Danger Will Robinson!
Lost in Space
Navigating a Debtor Through a Chapter 13 Case

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The Discharge Issue

Your client has miraculously made it all the way through the maze that is Chapter 13 and has made every single payment to the Chapter 13 Trustee that was required under the confirmed Plan.[1] Both you and your client are expecting a discharge and an end to the process. But the Chapter 13 Trustee filed a pesky Notice of Final Cure which drew a response from the mortgage lender stating that your client is not current on the post-petition mortgage payments. The mortgage loan was listed as "pay direct" in the Plan. Because there is a post-petition arrearage, does your client get his/her discharge?[2] Probably not.

In re Heinzle, 511 B. R. 69 (Bankr. W. D. Tex., 2014) - The debtors cured a mortgage arrearage through the Plan with disbursements made by the Chapter 13 Trustee and were supposed to make direct monthly payments to the mortgage lender. They did not make all of their direct payments. When the Chapter 13 Trustee filed the Notice of Final Cure, the mortgage lender responded that the debtors were roughly thirty months in arrears on the post-petition direct payments. The Trustee filed a motion to deny the discharge and dismiss the case.

The debtors argued that the phrase "all payments under the plan" as used in §1328(a) means only those payments the debtors were required to make to the Trustee, which they made, but not direct payments. However, as stated by Judge Gargotta, "[C]ourts in this circuit and elsewhere have concluded that payments made directly to a mortgagee are plan payments." *Id*. at 75. Relying on *In re Foster*, 670 F. 2d 478 (5th Cir. 1982), he concluded, "The term 'under the plan' properly refers to any payment made pursuant to the provisions of a Chapter 13 plan, regardless of whether such payment is made through the trustee or by a debtor directly to a creditor." *Heinzle* at 77. Judge Gargotta found that no further modification of the Plan, at least regarding a payment proposal, was possible because the debtors were at the end of the allowed five year term.[3]

As Judge Gargotta said, "A denial of discharge places Debtors in the difficult position of

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[1]Miraculous in the sense that, as we all know, many debtors are not able to do this for one reason or another.

[2]This issue is most likely to come up when the debtor does not pay post-petition mortgage payments simply because any response to the Notice of Final Cure will bring that default to the attention of the Court and the Chapter 13 Trustee. However, the reasoning in the cases dealing with this issue is equally applicable to the non-payment of any debt, post-petition, for which the debtor is the disbursing agent (as opposed to the Chapter 13 Trustee). So, any "pay direct" can create this problem – car payments, student loan payments, etc.

[3]Pursuant to §1322(d)(1), "the plan may not provide for payments over a period that is longer than 5 years" and pursuant to §1322(d)(2), "the court may not approve a [payment] period that is longer than 5 years."

potentially seeking further bankruptcy relief and would require creditors to determine the legal effect of a denial of discharge on future bankruptcy filings." *Id*. at 83. Judge Gargotta allowed the debtors fourteen days to convert the case or have it dismissed.

In re Kessler, 09-60247, 2015 WL 4726794 (Bankr. N. D. Tex. June 9, 2015) - The debtors moved for the entry of a discharge, stating that they completed all their Plan payments. As in *Heinzle*, the debtors had made the payments to the Trustee, but had not made all of their direct mortgage payments. Again, the mortgage arrearage was discovered when the lender responded to the Notice of Final Cure. The debtors argued that because long term debt is not discharged under §1328(a)(1) anyway, they should not be deprived of their discharge.[4] Judge Robert Jones rejected that argument. He also spoke to the possibility that debtors can avoid this issue by just not including the direct disbursement by the debtor of the ongoing mortgage payments in the Plan, hoping to keep those payments ***outside*** the Plan.[5] He concluded that if the debtor cures arrears through the Plan, the direct payments to the mortgage lender are "under the plan."

The debtors also argued that the lender's failure to object to their motion for a discharge constituted a waiver, relying on *United Student Aid Funds, Inc. v. Espinoza*, 559 U. S. 260 (2010). Judge Jones made short work of this argument. The debtors' discharges were denied.

Judge Jones' opinion was appealed to the United States District Court for the Northern District of Texas which issued a ruling on November 19, 2015, affirming the Bankruptcy Court's ruling.[6] The District Court stated that the result of a denial of discharge was neither absurd nor inequitable. Citing to the Fifth Circuit's opinion in *Foster*, *supra*., the District Court noted that those payments falling under the Plan include the "current mortgage payments while the case is pending." *Foster*, 670 F. 2d at 489. The debtors argued, again, that it would be inequitable for them to be denied a discharge because the debt would not be discharged under §1325(b)(5) anyway. The District Court rejected that argument and agreed with the Chapter 13 Trustee who argued that "allowing a discharge of the remaining debt where [Kessler] had the unfettered use of $40,000.00 in disposable income would be unfair and inequitable to [Kessler's] creditors."[7]

The District Court also agreed with the Bankruptcy Court's analysis of *Espinosa* stating that the Supreme Court did not say that "a creditor's failure to object to a requested discharge

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[4]Section 1328(a)(1) excepts from discharge any debt provided for under §1325(b)(5).

[5]"When a debtor chooses to exclude a secured debt from treatment under the plan, 'the lien securing [such debt] merely passes through the bankruptcy case unaffected'; as a consequence it will not be discharged. (citation omitted)." *Kessler* at p. 5.

[6]The District Court's opinion has not been published.

[7]*Br. of Appellee* at 12; See also *In re Fomancek*, 534 B. R. 296 (Bankr. D. Colo. 2015). An examination of the record in the *Kessler* case reveals that the debtors did not make a mortgage payment from February, 2010 through May, 2013. In response to the Trustee's Notice of Final Cure, the mortgage lender stated that the debtors were over forty thousand dollars in arrears on the post-petition mortgage payments. The Trustee's point is well-taken. If the debtors did not make payments to the mortgage lender, payments that were deducted in calculating their disposable income, what did they do with the money? It was not dedicated to the repayment of their unsecured debt.

order requires the bankruptcy judge to *grant* a discharge regardless of whether the debtor has fully satisfied all payments under the plan." *Kessler v. Wilson, No. 6:15-cv-00040-C,* slip op. at 7 (N.D. Tex. Nov. 19, 2015).

Kessler is on appeal to the Fifth Circuit. The case number is 15-11252. So, watch for a Fifth Circuit ruling on this issue.

In re Ramos, 540 B.R. 580 (Bankr. N.D. Tex. 2015) – Judge Jernigan agreed with the *Heinzle* and *Kessler* opinions, coming to the conclusion that "direct" payments are payments under the Plan and, if the debtor does not make those payments, the debtor is not entitled to a discharge. Much more to come on the *Ramos* opinion, below.

What Now?

With the discharge hanging in the balance, what do you do? It is too late to modify the Plan to address the arrearage by paying it through the Trustee. So how about just modifying to surrender the collateral, presumably in satisfaction of the debt, or, at least, the allowed secured claim? If you do that, will your clients then be eligible for a discharge? Is that type of modification even acceptable? Maybe not.

