

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)
)
VICKI L. WYSONG,) CASE NO. 04-36321 HCD
) CHAPTER 13
)
DEBTOR.)

Appearances:

Joshua L. Twombly, Esq, and Annette F. Rush, Esq., attorneys for debtor, UAWLSP DaimlerChrysler, 217 Southway Boulevard East, Suite 201, Kokomo, Indiana 46902; and

Debra L Miller, Esq., Chapter 13 Trustee, 100 East Wayne Street, Post Office Box 11550, South Bend, Indiana 46601.

MEMORANDUM OF DECISION

At South Bend, Indiana, on September 15, 2005.

Before the court is the Chapter 13 Plan, filed on December 6, 2004, by the debtor Vicki L. Wysong, and the Trustee's Objection to Confirmation of Plan, filed on February 1, 2005, by Debra L. Miller, Chapter 13 Trustee in this case. The Trustee objected to the Plan's provision requiring the secured creditor GMAC to release its lien when the secured portion of the debt was paid. The debtor challenged the Trustee's standing to object to confirmation of the debtor's Plan regarding the treatment of GMAC when GMAC did not object to the Plan. After the court held a confirmation hearing on February 3, 2005, it directed the parties to submit briefs. The court then took the Trustee's objection to confirmation of the debtor's Plan under advisement. For the reasons that follow, the court finds that the Trustee's Objection is sustained and confirmation of the debtor's proposed Chapter 13 Plan is denied.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and

determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(L) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rule of Bankruptcy Procedure 7052. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

Background

The uncontested facts in this case indicate that the debtor filed her chapter 13 petition and Plan on December 6, 2004. The Plan provisions at issue concern the treatment of GMAC, the holder of the lien on the debtor's vehicle, a 2003 Chevrolet Trailblazer. GMAC filed a claim on December 15, 2004, in the amount of \$28,323.68. The Plan states that GMAC "shall be paid the fair market value (listed as \$20,000) of the collateral as secured first and prior to unsecured creditors and concurrent with trustee fees." R. 4, Plan, at ¶ 2B. It specifies that GMAC will be paid \$20,000 inside the Plan as a secured claim, at the prime rate of interest of 4.75%, and the balance of the debt as an unsecured claim. *See id.* Under the Plan, unsecured claims will be paid by "pro rata distribution from any remaining funds with expectation that this case will pay 100% of the total allowed claims in this case." *Id.* at ¶ 4B. Paragraph 2F is the provision under discussion:

The Vehicle Lender, GMAC, is required to release the title to the collateral, the 2003 Chevy Trailblazer, on payment by the debtor of the secured portion of the claim as allowed under 11 U.S.C. § 1325(a)(5)(B)(1) during the plan life. Upon payment of secured claim, the creditor's lien is released. Any deficiency will be allowed for payment with all unsecured allowed claims.

The Trustee objects to the Plan¹, and particularly to ¶ 2F, on the ground that the Plan provides for the turnover of the debtor's vehicle once the secured portion has been paid, rather than when the Plan is completed. The Trustee argues that the provision is contrary to this court's standard practice and does not comply with other

¹ The Trustee raised two other objections to the debtor's Plan: that the Plan did not address the mortgage creditor's pre-petition arrearage or the secured claim of Wells Fargo. Those two issues have been resolved and are not now before the court.

provisions in the Bankruptcy Code, namely §§ 349(b), 1307(b), and 1328(a). In the Trustee's view, the debtor must complete her Plan in order to be entitled to a lien release. *See* R. 26, Tr.'s Br., at 12. The debtor responds that the Trustee has no standing to object to the release of the vehicle's title when GMAC did not object. "Neither the Code nor the decisions of the Supreme Court bar the right of the debtor in a chapter 13 plan to obtain the title to secured property once the lien has been paid in full and the creditor consents to said treatment by not raising its own objection to the terms provided in the debtor's plan." R. 27, D's Reply Br. at 4.

