are to the Federal Rules of Appellate Procedure 1-48.

27

28 ² We refer to some parties by their first names for clarity.
No disrespect is intended.

29

³ Behrend conducted his business and financial affairs
through various trusts and other entities. As relevant here, the
parties do not dispute that Behrend's bankruptcy estate,
represented by bankruptcy trustee Mastan, holds the beneficial
interest in the Property.

1 ("Second Loan").

2 In connection with the purchase, Jeanne executed a "wrap-
3 around" note and mortgage, which included the First and Second
4 loans and deeds of trust, known as the All Inclusive Note and All
5 Inclusive Deed of Trust ("AITD"), for \$1,030,000,⁴ in favor of
6 Earthwise LLC, as trustee for the seller (a trust controlled by
7 Behrend). The AITD was recorded as a third priority deed of trust
8 on the Property.

9 Finally, Jeanne also executed a note for a fourth loan in the
10 amount of \$325,000 in favor of Earthwise (Behrend), secured by a
11 recorded fourth priority deed of trust (the "Fourth Loan"). The
12 AITD loan and the Fourth Loan proceeds were used entirely for the
13 purchase price of the Property.⁵ The AITD and the Fourth Loan
14 documents were signed by Jeanne on April 6, 2009.

15 Behrend filed a chapter 11 bankruptcy petition on March 25,
16 2010. Mastan was appointed chapter 11 trustee in that case on
17 March 1, 2011. On May 9, 2011, the bankruptcy court converted
18 Behrend's case to a chapter 7 case, and Mastan was appointed

19
20 ⁴ Although it is not clear in the record, the \$1,030,000
21 apparently represented the balance due for principal and interest
22 on the First and Second Loans. Jeanne did not assume liability
23 for these loans, but instead "wrapped around" the loans with the
AITD. Jeanne was responsible for making payments on the AITD and
Fourth Loan, and Behrend was responsible for making the payments
on the First and Second Loans.

24 ⁵ Thus, under California law, the AITD and Fourth Loan were
25 purchase money mortgages. A purchase money transaction occurs
26 when "[t]he sum represented by the note and trust deed was a
27 necessary part of the purchase price." Heritage Pac. Fin. LLC v.
Edgar (In re Montano), 501 B.R. 96, 109 n.11 (9th Cir. BAP 2013)
(quoting Stockton Sav. & Loan Bank v. Massanet, 114 P.2d 592, 597
28 (Cal. 1941). Significant here, purchase money mortgages come
within the purview of California's anti-deficiency statutes. See
Cal. Code Civ. Proc. § 580b(a)(2) (quoted, infra, n.6).

1 chapter 7 trustee.

2 **The Salamons' Bankruptcy Case and Mastan's Claim**

3 The Salamons filed their own chapter 11 petition on June 8,
4 2012, and, throughout that case, have exercised powers of a debtor
5 in possession of their bankruptcy estate. See § 1107(a).

6 Mastan, as trustee in Behrend's chapter 7 case, filed a
7 secured proof of claim in the Salamons' chapter 11 case for
8 \$1,355,000, the principal due under the AITD and Fourth Loan, on
9 October 3, 2012.

10 American West Bank ("AWB"), the successor to United
11 Commercial Bank, and the Salamons stipulated that the automatic
12 stay could be terminated so that AWB could foreclose on the
13 Property under the first priority deed of trust. The bankruptcy
14 court approved the stipulation and granted stay relief to AWB in
15 an order entered on October 19, 2012. AWB served a notice of
16 default under the first priority deed of trust on November 1,
17 2012, recorded a notice of trustee's sale on February 6, 2013, and
18 the Property was sold at a foreclosure sale on March 13, 2013, for
19 \$1,275,500.

20 In November, 2013, Mastan learned that the sale had generated
21 sufficient funds to pay the full amount due on the First and
22 Second Loans and that there were surplus funds available to pay to
23 Behrend's estate. After making demand on the foreclosing trustee,
24 Mastan received a check for \$150,560.14. This sum was sufficient
25 to pay the remaining balance on the AITD, and a portion of the
26 amount due on the Fourth Loan. Mastan filed an amended unsecured
27 proof of claim (the "APOC") in the Salamons' chapter 11 case for
28 the remaining balance in the amount of \$303,345.75.