In re Coleman, 231 B. R. 397 (S. D. Ga 1999) – The debtor modified to surrender a Corvette when his income fell. He had been making direct payments to the lender. The Court concluded that §1329(a)(3) allows a reduction in the distribution to a creditor under a Plan, but that reduction is limited to amount of a payment received from another source, like the payment of insurance proceeds or foreclosure proceeds. The debtor was required either to continue to pay the deficiency balance owed to the lender outside the Plan or to modify the Plan to add the deficiency balance as a secured claim to be paid through the Plan. Then the Court stated, "Had the Debtor either correctly valued the collateral at the outset, when the plan was originally confirmed, or funded the secured claim at a rate equal to the depreciation of the collateral, he would not be faced today with this quandry." *Id*. at 403. The Court assumed that the lender had not been compensated for depreciation without any discussion of the amount of the depreciation, how it might have been calculated, or whether the payments up to the point of surrender actually compensated for it.

In re Nolan, 232 F.3d 528 (6th Cir. 2000) – This is the oft-cited appellate opinion on this issue. Per the confirmed Plan, the car creditor was crammed down, resulting in a bifurcated claim. The allowed secured claim equaled the value of its collateral and was to be paid at interest. The balance of the debt was classified as an unsecured claim and was to receive a small distribution per the Plan. Following confirmation, the debtor sought to modify the Plan to surrender the vehicle and reclassify the balance of the allowed secured claim as part of the unsecured claim. The car creditor objected on the ground that §1329 did not allow the debtor to reclassify a secured claim as an unsecured claim without a " . . . good faith showing of unanticipated substantial change in circumstances." *Id.*, at 529. The lender contended that the debtor had not acted in good faith because she did not maintain the vehicle. The Bankruptcy Court approved the modification and found that the debtor had not acted in bad faith. The

District Court reversed, holding, as a matter of law, that §1329(a) did not allow the debtor to modify to surrender the collateral and reclassify any resulting deficiency as an unsecured claim.

The Sixth Circuit affirmed the District Court and did not permit the modification. The Court of Appeals reasoned that:

(1) §1329(a) does not allow a debtor to alter, reduce or reclassify a secured claim that has been previously allowed. The Sixth Circuit says that §1329(a) cannot be used to reclassify a claim but does not say that §1329(a) does not allow a post-confirmation motion to surrender collateral.

(2) §1325(a)(5)(B) provides that a secured claim ". . . is fixed in amount and status and must be paid in full once it has been allowed". *Id.* at 532. According to the Sixth Circuit, the debtor sought a further reclassification and bifurcation of a previously allowed secured claim into an allowed secured portion and an allowed unsecured portion, contravening the provisions of §1325(a)(5)(B)(ii) – a second bifurcation, if you will. Again, the Sixth Circuit focused on claims reclassification, not surrender in and of itself.

(3) The modification would contravene §1327(a) because it would shift the burden of depreciation to the creditor.[8]

(4) Allowing the debtor's interpretation of §1329 would create an inequitable situation in which the debtor could reclassify claims in light of depreciation but in which a creditor could not modify to reclassify a claim if the collateral appreciated.[9]

(5) §1329(a) does not allow the modification of the amount of a claim, but, instead, allows only the modification of payments.

The Court of Appeals concluded that the debtor could not modify a Plan by (1) surrendering the collateral to the creditor, (2) having the creditor sell the collateral and apply the proceeds to the debt and (3) reclassifying the remaining balance of the allowed secured claim as an unsecured claim. Once an allowed secured claim, always an allowed secured claim. Although *Nolan* is sometimes cited as standing for the proposition that a debtor cannot modify post-confirmation to surrender collateral, the Court of Appeals actually does not make that holding. The *Nolan* court did not express a problem with the surrender, *per-se*, just with the attempt to reclassify the claim. Presumably, a modification of the Plan to surrender the collateral and pay any remaining balance of the secured claim, *as a secured claim*, would pass muster under *Nolan*, at least as it is written.

In re Jackson, 28 B. R. 703 (Bankr. Ala. 2001) – This is another car case and an attempt to surrender in full satisfaction of the total debt. Recognizing the split of authority on the issue,

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[8]Really? Why didn't the creditor object to the payment stream at confirmation if it was insufficient to compensate for depreciation? And wouldn't a finding that the modification has not been proposed in good faith answer the concern if there was excessive, abusive, or uncompensated depreciation of the collateral by a debtor?

[9]This is probably not a correct statement. To the extent the secured creditor had a bifurcated claim and an unsecured portion of its debt, it would have an allowed unsecured claim and therefore would be one of the parties listed in §1329(a) as eligible to propose a modification. It might not win the argument, but it would not be precluded from making it.

the Court was persuaded by *Nolan*. The Judge stated, "The decision is a harsh one for debtors. It will force them to make decisions about the retention or surrender of vehicles before confirmation. Otherwise, deficiency payments after surrender will continue to be secured debts." *Id*. at 705.

In re Coffman, 271 B. R. 492 (Bankr. N.D. Tex. 2002) – This opinion from Judge Robert Jones again involved a car creditor which was crammed down as to value, creating a bifurcated claim. After delivering the vehicle to the lender's parking lot, the debtors sought a post-confirmation modification of the Plan to surrender the vehicle in full satisfaction of the allowed secured claim and to decrease their Plan payment. They argued that to the extent the car creditor had a deficiency balance once the car was sold, that should be part of its unsecured claim. The proposed modification also sought the reduction of the percentage to unsecureds to 0%. The car creditor objected.

Judge Jones first noted that §1327 provides that a confirmed Plan is *res judicata* and binds the debtor and every creditor. The bifurcation of any claim into secured and unsecured portions as part of the confirmation process is *res judicata* as to that issue. Section 1329 provides a limited exception to the binding effect of the confirmed Plan but, as stated by the Court of Appeals in *Nolan*, §1329(a) only permits a debtor to alter the amount or timing of payments, but does not authorize reclassification of claims.

Even if §1329 could be used as argued by the debtors, Judge Jones found the proposed modification to be unfair and also found that the debtors should bear the burden of depreciation.

Although no party argued the applicability of §502(j), Judge Jones considered this Code provision anyway because some courts had held that this section permits the type of modification proposed by the debtors.[10] In the view of Judge Jones, §502(j) applies to the allowance/disallowance of a claim, not claim reclassification. Even if it did, Judge Jones asked whether he ***should*** allow reclassification of a claim using §502(j), considering that reconsideration must be based on "cause" and, if cause exists, reconsideration must be done "according to the equities of the case." "Cause" is not defined in the Bankruptcy Code, but Judge Jones stated that the Fifth Circuit has likened it to the requirements of Rule 9024 of the Bankruptcy Rules of Procedure and Rule 60(b) of the Federal Rules of Civil Procedure. Judge Jones then enumerated the substantive requirements of Rule 60(b) which are: "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence ... (3) fraud ... misrepresentation, or other misconduct of an adverse party ... (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged ... or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment." *Id.* at 498. He noted that the debtors sought relief on equitable grounds as set out in (5) and (6) – relief that is considered extraordinary and which is invoked only on the showing of exceptional circumstances. There was no evidence of exceptional or extraordinary circumstances to support a reclassification of the car lender's claim.