Discussion

The debtor has presented her proposed chapter 13 Plan and seeks confirmation of it. The court must be satisfied that the Plan has met the six-part test of 11 U.S.C. § 1325(a). *See Petro v. Mishler*, 276 F.3d 375, 378 (7th Cir. 2002). Section 1325(a) provides:

- (a) Except as provided in subsection (b), the court shall confirm a plan if –
 - (1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;
 - (2) any fee, charge, or amount required . . . to be paid before confirmation has been paid;
 - (3) the plan has been proposed in good faith and not by any means forbidden by law;
 - (4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 13 of this title on such date;
 - (5) with respect to each allowed secured claim provided for by the plan —
 - (A) the holder of such claim has accepted the plan;
 - (B) (i) the plan provides that the holder of such claim retain the lien securing such claim; and (ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; or
 - (C) the debtor surrenders the property securing such claim to such holder; and
 - (6) the debtor will be able to make all payments under the plan and to comply with the plan.

11 U.S.C. § 1325(a). The debtor, as the proponent of the Plan, has the burden of proving that the Plan meets the statutory requirements. *See In re McNichols*, 254 B.R. 422, 427 (Bankr. N.D. Ill. 2000) (citing *In re Rimgale*, 669 F.2d 426, 431 (7th Cir. 1982)); *see also Meyer v. Hill (In re Hill)*, 268 B.R. 548, 552 (9th Cir. B.A.P. 2001). The court has the obligation of determining that the debtor has carried her burden of satisfying all the essential elements for confirmation. *See id.* However, the Trustee, as the objector to the Plan, has the initial burden of producing the reasons for her challenge; if she is successful, the burden shifts back to the debtor to rebut those reasons. *See 8 Collier on Bankruptcy* ¶ 1324.03 at 1324-6, 1324-7 (Alan N. Resnick, Henry J. Sommer, eds.-in-chief, 15th ed. rev'd 2005) (“Generally, the burden of going forward with evidence and the ultimate burden of proof is borne by the party objecting to confirmation.”).

The Trustee asserts that the Plan cannot be confirmed because § 1325(a)(1) was not met. However, because the debtor challenges the Trustee’s standing to bring this argument and points out her failure to file the objection timely, the court considers those issues first.

A. Trustee’s standing

The debtor claims that the Trustee lacks standing to object to the debtor’s Plan concerning treatment of a non-objecting secured creditor. Because GMAC did not object to the Plan, it is deemed to have accepted it under § 1325(a)(5)(A), argues the debtor. “The trustee has no duty to police Chapter 13 plans and cannot substitute her position for the position of a non-objecting creditor who, but for lack of diligence, may have objected to its treatment in the case.” R. 25, D.’s Br. at 2.

The Trustee disagrees. She asserts that her duties as Trustee pursuant to § 1302(b) require her to review the chapter 13 Plan for compliance with the Bankruptcy Code.² *See* R. 26, Tr.’s Br. at 4. Upon review of the

² Section 1302(b) sets forth the duties of the chapter 13 trustee. In pertinent part, it provides:

(b) the trustee shall –

(1) perform the duties specified in sections 704(2), 704(3), 704(4). . . and 704(9) of this title;

(continued...)

Plan, she determined that the lien release language in the debtor's Plan impedes the application and purpose of other Code provisions, in violation of 11 U.S.C. § 1325(a)(1). *See id.* at 9. Relying upon this court's 2002 decision *In re Sojka*, Case No. 01-35053 (Bankr. N.D. Ind. Aug. 16, 2002) (unpub'd opinion), the Trustee concludes that she has standing to object to the treatment of a secured creditor in the debtor's proposed Plan even when that creditor does not object. *See id.* at 6-7.

The debtor distinguishes *Sojka* on its facts – it involved a real estate mortgage, not an automobile loan; and the *Sojka* plan provision was alleged to have violated § 1322, not §§ 349, 1307, and 1328. However, both in *Sojka* and in this case the court was asked to consider a chapter 13 trustee's standing to object to a chapter 13 plan, based on the plan's treatment of a secured creditor, when the secured creditor did not object. Under the facts in *Sojka*, the court found that the trustee had standing to object. It now finds that the *Sojka* analysis is pertinent to its ruling in this case.