1 On April 28, 2014, the Salamons filed a motion in the
2 bankruptcy court for an order disallowing Mastan's APOC. The
3 Salamons argued that under Cal. Civ. Code § 580b(a)(2),⁶ Mastan
4 could not assert an unsecured claim for any deficiency remaining
5 due on the AITD and Fourth Loan after the foreclosure.

6 Mastan filed a response to the motion on May 27, 2014.
7 Mastan argued that, although the claim would be barred under
8 California law, § 1111(b)(1) overrides the state law prohibiting a
9 deficiency claim. Mastan pointed out that the only exceptions to
10 the application of § 1111(b) – a class election under
11 § 1111(b)(2), a sale of the Property under § 363, or a sale under
12 a chapter 11 plan – were not present.

13 In a reply filed June 3, 2014, the Salamons contended that
14 because the Property was removed from the bankruptcy estate via
15 the foreclosure sale, the state anti-deficiency law applied to
16 preclude Mastan's claim. In other words, because Maston's claim
17 was no longer secured by a lien on property of the estate,
18

19 ⁶ "(a) [N]o deficiency judgment shall lie in any event for
20 the following: . . . (2) Under a deed of trust or mortgage given
21 to the vendor to secure payment of the balance of the purchase
22 price of that real property or estate for years therein." Cal.
23 Code Civ. Proc. § 580b(a)(2).

24 There was some discussion at oral argument about whether Cal.
25 Code. Civ. Proc. §§ 580b(a)(2), 580b(a)(3) or 580d applies in this
26 situation. However, by its terms, Cal. Code Civ. Proc.
27 § 580b(a)(3) only applies to foreclosures of residential
28 properties of four units or less, and the Property had twenty-
eight units. And while Cal. Code. Civ. Proc. § 580d is a more
general statute that extends the anti-deficiency rule to all
mortgages, not just purchase money mortgages, Coker v. JP Morgan
Chase Bank, N.A., 281 Cal. App. 4th 1, 9 (2013), it does not apply
to a non-foreclosing junior lien, such as the AITD or Fourth Loan.
Cadlerock Joint Venture, LP v. Lobel, 206 Cal. App. 4th 1531, 1549
(2012). Therefore, Cal. Code Civ. Proc. § 580b(a)(2) controls in
this case.

1 § 1111(b) did not apply to it.

2 Before the hearing on the Salamons' motion to disallow
3 Mastan's claim, the bankruptcy court entered a tentative decision
4 which stated in full:

5 Except as noted below, the court incorporates by
6 reference herein the legal analysis and case citations
7 set forth in Debtor's Motion and Reply Pleadings. The
8 Court notes, however, that Debtors are incorrect that
9 the subject property was no longer property of the
10 estate at the time the order granting relief from stay
11 was entered. The granting of relief from stay allows a
12 secured creditor to proceed with foreclosure proceedings
13 but, until a sale actually occurs, the property remains
14 property of the bankruptcy estate. Accordingly, in this
15 case, the property was no longer property of the estate
16 as of the date of the foreclosure sale, i.e., on March
17 13, 2013. At that point, Creditor no longer held a
18 "claim secured by a lien on property of the estate" for
19 purposes of § 1111(b). Further, the Court agrees that
20 the anti-deficiency provisions under California law, CCP
21 580(b) [apply].

22 Tentative Decision, June 10, 2014.

23 After hearing the arguments of counsel, the bankruptcy court
24 announced its decision, granting the Salamons' motion to disallow
25 Mastan's unsecured claim. Its Order memorializing its decision,
26 entered on June 20, 2014, explained:

27 The Court finds the property in question remained
28 property of the estate up and till a foreclosure sale
actually occurs. At that point, the Creditor no longer
had a claim "secured by a lien on property of the
estate" for purposes of Section 1111(b). The court
further finds that the anti-deficiency provision under
California Law, CCP 580(b), applies.

Mastan filed a timely appeal on June 27, 2014.