As in *Nolan*, Judge Jones did not say that §1329(a) does not permit a post-confirmation

[10]Section 502(j) provides, in pertinent part, "A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case." This Code provision was not amended by BAPCPA and is discussed in more detail below.

modification of the Plan to surrender collateral. Instead, he found that §1329 does not permit reclassification of the claim. Presumably, if the modification had called for the surrender of the collateral with the repayment of any deficiency balance as a secured claim, it might have been approved. It was not the surrender that was the problem; it was the attempt to reclassify the claim.

In re Cameron, 274 B. R. 457 (Bankr. N.D. Tex. 2002) – In this opinion by Judge Houser, the debtor filed a Plan to which the car creditor objected. The objection was resolved and a Plan was confirmed which provided for the allowed secured claim of the car creditor. The car creditor, however, did not file a proof of claim. After the bar date, the debtor filed a claim objection in which she sought to disallow the car creditor's claim. The car creditor did not respond and the Court disallowed the claim. As Judge Houser explained, the net effect of the confirmation order and the order disallowing the claim was to provide the car creditor with an allowed secured claim in the amount of the value of the collateral and to disallow any unsecured deficiency.

After confirmation, the debtor filed a Plan modification to surrender the car creditor's collateral in satisfaction of the allowed secured debt and to reduce the Plan payment. Approval of the modification would mean no more payments to the car creditor.[11] The car creditor objected and argued that, legally, it was not a permissible modification under §1329(a). The car creditor stated that it was willing to repossess and sell the car and apply the net sales proceeds to the balance of the allowed secured claim, but any remaining balance should continue to be paid as an allowed secured claim until it was paid in full, at interest.[12] The debtor would not accept this condition. As Judge Houser put it, "Thus, the Court must decide whether the Debtor has the legal right to modify her confirmed Plan to surrender the Car in satisfaction of any claim [the car lender] is entitled to assert." *Id.* at 459. She stated that she agreed with *Nolan* and *Coffman*, but offered a different analysis to get to the same result.

She noted that §1325, dealing with confirmation of the Plan, provides for three alternative methods to address a secured claim, one of which is that the debtor can surrender collateral to the secured lender and the other two of which are payment options. Once the Plan is confirmed, the debtor has picked one of these three options which, by virtue of confirmation, is binding on the creditor and the debtor. Judge Houser concluded that §1329(a) does not allow the debtor

". . . to go back and elect a different method by which to satisfy an allowed secured claim." *Id*. at 461. The debtor elected a payment option under §1325 at the time of confirmation [specifically, the option provided in §1325(a)(5)(B)] and could not use a modification to change that payment option to the surrender option provided in §1325(a)(5)(C).

In re Jefferson, 299 B. R. 468 (Bankr. S. D. Ohio 2003) – This is one of the few cases

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[11]Remember, there was no allowed unsecured claim because of the claim objection.

[12]This application of the net sales proceeds fits right in to §1329(a)(3) which allows a modification to change "the amount of distribution to a creditor . . . to take account of any payment . . . other than under the plan". The net sales proceeds would be the "payment . . . other than under the plan".

involving real property, nine parcels of it to be exact. The debtor valued each parcel prior to confirmation in such a way that he confirmed a 100% Plan. About fourteen months later, he thought better of it and moved to modify, decreasing the property valuations and lowering the percentage to unsecureds to 52%.[13] The modification included a surrender of one of the parcels of real property in full satisfaction of the claims against it. The debtor testified that he was overly optimistic in his earlier valuations - shocking. The Chapter 13 Trustee objected based on, among other reasons, best interest. The lienholder, however, did not object. The bankruptcy court, which was bound by the *Nolan* decision, followed it and denied the modification, although the Court stated that it might approve such a modification with "the express consent of the creditor so affected." *Id*. at 470.[14]

In re Adkins, 425 F.3d 296 (6th Cir. 2005) – Back to the Sixth Circuit, this is another car case involving a cram down and a bifurcated claim. There was a proposed 100% dividend to unsecured creditors. The debtor fell behind on Plan payments and the car creditor moved for relief from the automatic stay. In the stay relief motion, the car creditor requested that any difference between the remaining balance on its allowed secured claim and the proceeds from the sale of the vehicle at auction should be paid to it as a secured claim. In other words, the auction proceeds would just reduce the amount of the secured claim. The Trustee argued that this deficiency amount should be reclassified as a unsecured claim. The Bankruptcy Court overruled the Trustee's objection. The District Court affirmed and so did the Sixth Circuit. The Court of Appeals found no difference between a debtor's voluntary decision to surrender collateral and a debtor's involuntary surrender of collateral because stay relief was granted and the lender repossessed. Referring to both the *Cameron* and *Coffman* decisions from the Northern District of Texas, the Sixth Circuit cited from *Coffman* stating, "Because all issues addressed during a plan confirmation are given preclusive effect, the bifurcation of a creditor's claim into a secured and an unsecured claim is likewise given preclusive effect. Thus if a creditor has an allowed secured claim of x dollars, which must be paid during the life of the plan, that issue has been litigated and cannot be altered." *Adkins* at 302. Again, the issue gets back to reclassification of the claim.

In re Belcher, 369 B. R. 465 (Bankr. E. D. Ark. 2007) – The Court dealt with a post-BAPCPA 910 car which was involved in an accident and insured at the time, but the total loss recovery was less than what was owed to the secured creditor. The debtors were required to pay the entire amount of the creditor's claim at interest, crediting the claim with the insurance proceeds, of course.

In re Conley, 504 B. R. (Bankr. Colo. 2014) – The Court stated that the Plan could be modified to take into account application of sales proceeds to the claim as well as what the debtor had already paid, but could not be modified to recharacterize or "rebifurcate" the allowed

[13]Which is still pretty dang good.

[14]As to the best interest test, the Court found that the liquidation analysis is as of the effective date of the modified Plan and would have allowed the reduction in the percentage to the unsecureds.

secured claim and treat part of that claim as an unsecured claim.

In re Ramos, 540 B.R. 580 (Bankr. N.D. Tex. 2015) – This is an opinion by Judge Jernigan. The facts are similar to those in *Heinzle* and *Kessler*. The debtors reached the end of the case having defaulted on the monthly post-petition payments to the mortgage lender. The lender filed a response to the Notice of Final Cure and the Trustee filed an objection to the entry of a discharge. Agreeing with *Heinzle* and *Kessler*, Judge Jernigan found that the debtors were not entitled to a discharge.

After the Trustee objected to the entry of the discharge, the debtors filed a motion to modify their Plan to "Surrender in Full" to the mortgage lender. The Trustee filed an objection to the proposed modification on the sole ground that it was too late to propose a plan modification because the final payment under the Plan had been made. The mortgage lender did not oppose the modification or the entry of the discharge.