Section 1324 of the Bankruptcy Code provides that “[a] party in interest may object to confirmation of the plan.” 11 U.S.C. § 1324. Although there is no Code definition of the phrase “party in interest,” it has long been generally accepted that a chapter 13 trustee qualifies as a party in interest. *See 8 Collier on Bankruptcy* ¶ 1324.03 at 1324-5; *In re Erwin*, 10 B.R. 138, 139 (Bankr. D. Colo. 1981) (finding that chapter 13 trustee is a party in interest with standing to object to confirmation). The court first finds, therefore, that the chapter 13 Trustee is a party in interest.

²(...continued)

(2) appear and be heard at any hearing that concerns –

(A) the value of property subject to a lien;

(B) confirmation of a plan; or

(C) modification of the plan after confirmation;

...

(4) advise, other than on legal matters, and assist the debtor in performance under the plan; and

(5) ensure that the debtor commences making timely payments under section 1326 of this title.

11 U.S.C. § 1302.

The court also finds that a chapter 13 trustee, as a party in interest, is vested with standing to object to confirmation of a chapter 13 plan. *See* 8 *Collier on Bankruptcy* ¶ 1324.03 at 1324-5 n.1. The work of a chapter 13 trustee, as set forth in 11 U.S.C. § 1302(b), is focused primarily on the administration of a debtor’s plan. *See In re Colburn*, 231 B.R. 778, 783 (Bankr. D. Or. 1999). In that provision, Congress gave the trustee “a broad array of powers and duties.” *Tower Loan of Mississippi, Inc. v. Maddox (In re Maddox)*, 15 F.3d 1347, 1355 (5th Cir. 1994). Those duties include evaluating the plan’s terms, being heard on the issue whether a plan complies with the provisions of chapter 13, and making a recommendation for or against confirmation. *See In re Vincent*, 252 B.R. 91, 96 (Bankr. E.D. Va. 2000); *In re Foulk*, 134 B.R. 929, 931 (Bankr. D. Neb. 1991); 1 *Chapter 13 Bankruptcy 3d Edition* § 58.5 at 58-10, 58-11 (Keith M. Lundin, ed., 2000 & 2004 Supp.). A chapter 13 trustee “services the interests of all creditors primarily by collecting payments from debtors and disbursing them to creditors.” *In re Maddox*, 15 F.3d at 1355 (finding that a chapter 13 trustee has standing under § 1302(b)(1) to avoid liens); *see also In re Vincent*, 252 B.R. at 96 (finding that a trustee has standing under § 1302(b)(2) to challenge the plan’s interest rate, its collateral valuation, and other terms of the plan). Section 1302(b)(2)(B) specifically requires a trustee to “appear and be heard at any hearing that concerns confirmation of a plan.” That mandate has been interpreted to mean that the trustee not only has the right but also has “the obligation to appear and to object.” *In re Hill*, 268 B.R. at 555 (finding that the trustee has standing to object to plan and to appeal court’s confirmation of plan). The court finds, therefore, that this chapter 13 Trustee has standing to object to the debtor’s chapter 13 Plan pursuant to §§ 1324 and 1302(b)(2).

Courts have also found that a chapter 13 trustee has the right to object to confirmation of a plan when the creditors themselves have failed to object. *See, e.g., In re Fox*, 249 B.R. 140, 144 (Bankr. D. S.C. 2000); *In re Shandrew*, 210 B.R. 829, 830 (Bankr. E.D. Calif. 1997). The Ninth Circuit Court of Appeals has discussed in depth a trustee’s standing and held that a chapter 13 trustee has standing to raise an objection to plan confirmation under 11 U.S.C. § 1325(a)(1), even though the secured creditor did not raise an objection. *See Andrews v. Loheit (In re Andrews)*, 49 F.3d 1404, 1409 (9th Cir. 1995). Agreeing with the lower court decisions