24 **II. JURISDICTION**

25 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
26 and 157(b)(2)(B). We have jurisdiction under 28 U.S.C. § 158.

27 **III. ISSUE**

28 Whether the bankruptcy court erred in disallowing Mastan's

1 amended claim.

2 **IV. STANDARDS OF REVIEW**

3 The bankruptcy court's interpretation of the Bankruptcy Code
4 is reviewed de novo. Durkin v. Bendor Corp. (In re G.I. Indus.,
5 Inc.), 204 F.3d 1276, 1279 (9th Cir. 2000). Disallowance of a
6 claim is reviewed de novo. Margaret B. McGimsey Trust v. USA
7 Capital Diversified Trust Deed Fund, LLC (In re USA Commercial
8 Mortgage Co.), 377 B.R. 608, 617 (9th Cir. BAP 2007)
9 ("Disallowance of a claim is a legal determination that the claim
10 under consideration is not allowable by law.").

11 **IV. DISCUSSION**

12 The parties agree that resolution of this appeal centers on
13 the bankruptcy court's interpretation of § 1111(b)(1)(A), which
14 provides that:

15 A claim secured by a lien on property of the estate
16 shall be allowed or disallowed under section 502 of this
17 title the same as if the holder of such claim had
recourse against the debtor on account of such claim,
whether or not such holder has such recourse, unless

18 (I) the class of which such claim is a part
19 elects, by at least two-thirds in amount and more
20 than half in number of allowed claims of such
class, application of paragraph (2) of this
subsection; or

21 (ii) such holder does not have such recourse
22 and such property is sold under section 363 of this
title or is to be sold under the plan.

23 § 1111(b)(1)(A).

24 Collier explains the role of § 1111(b) in reorganization
25 cases:

26 Section 1111(b) represents an attempt by Congress to create a
27 balance between the debtor's need for protection, and a
creditor's right to receive equitable treatment.

28 . . .

1 The text of section 1111(b)(1)(A) tells courts to ignore
2 state law and nonrecourse agreements. Unless otherwise
3 excepted, [the court] must treat "a claim secured by a lien
4 on property of the estate . . . the same as if the holder of
5 such claim had recourse against the debtor on account of such
6 claim, whether or not such holder has such recourse." As a
7 consequence, a partially secured nonrecourse creditor may do
8 better in a chapter 11 case than in a chapter 7 case if its
9 deficiency claim has any value. Because a chapter 11 plan
does not provide for the sale or other liquidation of the
collateral, any valuation which determines a deficiency will
be a judicial valuation. In promulgating section 1111(b),
Congress essentially stated that such a judicial valuation
was not part of the nonrecourse creditor's bargain, and
provided an avenue for the creditor to elect to have the
deficiency recognized.

10 7 Collier on Bankruptcy ¶ 1111.03{1}[a] (Alan N. Resnick & Henry
11 J. Sommer, eds., 16th ed. 2014).

12 Although § 1111(b)(1)(A) bestows a potential benefit on a
13 creditor holding a nonrecourse, partially secured claim in a
14 chapter 11 case, a condition precedent to the creditor's enjoyment
15 of that special status is that it must hold "a claim secured by a
16 lien on property of the estate." Here, the question is whether
17 that condition was satisfied because Mastan held such a lien on
18 the date the Salamons' petition was filed, even though the lien no
19 longer existed when the allowance of Mastan's claim was
20 challenged.

21 In interpreting the Code, "'when the statute's language in
22 plain, the sole function of courts – at least where the
23 disposition required is not absurd – is to enforce it according to
24 its terms.'" Lamie v. U.S. Tr., 540 U.S. 526, 534 (2004); Parks
25 v. Drummond (In re Parks), 475 B.R. 703, 707 (9th Cir. BAP 2012)
26 ("If the statute is clear, the inquiry is at its end, and we
27 enforce the statute on its terms."). "Furthermore, 'the words of
28 [the Code] must be read in their context and with a view to their

1 place in the overall statutory scheme.'" Danielson v. Flores (In
2 re Flores), 735 F.3d 855, 859 (9th Cir. 2013) (en banc) (quoting
3 Gale v. First Franklin Loan Servs., 701 F.3d 1240, 1244 (9th Cir.
4 2012)). "When the statute's language is plain, the sole function
5 of the courts . . . is to enforce it according to its terms."
6 Hartford Underwriters Ins. Co. v. Union Planters Bank, 530 U.S. 1,
7 6 (2000).