Judge Jernigan overruled the Trustee's one objection which was that the modification was too late. Section 1329 allows for the modification of a Plan any time after confirmation but before completion of payments under the Plan. If direct payments are considered payments under the Plan, a debtor who is delinquent on post-petition mortgage payments could presumably modify his/her Plan because those payments are not complete. So, such a modification may not be barred by §1329. However, because §1329(c) states that the court may not approve a repayment period that exceeds five years, the option to modify a Chapter 13 Plan to include the payment of post-petition mortgage arrears at the end of a 60-month term is not permitted. But the debtors were not proposing an extension of time to make payments. They proposed a surrender. They were not too late. That finding resolved the Trustee's objection.

The Court continued with consideration of whether the modification should be approved and reviewed the split authority regarding whether a debtor can modify a Chapter 13 Plan pursuant to §1329 to surrender collateral to a secured creditor. Actually, Judge Jernigan's opinion is based on a different analysis than claims reclassification which is the issue discussed in the previous cases. The Court noted that "surrender" is not one of the enumerated reasons in Section 1329(a)(1)-(4) to modify a Plan post-confirmation. In Judge Jernigan's view, §1329(a) does not provide a mechanism for that type of plan modification.

Judge Jernigan then stated that if the mortgage lender foreclosed on the property prior to the completion of the Plan, the debtor could then reduce the secured claim of the mortgage lender since the foreclosure proceeds would be an **actual** payment on the claim "other than under the plan". This is a modification permitted under section 1329(a)(3). She also suggested that what the mortgage lender holds, if there is a deficiency balance remaining, is an allowed unsecured claim for that deficiency balance. In fact, one of the concerns she expressed in the *Ramos* opinion is the fact that the lender was not able to participate in the disbursements made to unsecured creditors in that case.

Judge Jernigan also made the point that even if she was incorrect about the operation of §1329(a), she would still have to consider the effect of §1322(b)(2) which essentially provides that a Plan cannot modify the rights of the holder of a claim secured only by a lien on real

property that is the debtor's principal residence.[15] The upshot is that depriving a mortgage lender of the right to assert an unsecured deficiency claim following a foreclosure would be a modification of its rights.

The modification was not approved. The debtors converted to a Chapter 7 and got their discharges. They listed their home as a surrender in Schedule A/B and also on their Notice of Intent.

As you can see, most of the opinions surveyed do not prohibit post-petition modifications of a Plan to surrender collateral *per-se* and, instead, focus on the issue of whether a debtor can reclassify the deficiency balance owed on the claim as unsecured.[16] The *Ramos* opinion is the only one surveyed in which the Court found that a debtor cannot modify a Plan to surrender collateral because surrender, as defined as a debtor's voluntary turn over of collateral to the lender, is not one of the four reasons enumerated in §1329(a) as a reason to modify a Plan. The *Sharpe* and *Holt* cases, mentioned in footnote 16, also would not allow a post-confirmation modification, but on much less tenable grounds. These last two cases are not nearly as well-reasoned as *Ramos*. All of these cases may arrive at the same end-point, denial of the proposed modification, but they use very different routes to get there.

THERE ARE OTHER SCHOOLS OF THOUGHT

As acknowledged by the Sixth Circuit in the *Adkins* opinion and by Judge Jernigan in the *Ramos* opinion, there are other schools of thought regarding the issue of surrender and claim reclassification.[17] Courts allowing a surrender in full satisfaction of the allowed secured claim and finding that any deficiency balance will be treated as unsecured claim rely primarily on §§502(j) and 506 or different interpretations of §§1327 and/or 1329.

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[15]Except as set out in §1329(b)(5) which allows an arrearage cure.

[16]For cases with similar holdings, see *In re Arguin*, 345 B. R. 876 (Bankr. N. D. Ill. 2006); *In re Smith*, 259 B. R. 323 (Bankr. S. D. Ill. 2001); *In re Meeks*, 237 B. R. 856 (Bankr. M. D. Fla. 1999); *In re Dunlap*, 215 B. R. 867 (Bankr. E. D. Ark. 1997); *In re Banks*, 161 B. R. 375 (Bankr. S. D. Miss. 1993); *In re Goos*, 253 B. R. 416 (Bankr. W. D. Mich. 2000) and *In re Abercrombie*, 39 B.R. 178 (Bankr. N.D. Ga. 1984). Using a different analysis, some courts have denied a post-confirmation modification to surrender collateral to a creditor on the basis that the only place such action could fit into the statute is §1329(a)(1) which allows a modification to ". . . increase or reduce the amount of payments on claims of a particular class provided for by the plan . . .". "The statute does not permit individualized treatment of class members or the reclassification of a single creditor from a secured to an unsecured status." *In re Sharpe*, 122 B. R. 708 (D. Ct. E. D. Tn. 1991) and *In re Holt*, 136 B. R. 260 (Bankr. D. Idaho 1992). But what of cases in which there is only ***one*** secured creditor? Or Plans which provide that each secured claim is in a separate class? The Court in *Holt* stated that it relied on the holding in *Sharpe* and then continues that ". . . it does not appear to be fair and equitable to allow a debtor the continued ability to elect to retain or return secured property during the full term of the plan." *Id*., at 260-261. The Court cites no authority for this last point.

[17]These are actually two different issues, as discussed previously. The first issue is whether a debtor can surrender post-confirmation. The second is, if a debtor can surrender, what do you do with any unpaid portion of the secured claim? How does a debtor have to treat that?

In re Dennett, case number 12-10066, this decision by Judge Robert Jones entered on March 31, 2016 (Bankr. N. D. Tex. 2016) is our most recent Northern District opinion. The debtors proposed a Plan to pay a pre-petition mortgage arrearage through Trustee disbursements and were supposed to make direct payments on the post-petition monthly mortgage payments. The Plan listed a value for the house of $81,566.00 and a debt of $70,397.00, indicating that the mortgage lender was fully secured.[18] The sequence of events is typical:

1. The Trustee filed a Certification of Receipt and Disbursement of Final Chapter 13 Plan Payment.
2. The debtors filed their Certification and Motion for Entry of Chapter 13 Discharge in which they stated, under penalty of perjury, "I have made all payments required by my confirmed chapter 13 plan including direct payments." This was filed *after* the decision by the same judge in the *Kessler* case, *supra*., in which the Court specifically found that direct payments to the mortgage lender were payments under the Plan and must be current for the debtor to get a discharge.
3. The Trustee filed a Notice of Final Cure.
4. The mortgage lender filed a response to the Notice of Final Cure, stating that the debtors missed 33 post-petition payments and had a post-petition arrearage of $32,481.05.
5. The debtors moved to modify the Plan to surrender the house "in full satisfaction of all debt remaining against it." No one objected to the modification.