that § 1302(b)(2) conferred standing on the chapter 13 trustee to object to confirmation, the appellate court stated: “[T]he primary purpose of the Chapter 13 trustee is not just to serve the interests of the unsecured creditors, but rather, to serve the interests of all creditors.” *Id.* at 1407 (citing *In re Maddox*, 15 F.3d at 1355). When a trustee reviews a plan for confirmation, he “may object if the plan fails to conform to all the requirements in the Bankruptcy Code,” including each of the requirements of § 1325. *Id.* Judge Lundin summarized the *Andrews* decision in his authoritative treatise, *Chapter 13 Bankruptcy 3d Edition*:

Andrews seems to say that the duty in § 1302(b)(2)(B), coupled with the condition on confirmation in § 1325(a)(1), confers standing on the Chapter 13 trustee to object to confirmation on any ground found in the Code, notwithstanding that the rights being protected are particular to a class of creditors.

1 *Chapter 13 Bankruptcy 3d Edition* § 58.5 at 58-13 to 58-14. Based on *Andrews*’s cogent analysis, therefore, this court finds that the chapter 13 Trustee is a party in interest with standing to object to confirmation of the debtor’s Plan on the ground that it fails to comply with a statutory requirement for a Plan. The court determines that a chapter 13 Trustee may object on behalf of a secured creditor even when that creditor does not raise its own objection to the Plan.

In arriving at this determination, the court has considered the debtor’s objections to the Trustee’s standing. She first claims that, because GMAC did not object to its treatment under the Plan, the secured creditor is deemed to have accepted the debtor’s Plan pursuant to § 1325(a)(5) and the accepted Plan should not be hindered by the Trustee’s objection. However, the court finds that the Trustee’s objection is based upon § 1325(a)(1), which requires plan compliance with the Bankruptcy Code, not (a)(5), which sets out alternative methods of providing for allowed secured claims. The Ninth Circuit Court of Appeals distinguished objections brought under § 1325(a)(5) and (a)(1) in its decision *In re Andrews*. The *Andrews* court found it problematic to confer standing on a trustee under § 1325(a)(5), but found that the chapter 13 trustee had standing to object to the plan under § 1325(a)(1). *See In re Andrews*, 49 F.3d at 1408. In the same way, this court finds that the chapter 13 Trustee in this case has standing to object to confirmation of the debtor’s chapter 13 Plan under § 1325(a)(1).

The debtor also asserts that the Trustee does not have standing to object to confirmation because she did not raise her objection pursuant to 11 U.S.C. § 1325(b). Subsection (b), added to § 1325 in 1984, is an ability-to-pay test that may be brought “only upon the objection to confirmation filed by the chapter 13 trustee or holder of an allowed unsecured claim.” 8 *Collier on Bankruptcy* ¶ 1325.08[2] at 1325-47. However, by adding this subsection Congress did not intend to require a trustee to object only under § 1325(b); rather, it intended to allow only the trustee and unsecured creditors to bring such objections concerning the debtor’s ability to pay. In other words, a trustee may raise an objection under § 1325(a) or (b). *See Petro v. Mishler*, 276 F.3d 375, 378 (7th Cir. 2002) (“If the Trustee in this case suspected that the Petros were not acting in good faith in proposing their Chapter 13 plan or that they had failed to allocate a significant portion of their disposable incomes to the payment of their creditors, he could have objected under sections 1325(a) or (b).”); *In re Andrews*, 49 F.3d at 1409 (concluding that Congress, when adding § 1325(b), did not intend to deny standing to a chapter 13 trustee to object under § 1325(a)). The court determines, therefore, that this chapter 13 Trustee has standing to object to Plan confirmation under § 1325(a)(1).