8 According to § 1111(b)(1), a nonrecourse claim is treated as
9 a recourse claim in a chapter 11 case if it is "secured by a lien
10 on property of the estate." The bankruptcy court noted that, from
11 and after March 13, 2014, the date of the foreclosure sale at
12 which it was sold, the Property was no longer property of the
13 Salamons' bankruptcy estate. "At that point, [Mastan] no longer
14 had a claim 'secured by a lien on property of the estate' for
15 purposes of Section 1111(b)." Thus, the bankruptcy court
16 concluded, in treating Mastan's claim in the same fashion as a
17 recourse claim, § 1111(b)(1)(A) no longer applied and, instead,
18 the California anti-deficiency statutes, including Cal. Civ. Code
19 § 580b, prohibited enforcement of the unsecured claim. As a
20 result, under § 502(b)(1),⁷ Mastan's amended claim was disallowed.

21
22 ⁷ This Code provision states:

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

30 (1) such claim is unenforceable against the debtor
31 and property of the debtor, under any agreement or

(continued...)

1 Mastan argues that the bankruptcy court erred by not
2 considering the language in § 1111(b)(1)(A) instructing that “[a]
3 claim secured by a lien on property of the estate shall be allowed
4 or disallowed under section 502 of this title” in light of the
5 requirement in § 502(b)(1) that the court “shall determine the
6 amount of such claim in lawful currency of the United States as of
7 the date of the filing of the petition[.]” Mastan reasons that
8 because, as of the petition date, his claim against the Salamons
9 was secured by liens against property of their bankruptcy estate
10 (i.e., the deeds of trust securing the AITD and Fourth Loan),
11 § 1111(b)(1)(A) overrides state law and requires that Mastan’s
12 amended claim be allowed as if he had recourse against the
13 Salamons on account of his claim. In short, Mastan asks us to
14 interpret “property of the estate” in § 1111(b)(1)(A) as a
15 reference to the property that existed at the time of filing the
16 petition, not at the time of considering the objection to the
17 amended claim.

18 While case law interpreting this phrase in § 1111(b)(1)(A) is
19 sparse, it is contrary to Mastan’s position. The most oft-cited
20 decision on this issue is Tampa Bay Assocs., Ltd. v. DRW
21 Worthington, Ltd. (In re Tampa Bay Assocs., Ltd.), 864 F.2d 47
22 (5th Cir. 1989).⁸ In that case, prior to plan confirmation,

23
24 ⁷(...continued)
25 applicable law for a reason other than because such
claim is contingent or unmaturred[.]

26 § 502(b)(1).

27 ⁸ The citation to this case apparently contains an error.
28 Tampa Bay Associates was a creditor, not the debtor; the debtor
(continued...)

1 creditor Tampa Bay obtained stay relief from the bankruptcy court
2 to foreclose its lien on an apartment building owned by debtor DRW
3 Worthington. After the property was sold at a foreclosure sale,
4 Tampa Bay filed an amended proof of claim for the deficiency
5 remaining due after the sale. When DRW objected to the amended
6 claim, the bankruptcy court disallowed it, and the district court
7 affirmed. Id. at 49. The Fifth Circuit agreed with the lower
8 courts and concluded:

9 Section 1111(b)(1)(A) specifically states that "a claim
10 secured by a lien on property of the estate shall be
11 allowed or disallowed under section 502 . . . the same
12 as if the holder of such claim had recourse against the
13 debtor. . . ." Once Tampa Bay foreclosed on the
14 property it extinguished the "claim secured by a lien"
15 necessary to invoke a section 1111(b) election.