In the context of ruling on the debtors' Certification and Motion for Entry of Discharge, the Court, *sua sponte*, addressed the modification and concluded that a surrender of collateral, post-confirmation, is not prohibited by §1329(a). The surrender in full satisfaction of the debt was consistent with the value of the house and the amount of the debt as set out in the Plan. According to Judge Jones, this was unlike the situation in *Ramos* because, in *Ramos*, the mortgage lender had a debt greater than the value of the house at the time of confirmation. Reviewing existing authorities, some of which are cited below, Judge Jones concluded that surrender is allowed under §1329(a) and is a means to address a secured debt. The Court recognized that valuation of the property was not an issue at confirmation, but also recognized that the mortgage lender did not objection to confirmation, had not moved to terminate the stay, and did not object to the modification. Judge Jones concluded, based on the non-action by the mortgage lender, that it was satisfied with the debtors' proposed surrender.

The Court raised another issue, however, and it is a troubling issue. In the Certification and Motion for Entry of Chapter 13 Discharge, the debtors asserted that they were current on their direct payments. Being current on those payments is a condition of receiving a discharge. Judge Jones set a hearing on that misrepresentation for May 5, 2016. Perhaps we will have a ruling by the time of the Bench/Bar conference.

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[18]There was not a finding as to value in the confirmation process, however, for two reasons. First, the Motion for Valuation in Section III of the Plan does not call for valuation of collateral listed in Section I, sub-part G, the section in which the debtor lists direct pays. Additionally, the non-standard language included in the Dennetts' Plan, in Section IV, stated that "The value of the Real Property on this plan is in no way an admission of actual value. Real Property is fully valued on the plan for the purpose of avoidance of a bifurcated claim."

Bank One NA v. Leuellen, 322 B. R. 648 (D. Ct. S.D. Ind. 2005) – The District Court relied on *Associates Commercial Corp. v. Rash*, 520 U. S. 953, 965, 117 S. Ct. 1879, 138 L. Ed.2d 148 (1997) to explain that under §506(a), "a creditor's claim for the balance owed on collateral is 'secured only to the extent of the value of the collateral; its claim over and above the value of the [collateral is] unsecured.'" *Rash*, 520 U.S. at 956, 117 S.Ct. 1879. When the collateral is surrendered, it satisfies the allowed secured claim and the deficiency owed becomes an unsecured claim.

In re White , 169 B. R. 526 (Bankr. W.D. N. Y. 1994) – This case involved a sale by the lienholder of a mobile home. The lienholder then asserted that the debtors were required to pay the balance of the allowed secured claim in full. The Court recognized that when debtors retain collateral and use §1325(a)(5)(B) as their confirmation "payment option", they are agreeing to pay the present value of the collateral to the secured lender over the life of the Plan. But, the debtor does not guarantee payment of the value set at confirmation. The debtor's promise to pay is "conditioned on the Debtor's ability to retain the collateral." *Id*. at 530. Addressing the issue raised by some courts that §1329 is limited to amounts to be paid and not a means to reclassify the claim, the Judge reconciled his holding with §1329, to the extent necessary, by saying that, "after repossession and sale the secured claim is simply being 'valued to 0' and the amounts to be paid on the secured claims are being reduced to 0, while the unsecured claim is being modified upwardly if necessary." *Id*.

In re Zieder, 263 B. R. 114 (Bankr. D. Az. 2001) – Another car case involving a modification to eliminate payments on the allowed secured claim, which the Court approved. The car was sold at auction. The Court stated that while §1329 does not speak to the reclassification of claims through a Plan modification, §502(j) does. There is nothing in §502(j) which limits the application of that section to confirmation. The Judge further found that "§502(j) creates a narrow exception to the res judicata effect of §1327." *Id*. at 117. He also stated, "There is no provision of the Code . . . that gives a creditor a secured claim without any collateral." *Id*. This Court found that liquidation of the collateral was sufficient cause to reconsider the secured claim allowed at the time of confirmation.

In re Davis, 404 B. R. 183 (Bankr. S. D. Tex. 2009) – This is another car case involving a split claim, with a twist. The vehicle was involved in an accident and, because the driver (a daughter) was not listed on the insurance policy, coverage was denied. The debtors could not pay for the repairs and the vehicle sat in a body shop for two years during which time the debtors made Plan payments on the vehicle. The lender eventually found out and repossessed the vehicle.[19]

After the repossession, the debtors moved to modify to surrender the vehicle in full satisfaction of the lender's entire debt. Judge Bohm decided that pursuant to §1329(a)(3), surrender of collateral is "unquestionably a form of payment." *Id*. at 194. However, the debtors could not modify to surrender the vehicle in full satisfaction of the entire debt, but ***could*** modify

[19]Without first obtaining an order terminating the automatic stay, a fact that did not escape Judge Bohm's notice.

to treat the entire deficiency balance as a general unsecured claim. Judge Bohm discussed the fact that the lender no longer had any collateral securing its claim.[20] Without a lien, the creditor cannot be considered secured. Judge Bohm also discussed his view of the argument that allowing reclassification of the claim shifts the risk of depreciation to the creditor. He pointed out that §502(j) allows consideration of the equities of the case which means that there is no danger of an unfair result. Also, as Judge Bohm saw it, there ***is*** no shifting of the risk because the risk of depreciation is right where it has always been – on the creditor.

In re Boykin, 428 B. R. 662 (Bankr. S. C. 2009) – This Bankruptcy Court is in the Fourth Circuit. The Fourth Circuit Court of Appeals has held that, "the doctrine of *res judicata* prevents modification of a confirmed plan . . . unless the party seeking modification demonstrates that the debtor experienced a substantial and unanticipated post confirmation change in his financial circumstance." *In re Murphy*, 474 F. 3d 143, 149 (4th Cir. 2007) and *In re Arnold*, 869 F.2d 240, 243 (4th Cir. 1989). *Boykin* involved the surrender of a vehicle. Because of the change in the debtor's living expenses and the lack of evidence of abuse or neglect of the collateral, the Court allowed the modification to surrender. The Court also stated that a modification to surrender "contains an implicit request that the secured creditor's claim be reclassified as an unsecured claim to the extent there is a deficiency." *Boykin* at 667. The Court found that reclassification could be appropriately considered under §502(j).[21]

Some courts *might* have allowed a modification to surrender under facts different than the ones which were presented in the case before them, although they do not explore that option. They generally conclude that the debtor before them had not acted in good faith and the Court has not approved the modification. An example is *In re Odin*, 2010 WL 3791486 (Bankr. D. OR 2010) in which the debtor abused the collateral, although the opinion does not make it clear whether the abuse was pre- or post-petition. The debtor filed a modification to surrender the vehicle, now greatly depreciated, in full satisfaction of the allowed secured claim. The Court relied on §1325(a)(3) to deny the modification based on a lack of good faith, but did not rule out a different result if there was no showing of bad faith.

One case contains an interesting discussion of the binding effect of confirmation and the concept of *res judicata*. *In re Barclay*, 276 B. R. 276 (Bankr. Ala. 2001) involved a fully secured car creditor and a post-confirmation modification to surrender the vehicle. The Court found that the surrender constituted a one-time only increase in payments to this secured

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[20]He opines that the lien no longer exists when the collateral is repossessed. However, the lien may actually no longer exist only after foreclosure is complete. But, at some point, there is no more lien.