The debtor’s final standing argument is that the Trustee should not review the individual Plan provisions concerning claims of secured creditors. However, this court finds that a trustee has a duty, under § 1302(b), to evaluate the debtor’s Plan for compliance with the provisions of the Bankruptcy Code. He or she routinely reports to the court on the feasibility of chapter 13 plans and may object to any provisions. The court finds that a trustee’s responsibility in administering a chapter 13 plan pursuant to § 1302 necessarily encompasses his or her duty to consider the plan’s confirmability and confers standing on the trustee to object to confirmation.³ *See Andrews*, 49 F.3d at 1407-08 (citing cases) (“It thus would be inconsistent to provide the trustee with such a broad array

³ A chapter 13 trustee’s duty under § 1302(b)(2) to appear and be heard at a hearing on confirmation is a requirement of his or her office as trustee and is an aid to the court, not to the secured creditor. Although the court finds that standing is conferred on a trustee under § 1302(b)(2)(B), it does not impose a duty on the trustee to advocate for the secured creditor. The court agrees with the concern expressed by Judge Lundin: “That the trustee shall appear and be heard with respect to confirmation should not be misinterpreted to mean that the Chapter 13 trustee has the duty to identify all objections to confirmation and to raise those objections without regard to whether creditors are protecting themselves.” 1 *Chapter 13 Bankruptcy 3d Edition*, § 58.5 at 58-14.

of powers and duties and yet deny the trustee standing to object at the confirmation hearing when the plan fails to comply with the Bankruptcy Code.”).

The court determines, therefore, that this chapter 13 Trustee is a party in interest with standing to object to confirmation of the debtor’s chapter 13 Plan on the ground that a provision in the proposed Plan does not comply with the Bankruptcy Code.

B. Timeliness of Trustee’s Objection

The debtor also points out that the Trustee did not file her objection by January 27, 2005, the bar date set for objections to the Plan. *See* R. 7, Order of December 10, 2004. Because she did not file a timely objection and did not request an extension of time for submitting her objection, her filing should be denied, insists the debtor. *See* R. 25 at 3-4 (citing Fed. R. Bankr. P. 3015(f)).

Federal Rule of Bankruptcy Procedure 3015(f) sets forth the policy concerning objections to confirmation:

An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, before confirmation of the plan. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

The rule clearly requires that an objection to confirmation, which is a contested matter governed by Rule 9014, be filed and served with reasonable notice and opportunity for a hearing before the plan is confirmed. It does not specify a time limit to filing an objection. The previous rule governing objections to confirmation, Rule 3020, had stated that objections were to be filed “within a time fixed by the court.” However, under the 1993 rule amendments, Rule 3020 no longer governs the confirmation process in chapter 13 cases and Rule 3015(f) requires only that the objection be filed and served “before confirmation of the plan.” *See* 8 *Collier on Bankruptcy* ¶ 1324.03 at 1324-6 (“Local bankruptcy rules sometimes set more specific deadlines, although arguably a local rule cannot shorten the time period allowed by the Federal Rules of Bankruptcy Procedure.”).

In this case, the Trustee filed an objection to confirmation of the debtor's Plan five days after the court's objection deadline and two days prior to the confirmation hearing. *See In re Cook*, 253 B.R. 249, 251 (Bankr. E.D. Ark. 2000) (stating that court's local rules and general order deadlines should be followed but that the court has power to modify time requirements when appropriate). However, the Trustee explained that she had advised the debtor of her objection to the lien release provision of the debtor's Plan at the § 341 meeting of creditors on January 10, 2005. *See R. 26 at 2*. This court finds that, under Bankruptcy Rule 3015(f), it may consider any objection to a chapter 13 plan that is raised prior to confirmation. The court finds that the Trustee complied with Bankruptcy Rule 3015(f); it will not reject her objection to the Plan on the ground of untimeliness. *See In re Cook*, 253 B.R. at 251 (deciding to hear objection to confirmation that was timely under Rule 3015 but untimely under its general order); *In re Ryan*, 160 B.R. 494, 496 (Bankr. N.D.N.Y. 1993) (finding that creditor's objection, filed after confirmation hearing was begun but before the adjourned hearing was completed, was timely).

