

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In Re:

Lorna Neitzel,

Debtor.

Case No. 14-28695-GMH

Chapter 13

Lorna Neitzel,

Plaintiff,

v.

Adversary No. 15-2057

J.P. Morgan Chase Bank, N.A.,

Defendant.

ORDER

The debtor commenced this adversary proceeding against J.P. Morgan Chase Bank, N.A. ("Chase") alleging that Chase holds a claim secured by a junior lien on the debtor's principal residence and the residence's value is less than the amount the debtor owes the senior lienholder.¹ Based on these allegations, the debtor seeks a judgment declaring that (1) Chase's claim is a general unsecured claim for purposes of 11 U.S.C. §506(a); (2) Chase's claim "shall be deemed to be fully paid" and its "lien shall have no

¹ Chase also holds the senior lien. For ease of explication this order ignores Chase's claim secured by the senior lien. Unless otherwise indicated, all references to "Chase's claim" are to its claim secured by the junior lien.

legal effect” upon completion of the debtor’s chapter 13 plan and entry of discharge; and (3) Chase’s “purported second mortgage is void pursuant to 11 U.S.C. §506(d)”. CM-ECF, Doc. No. 1, 5.

The parties have filed a proposed stipulation to resolve this adversary proceeding. CM-ECF, Doc. No. 19. Chase has agreed that the debtor’s plan may treat its claim as unsecured and modify its lien rights. The parties ask the court to approve the stipulation’s terms and make those terms “an order of the court”. CM-ECF, Doc. No. 19, 2.

One of the stipulation’s terms is that “upon the entry of an order approving this stipulation, [Chase] may file an unsecured claim for its outstanding loan balance as of the date of the order’s entry. The unsecured claim shall be paid *pro rata* with the other timely-filed unsecured claims.” *Id.* at 1. Here’s the rub. The deadline to file claims expired more than six months before the parties entered into their stipulation, and Chase never filed a proof of claim.

Federal Rule of Bankruptcy Procedure 3002(c) governs the time to file claims in chapter 13 cases. Under that rule a proof of claim must be filed within 90 days after the first date set for the meeting of creditors. Fed. R. Bankr. P. 3002(c). The rule authorizes more time only when one of the rule’s six enumerated exceptions apply. See Fed. R. Bankr. P. 3002(c) & 9006(b)(3).²

In support of the proposed order allowing it to file a claim more than 90 days after the first meeting of creditors, Chase relies solely on the exception found in Rule 3002(c)(3). This provision, as arguably relevant here, allows a creditor to file a proof of claim 30 days after the entry of a judgment that gives rise to an unsecured claim *and* denies or avoids an interest in property:

² The parties do not argue for an enlargement of the Rule 3004 deadline by which a debtor may file a proof of claim; thus, this order does not address that possibility. See Fed. R. Bankr. 9006(b).

An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property.

Fed. R. Bankr. P. 3002(c)(3). Chase argues that Rule 3002(c)(3)'s exception applies because the "parties have now stipulated to avoid [its] security interest as wholly unsecured". CM-ECF, Doc. No. 22, 3.

But the judgment in this adversary proceeding will not avoid Chase's lien. Although the complaint seeks a declaration that Chase's lien is "void pursuant to 11 U.S.C. §506(d)", that request is meritless. Section 506(d) permits liens to be declared void only when either the lien secures a claim that is not allowable or the lien is not enforceable under state law. See *Bank of Am., N.A. v. Caulkett*, 135 S. Ct. 1995 (2015); *Dewsnup v. Timm*, 502 U.S. 410 (1992); *Ryan v. United States (In re Ryan)*, 725 F.3d 623 (7th Cir. 2013). Section 506(d) does *not* provide for avoidance of valid state-law liens solely on the basis that the value of the collateral is less than the amount owed to senior lienholders. See *Caulkett*, 135 S. Ct. at 1999; *Dewsnup*, 502 U.S. at 416–18; *Ryan*, 725 F.3d at 625. Yet all the debtor alleges in this adversary proceeding is that the value of the collateral is less than the amounts owed to holders of liens senior to Chase's lien. Consequently, §506(d) does not authorize a judgment avoiding Chase's lien that would trigger Rule 3002(c)(3)'s extension of the time for Chase to file a proof of claim.

A debtor's chapter 13 plan, in contrast, can eliminate a junior lien on the debtor's principal residence if the lien is "underwater" — the debt amount secured by senior liens is greater than the value of the residence. This is because 11 U.S.C. §506(a) treats underwater-lien claims as "unsecured", and §1322(b)(2) allows a chapter 13 plan to modify the rights of holders of unsecured claims. See 11 U.S.C. §§506(a) & 1322(b)(2); see also *Monroe v. Seaway Bank & Trust Co. (In re Monroe)*, 509 B.R. 613 (Bankr. E.D. Wis. 2014).

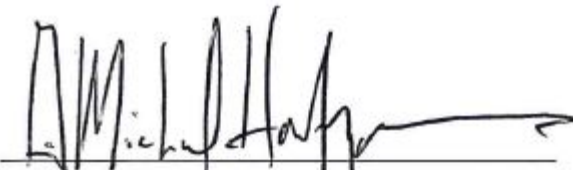
When a plan provides for elimination of an underwater lien, however, it is the order confirming the plan that eliminates the lien (subject to contingent revesting by operation of 11 U.S.C. §§348(f) and 349(b)). The judgment in this adversary proceeding, therefore, will not eliminate Chase's lien. That judgment will only declare that Chase lacks a secured claim for purposes of §§506(a) and 1322, because the value of its collateral is less than the senior debt secured by that collateral.

Finally, an order confirming a plan that eliminates Chase's lien also would not give Chase an additional 30 days to file a proof of claim under Rule 3002(c)(3). Again, Rule 3002(c)(3) applies when "[a]n unsecured claim [] arises in favor of an entity or becomes allowable as a result of a judgment". Fed. R. Bankr. P. 3002(c)(3). Chase's unsecured claim neither arises nor becomes allowable as a result of the confirmation order. Claim allowance is governed by 11 U.S.C. §502. The order confirming the plan does not allow or disallow claims; it simply gives effect to the plan's provisions directing how the trustee and the debtor will pay claims and how the plan modifies the rights of holders of those claims.

Therefore, Rule 3002(c)(3) does not create an additional 30-day period in which Chase can timely file a proof of claim. The parties' request for entry of judgment so providing is denied.

So ordered.

July 22, 2015



G. Michael Halfenger
United States Bankruptcy Judge