[21]For cases with similar holdings, see *In re Disney*, 386 B. R. 292 (Bankr. D. Colo. 2008); *In re Ross*, 373 B. R. 656 (Bankr. W. D. MO. 2007); *In re Taylor*, 297 B. R. 487 (Bankr. E. D. Tex. 2003); *In re Hernandez*, 282 B.R. 200 (Bankr. S. D. Tex. 2002); *In re Knappen*, 281 B. R. 714 (Bankr. D. N. M. 2002); *In re Townley*, 256 B. R. 697 (Bankr. D. N. J. 2000); *In re Day*, 247 B. R. 898 (Bankr. M.D. Ga. 2000); *In re Johnson*. 247 B. R. 904 (Bankr. S. D. Ga. 1999); *In re Frost*, 96 B. R. (Bankr. S. D. Ohio 1989); *In re Jones*, 538 B. R. 844 (Bankr. W. D. Okla. 2015); *In re Tucker*, 500 B. R. 457 (Bankr. N. D. Miss. 2013); *In re Sellers*, 409 B. R. 820 (Bankr. W. D. La. 2009); *In re Lane*, 374 B. R. 830 (Bankr. D. Kan. 2007); and *In re Stone*, 91 B. R. 423 (Bankr. N. D. Ohio 1988).

creditor, the increased payment being the delivery of the collateral. The Court also stated that a modification to surrender is "perfectly acceptable." *Id*. at 281.

The debtors argued that the value established at confirmation required that the surrender satisfied the entire debt and that there should not be an unsecured claim based on that value. But the Court recognized that §506(a) provides that "value shall be determined in light of the purpose of the valuation and of the proposed use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." *Id*. at 279. The Court stated, "When a debtor proposes to modify a plan to surrender collateral which was originally valued in a retention context, the valuation must change." *Id*. at 280. Addressing the argument that value of the collateral is determined at confirmation and principals of *res judicata* apply, the Court stated that the surrender value of the collateral was not determined at confirmation. Four elements must be met for *res judicata* to apply, including a requirement that "both cases must involve the same cause of action." *Id*. The fourth prerequisite was not met because the cause of action in the confirmation context required the determination of a retention value and the cause of action in the modification context required the determination of a surrender value. Valuing the collateral at a surrender value usually results in a deficiency balance.

The Judge then turned his attention to the deficiency balance and what to do about it. He followed *Nolan*, stating, "while §1329(a) allows for the modification of a confirmed plan by surrender, as a payment on a claim, the statute does not allow the debtor to alter the allowed amount of the secured claim or to reclassify such claim as an unsecured claim." *Id.* at 282. The Court concluded that allowing reclassification would result in a **second** §506(a) cram down. The Judge also stated that *res judicata* should apply to the status of the claim because the cause of action at confirmation was the establishment of the status and amount of the claim. The second part of the opinion seems to be inconsistent with the earlier discussion of *res judicata* because, again, the context has changed from retention to surrender. If it was not *res judicata* as to the first issue, why is it *res judicata* as to the second?

ANOTHER WAY TO LOOK AT IT

As stated by Judge Bohm in the previously discussed case of *In re Davis*, 404 B. R. 183, 194 (Bankr. S. D. Tex. 2009), "The contention that §1329 renders §502(j) and §506(a) null and void once a plan is confirmed not only contradicts the plain language of those sections, but also reads language into §502(j) and §506(a) that is not there (i.e., that those sections apply in a Chapter 13 case only until the plan is confirmed." If §502(j) applies following confirmation, an argument can be made that a court can utilize this Code provision to protect the lender from the actions of a debtor because that provision allows reclassification of a claim based on the equities of the case.

Consider what happens if a debtor surrenders collateral at confirmation. Some value is assigned to the collateral, generally by the Plan, by the court or by what is received at a foreclosure sale. That value is deducted from the full claim amount and the remainder is treated as an unsecured claim, exactly the same result as under state law. What changes if the surrender is later in time? Is an alternative answer that the court must protect the creditor from the depreciation of its collateral in the meantime and make certain that the creditor is compensated

for that?[22] And the creditor may have already been compensated for that by the payment stream it has received during the life of the Plan.

Dealing with the depreciation issue, if the creditor has not been fully compensated, then the uncompensated depreciation could remain classified and payable as secured debt with any remaining balance being treated as unsecured debt. Determining depreciation should be on an "apples-to-apples" basis, rather than an "apples-to-oranges" comparison. In other words, in determining depreciation, a court could determine the surrender value of the collateral as of the effective date of the Plan and then compare that to the surrender value as of the date of the surrender, rather than comparing the retention value as of the effective date of the Plan with the surrender value as of the date of the surrender. The latter would not be a true look at the depreciation that occurred while the lender did not have control over the collateral. Depreciation should be the difference between what the lender would have gotten if it had liquidated the collateral shortly after confirmation and what it will get by liquidating the collateral shortly after the Plan modification is approved. If the lender has already been compensated at least that much, then it has been compensated for the depreciation of the collateral. It is no worse off in bankruptcy terms.

This also takes care of those situations in which the debtor has abused the collateral or there has been a loss as a result of lack of insurance and similar situations. Compare the surrender value then and now and, to the extent there is a shortfall in what has been paid to the lender, require compensation for that on a secured basis.

Additionally, an interest figure can be determined if the creditor should be compensated for any lost time value of money from "then" as compared to "now", but, again, this may be something the creditor has already been compensated for. Finally, there is the issue, in some cases, regarding the treatment of any deficiency balance reclassified as an allowed unsecured claim. If the court decides the lender has an general unsecured claim for any deficiency balance and other unsecured claimants in the case received a disbursement, that may be something else the lender must be compensated for.

But, overall, if the debtor ***can*** compensate for any actual loss, then what is the harm?

THE LAW SCHOOL EXAM QUESTIONS

Speaking of whether the lender has an general unsecured claim for any deficiency balance, Judge Jernigan's last point in *Ramos*, and the provisions of §1322(b)(2) generally, raise some interesting "law school exam" type questions. The last point in *Ramos* has to do with the effect of §1322(b)(2). Can, or in what way can, a Plan modify the rights of the holder of a claim secured only by a lien on real property that is the debtor's principal residence, other than the arrearage cure which is found in §1322(b)(5)? You cannot bifurcate this type of claim. Assume that the lender has foreclosed, a deficiency balance remains unpaid, and the debtor moves to modify to surrender the collateral in full satisfaction of any allowed secured portion of the claim (which is actually a modification to take into account a payment on the claim "other than under the plan").

[22]The creditor may also be entitled to compensation for the time value of money which it lost, at least to the extent that has not been compensated over the course of the case.

1. Can the debtor treat the deficiency balance as an allowed unsecured claim and, if other unsecureds are to receive nothing because it is a 0% Plan, does the mortgage lender also receive nothing on its deficiency claim?

2. Is treating the mortgage lender's deficiency balance as an unsecured claim a reclassification of that claim which would not be permissible under the analyses in *Nolan*, *Coffman* and *Cameron*? Must the deficiency balance be paid as a secured claim?