16 Id. at 50-51; see also Nat'l Real Estate Ltd. P'ship-II v. Consol.
17 Cap. Partners (In re Nat'l Real Estate Ltd. P'ship-II), 104 B.R.
18 968, 975 (Bankr. E.D. Wisc. 1989) ("1111(b) only applies to 'a
19 claim secured by a lien on property of the estate.' When [the
20 creditor] completed its foreclosure of the property, its claim no
21 longer was secured by a lien on property of the estate, and
22 § 1111(b) no longer applied.").

23 Mastan offers no case law supporting his interpretation of
24 § 1111(b)(1)(A) requiring that, if a claim is secured by a lien on
25 property of a debtor's bankruptcy estate as of the date of the
26 case filing, an otherwise nonrecourse debt will thereafter be
27 afforded treatment as a recourse debt even though the property is

28 ⁸(...continued)
was DRW Worthington, Ltd. As reported in the Federal 2d Series,
and in LEXIS and Westlaw, all have an incorrect caption, and thus
as cited by others, the error has been perpetuated.

1 sold at a foreclosure sale. Two other courts of appeals interpret
2 § 1111(b) in a manner consistent with the analysis of In re Tampa
3 Bay Assocs. See In re Brookfield Commons No. 1 LLC, 735 F.3d
4 596, 598 (7th Cir. 2013) (“The plain meaning of § 1111(b)(1)(A) is
5 unambiguous There is one prerequisite: the claim is
6 secured by a lien on the property of the estate.”); 680 Fifth Ave.
7 Assocs. v. Mutual Benefit Life Ins. Co. (In re 680 Fifth Ave.
8 Assocs.), 29 F.3d 95, 97 (2nd Cir. 1994) (“The plain meaning of
9 § 1111(b)(1)(A) does not limit itself to consensual or
10 nonconsensual liens. . . . The only precondition to the statute’s
11 application is a claim secured by a lien on property of the
12 estate.”).

13 In this case, under California law, the liens securing
14 Mastan’s claim were extinguished as a necessary consequence of the
15 nonjudicial foreclosure sale. Thoryk v. San Diego Gas & Elec. Co.,
16 225 Cal. App. 4th 386, 399 (2014); Bank of Am. v. Graves (1996) 51
17 Cal. App. 4th 607, 611-16 (1996). Although Mastan’s original
18 proof of claim may have asserted a claim secured by liens on
19 property of the estate, as recognized in the APOC Mastan filed,
20 those liens were eliminated as a matter of law as a result of the
21 foreclosure. As a result, when Salamons’ objection to the claim
22 was considered by the bankruptcy court, Mastan no longer held a
23 lien on any property of the estate.⁹ Absent a lien on estate
24 property, the bankruptcy court did not err in deciding that

25
26 ⁹ Indeed, Mastan conceded that the Property was no longer
27 property of the estate after foreclosure: “The debtor’s position
28 is that somehow the foreclosure sale then divested this property
of the estate, which I believe the foreclosure sale would it take
[sic] away from property of the estate, but that’s not the
determination.” Hr’g Tr. 3:9-12, June 10, 2014. Unfortunately
for Mastan’s position, as shown above, that is the proper
determination.

1 § 1111(b)(1)(A) did not apply to the APOC, and under the anti-
2 deficiency laws of California, the claim was unenforceable. As
3 provided in § 502(b)(1), the bankruptcy court did not err in
4 disallowing the amended claim because it was unenforceable under
5 applicable law.¹⁰

6 **CONCLUSION**

7 We AFFIRM the order of the bankruptcy court disallowing
8 Mastan's amended claim.

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25 ¹⁰ Like the bankruptcy court, because we base our decision
26 on the plain language of § 1111(b)(1)(A) requiring that, to
27 convert a nonrecourse claim to recourse, the claim must be
28 "secured by a lien on property of the estate," we need not
consider the Fifth Circuit's and other courts' alternative
reasoning for disallowing such a claim: that a foreclosure is
tantamount to a § 363 sale, and that therefore, Congress would
intend that the exception in § 1111(b)(1)(A)(ii) apply. In re
Tampa Bay Assoc., 864 F.2d at 50; In re Woodbridge N. Apts, Ltd.,
71 B.R. 189, 192 (Bankr. N.D. Cal. 1987).