3. If there is a deficiency balance and the debtor is allowed to reclassify the claim as unsecured, must the debtor still pay it in full, even if general unsecured creditors receive no disbursement, because §1322(b)(2) does not allow the debtor to modify the rights of most mortgage lenders? Does the mortgage lender have a right to be paid 100% because the term "claim", at its most basic, means a "right to payment?"[23] If the debtor compromises the "right to payment" by reducing the payment to less than 100% of the claim, does that run afoul of the provisions of §1322(b)(2)? And wouldn't this be the same as requiring the debtor to pay the claim as if it is secured?

4. In Texas, a debtor can have a homestead interest in real property that is not the debtor's principal place of residence. Would §1322(b)(2) apply in those cases or can the debtor treat that claim just like any other secured claim – altering the interest rate, cramming down the value, etc.?

5. This is not an issue based on §1322(b)(2), but what effect, if any, does the Trustee's Recommendation Regarding Claims ("TRCC") have on any claim reclassification? The General Order provides, in paragraph 8(d), "Unless an objection is timely filed as to the amount or classification of any claim or to any modification, the claim or modification will be allowed or approved as described in the TRCC, and such amount and classification will be final and binding on all parties without further order of the Court." Does this TRCC provision prohibit reclassification of a claim or does "further order of the Court" include an order pursuant to §502(j)?[24]

6. Also not a §1322(b)(2) issue, even *if* the debtor surrenders the collateral, *should* the debtor get a discharge? Getting back to the Trustee's point in *Kessler* (with which the District Court agreed), disposable income is calculated as if the debtor is making the mortgage payment. The Trustee argued that allowing a discharge of the remaining debt when the Kesslers had the unfettered use of $40,000.00 which really was part of their disposable income would be unfair and inequitable to their creditors. Should the debtor be allowed to deduct a payment the debtor actually is not making, not dedicate those funds to the repayment of creditors, and get a discharge?

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[23]See §101(5).

[24]Thanks to Sam Gregory for raising this interesting question.

7. Will Hope continue to search for her identity or will the evil Stephano . . . . No, wait. That's *Legally Blonde*. Just checking to see if your eyes have glazed over yet.

WHAT CAN THE COURT DO?

We know that a court can deny the discharge in those cases in which the debtor defaults in making post-petition "direct" payments. But then what? This issue was discussed in *In re Evans*, 543 B. R. 213 (Bankr. E. D. Va. 2016), a case which involved facts very similar to those presented in the *Heinzle*, *Kessler*, and *Ramos* cases. The debtor failed to remain current on post-petition mortgage payments. The Chapter 13 Trustee suggested that a course of action available to the Court was closing the Chapter 13 case without entering a discharge.

The Court stated that there are three ways to conclude a Chapter 13 case - discharge pursuant to §1328, conversion pursuant to §1307(c), or dismissal for cause pursuant to §1307(c). Closing the case with no discharge is not one of the remedies enumerated in the Code.

As a practical matter, if the debtor does not qualify for a conversion to Chapter 7 and cannot obtain a discharge, under this analysis, that leaves only dismissal. And for those courts which do not agree with the *Evans* case, it still leaves only dismissal or closure without a discharge. Either way, there is no discharge. How bad is that likely to be in Texas? Creditors may be entitled to assert state law remedies against the debtor at the conclusion of the case, but –

1. The debtor may be able to file a subsequent case, depending on the facts of his first case.[25] He might obtain a discharge in the second case.

2. The debtor may not need a discharge. Yes, any balance owed on a vehicle loan may have to be paid in full before obtaining a title release, but let's face it – collecting a deficiency balance in Texas is tough. Additionally, given the way §108(c) works, creditors who do not move fast enough may find themselves barred by limitations. Since many creditors may not be monitoring the case closely and may have charged off the debt at some point along the way, limitations can become a real issue. The debtor may get a pseudo-discharge based on the passage of time.

No, these solutions are not perfect, but they are worth thinking about.[26]

WHAT CAN THE DEBTOR DO?

It is the end of the case and unpaid post-petition payments stand between the debtor and the discharge. Or the debtor has figured out, post-confirmation, that he/she just cannot make the

[25]See §109(g).

[26]Credit for the idea that the debtor may not need a discharge goes to Chapter 13 Trustee, Tim Truman, and his analysis of the effect of not getting a discharge five years after the debtor files a case. Although the discharge is always what we consider to be the goal in a Chapter 13 case, five years down the line, not receiving a discharge may not be catastrophic.

mortgage payments and needs to let the house go. Or, there is a change in the financial circumstance of the debtor and what he/she once could afford is no longer affordable. What can the debtor do?

1. Some courts will allow the debtor to modify to surrender post-confirmation, if the creditor does not object. Some courts will allow it even over the creditor's objection. So, know your judge. However, the longer the debtor retains collateral without paying for it, the longer the debtor depreciates collateral or does not maintain it or keep it insured, the longer the debtor abuses or neglects the collateral, the more likely it becomes that a court will find the debtor is not acting in good faith. [27]

2. The debtor can pay the post-petition default and get the discharge.

3. The debtor can contact the lender and negotiate a surrender order that includes a waiver of any deficiency balance, a possibility mentioned in *Ramos*. Given the difficulty of collecting a deficiency balance either in a Chapter 13 case or pursuant to Texas state law, this may not be as far-fetched as it sounds. A creditor may be amenable to this because it potentially saves the lender the cost of filing a motion for relief and, perhaps, an eviction action and because they are basically good guys (j. k. on that last one).

4. Even in a court that will not allow a post-confirmation surrender, the debtor might be able to sell the collateral and apply the sales proceeds to the debt. The debtor would need a court order to sell the property free and clear of the lien and, yes, §363(f)(3) might present a problem if the debtor proposes a short sale and the lender objects. But, then again, the lender might consent.[28] The sales proceeds could then be applied to the allowed secured claim and, much like the scenario in which the lender forecloses and applies the foreclosure proceeds to the debt, there would be a payment on the claim "other than under the plan", putting the debtor squarely in §1329(a)(3) which would permit a modification. Whether the debtor could reclassify any remaining balance on the allowed secured portion of the debt as an unsecured deficiency balance is another issue. *Ramos* and other cases indicate that the debtor might be able to do this. *Nolan, Coffman* and *Cameron* and other similar cases indicate maybe not. This is a point the debtor might be able to negotiate with the creditor. Or, the debtor might have to pay any remaining balance owed in full to the creditor, but, depending on the facts of the case, the debtor might be able to do this, given enough time to address the problem or an alternate source of funds.[29]

And what if the lender successfully objects to the sale under §363(f)(3)? Perhaps, if the

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[27]Even if the debtor makes it past §1329(a), he/she still has to comply with §1329(b) to get the modification approved. Section 1329(b) incorporates §1325(a)(3) which means that the modification has to be proposed in good faith.

[28]See §363(f)(2).

[29]My daughter calls this type of alternate source of funding "The Bank of Mom".

debtor asks, the court might enter an equitable order along the lines of:

> Okay, Mr. Lender, the sale cannot be approved over your objection because it would constitute a short sale. But the debtor, through exhibits that were listed on a proper and timely filed Witness and Exhibit list and through witnesses also listed on that same proper and timely filed Witness and Exhibit list, presented credible evidence that this sale would have netted $175,000.00 to be paid to you. I cannot make you let them sell the property. But I can enter an order that protects the debtor. So, I am lifting the stay and you can foreclose, but I am deeming there to be a credit on the debt in the amount of the greater of the $175,000.00 or whatever you get at the foreclosure sale and I am ordering that the claim will be reduced in that amount.

None of these solutions is perfect, but they are something to consider.[30]

RIPPLE EFFECT

Pursuant to *Heinzle*, *Kessler*, and *Ramos*, the direct payment on ANY claim included specifically or by implication in a confirmed Chapter 13 Plan must be current to obtain a discharge. This includes car payments, student loan payments, special class payments, etc. However, the issue generally arises based on a creditor response to a Notice of Final Cure Payment. No such procedural mechanism exists to uncover a delinquency on collateral other than the debtor's principal residence or homestead.

Presumably a conduit program will resolve the issue in Chapter 13 bankruptcy proceedings as it relates to the debtor's mortgage lender. But questions are still open, and perhaps ominous, for all other pay-direct claims.

Furthermore, under *Coffman*, *Cameron*, and *Ramos*, a modification to surrender a house that the debtor can no longer afford – and recognizes he/she cannot afford – may not be an option post-confirmation, even in a conduit program. What does this mean for the prudent and honest debtor that recognizes that a change of financial circumstances requires a change in lifestyle or who recognizes that he/she was just too optimistic at the beginning of the case about saving the house, but has been making post-petition payments up to that point? Does the debtor have to start over in a new bankruptcy case in month 48, if the secured lender won't budge and won't foreclose on collateral or the debtor cannot reclassify the claim following a sale or foreclosure? Perhaps…stay tuned.

[30] If you want perfection, you probably should not be in the bankruptcy biz.

Pam Bassel

Pam Bassel was appointed as a Standing Chapter 13 Trustee for the Northern District of Texas on October 1, 2013. She LOVES her job. She was the senior partner of Bassel & Wilcox, PLLC from 2005 to 2013 and the senior partner of the bankruptcy section of Law, Snakard & Gambill in Fort Worth, Texas from 1987 to 2005 (and an associate attorney from 1982 to 1987 with the firm). She also served as Law Clerk to the Honorable John Flowers, United States Bankruptcy Judge for the Northern District of Texas, Fort Worth Division, from September 1981 to September 1982. She is licensed before the United States District Courts for the Northern, Eastern and Southern Districts of Texas and the Fifth Circuit Court of Appeals.

Education:

B.S.F.A. from Texas Christian University in 1976 - graduated Summa Cum Laude.

Doctor of Jurisprudence from the University of Texas School of Law in 1981, with top honors.

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Master in and one of the original members of the John C. Ford Inns of Court.

Outstanding Bankruptcy Lawyer in Tarrant County, Texas, in 1998.

Frequent speaker on bankruptcy topics most recently at the 2016 Bankruptcy 101 and Advanced Consumer Seminar sponsored by the State Bar of Texas, 2015 Bankruptcy 101 and Advanced Consumer Seminars sponsored by the State Bar of Texas; the 2015 Consumer Bankruptcy Practice seminar in Galveston, Texas in July, 2015; and the DFW Area Chapter 13 Seminar in October, 2015.

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Memberships

- State Bar of Texas
- Tarrant County Bar Association
- Tarrant County Debtors' Bar Association
- Tarrant County Bankruptcy Bar Association
- Dallas Bar Association
- Bar Association of the Fifth Federal Circuit

Notable Cases:

- *In re Chesnut*, 422 F.3d 298 (Fed. 5th Cir., 2005)
- *In the Matter of Chesnut*, No. 09-10145 (5th. Cir. 12/17/2009) (5th. Cir., 2009)
- *In re Meza*, 467 F.3d 874 (5th. Cir., 2006)
- *In re Cameron*, 274 B.R. 457 (Bankr. N.D. Tex., 2002)

Personal:

- Attend Grace Bible Church, Fort Worth – Vice-Chairman, Youth Director, Teacher, Guest Preacher
- Varsity Soccer Coach, Temple Christian School of Fort Worth, 11 years
- Soccer Referee
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- Video game enthusiast

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- **O. Max Gardner's Bankruptcy Boot Camp**

Memberships

- **National Association of Consumer Bankruptcy Attorneys**
- **West Texas Bankruptcy Bar Association (Past President and member)**
- **Lubbock County Bar Association**
- **State Bar of Texas**
- **The College of the State Bar of Texas**
- **American Bankruptcy Institute**
- **Committee Member - Farm, Ranch & Agri-Business Bankruptcy Institute - 1997 to 2010**
- **Committee Member - U.S. Bankruptcy Court for the Northern District of Texas Case Management / Electronic Case Filing (CM/ECF) Attorney Advisory Group – 2002**

Speaking Engagements and Scholarly Papers

- **Electronic Filings using CM/ECF presented to the 19th Annual Farm, Ranch & Agri-Business Bankruptcy Institute in 2003**
- **Chapter 7 Cases under BAPCPA presented to the 21st Annual Farm, Ranch & Agri-Business Bankruptcy Institute in 2005**
- **The Practical Side of Representing Debtors under BAPCPA presented to the University of Texas 24th Annual Bankruptcy Conference in 2005**
- **Handling Consumer Chapter 13 Cases under BAPCPA presented to the 2006 Northern District of Texas Bankruptcy Bench/Bar Conference in 2006**
- **Hot Topics in Chapter 13 presented to the 22nd Annual Farm, Ranch & Agri-Business Bankruptcy Institute in 2006**
- **What to Do When a New Client Walks In – Beginning a New Consumer Bankruptcy Case presented to the University of Texas 2nd Annual Consumer Bankruptcy Practice Conference in 2006**
- **Recent Cases of Interest in Chapter 13 presented to the 25th Annual Farm, Ranch & Agri-business Institution in 2009**
- **"Inglorious BAPCPA" – 5 years later presented to the 2010 Northern District of Texas Bankruptcy Bench/Bar Conference in 2010**
- **Exemptions under Texas and Federal Law presented to the monthly meeting of the Lubbock County Bar Association in 2010**
- **Requirements under Rule 3002.1 for Lenders and Debtors presented to the monthly meeting of the West Texas Bankruptcy Bar Association in 2012**
- **Bankruptcy Basics presented to the West Texas Women Certified Public Accountants (WTWCPA) Annual Seminar in 2014**
- **Bankruptcy Concepts Every Accountant and Banker Should Know presented to the joint monthly meeting of the South Plains Chapter of the Texas Society of Certified Public Accountants and Lubbock Area Bankers in 2015**

Personal

- **Born in Lubbock, Texas in 1967**
- **Married with two children**
- **Member of LakeRidge United Methodist Church**
- **Enjoys playing the Euphonium**