C. Plan's early lien release

The court turns now to the merits of the Trustee's objection, which focuses on the Plan's provision requiring the secured creditor to release its lien upon full payment of only the secured portion of the claim. Relying on a decision of this court, *In re Pruitt*, 203 B.R. 134 (Bankr. N.D. Ind. 1996), the Trustee argues that an undersecured creditor must be able to retain its lien until the debtor completes the plan. Releasing the lien prior to plan completion and discharge, she asserts, would thwart the underlying purpose of § 349(b), which is to restore the parties' property rights in the event of dismissal.

This provision of debtor's Plan hinders the purpose of § 349(b) because GMAC will not be able to restore its lien once it is released before a discharge and before a dismissal. Discharge is what triggers the permanent reordering of GMAC's and the debtor's contract obligations. The Trustee's position is that §§ 349(b), 1307(b), 1328(a)⁴ of Chapter 13 require[] full performance from the debtor to be entitled to

⁴ Section 1307(b) requires the court to dismiss a chapter 13 case "[o]n request of the debtor at any time, if the case has not been converted." The dismissal leads to specific effects under § 349(b): It reinstates "any lien voided under section 506(d)" and "revests the property of the estate in the entity in which such property was (continued...)"

a lien release. Debtor's Plan provision for GMAC's lien release before discharge is not in compliance with other provisions of Chapter 13, and therefore does not satisfy § 1325(a)(1) for confirmation.

R. 26 at 11-12.

The debtor asks the court to overrule its holding in *Pruitt* and to grant confirmation of the debtor's Plan. She argues that "holding a title hostage" until the Plan is completed is the wrong approach. R. 25 at 6. A claim is secured only to the extent of the value of the property on which the lien is fixed, under § 506(a). The lien remains intact, she says, until the secured portion of the claim is satisfied, but then must be released. *See id.* at 12 (citing § 1325(a)(5)(B) and cases). The debtor argues that "neither a creditor nor a trustee can prevent confirmation by demanding greater protection than is required by the statute [§ 1325]." *Id.* at 11.

The debtor also claims that *In re Pruitt* (which did not permit a chapter 13 plan to cancel a secured creditor's lien upon payment of the allowed secured claim) was wrongly decided because it mistakenly assumed that § 349(b) applied. According to the debtor, § 349 is a section of general applicability that should not "be relied upon to extinguish rights specifically afforded to Chapter 13 debtors by operation of §§ 1322(b)(2), 1325(a)(5)(B) and 1327" R. 25 at 16 (citing cases). In any case, *Pruitt* is inapplicable in this case, the debtor points out, because the objection in *Pruitt* was raised by the secured creditor, not by the trustee; therefore the question of the objector's standing to bring an objection was not an issue.

This court is required to confirm the debtor's repayment Plan as long as the six prerequisites of § 1325 are met. The Trustee claims that § 1325(a)(1) has not been satisfied. The Trustee objects to the provision in the debtor's proposed chapter 13 Plan requiring early release of GMAC's lien – after payment of the secured portion of the debt but before payment of the unsecured portion, before completion of the chapter 13 case, and before receipt of a discharge. According to the debtor, however, "[n]either the Code nor the decisions of the Supreme Court bar the right of the debtor in a chapter 13 plan to obtain the title to secured property once the lien has been

⁴(...continued)

vested immediately before the commencement of the case." Section 1328(a) requires the court to "grant the debtor a discharge of all debts provided for by the plan" as soon as it can "after completion by the debtor of all payments under the plan."

paid in full and the creditor consents to said treatment by not raising its own objection to the terms provided in the debtor's plan." R. 27, D.'s Reply Br. at 4.

When this court found, in *In re Pruitt*, 203 B.R. 134 (Bankr. N.D. Ind. 1996), that "the debtor may not obtain release of the [secured creditor's] lien until she successfully completes the confirmed plan and receives a discharge *or* obtains another appropriate relief from the court," *id.* at 137, courts were split over the issue. They remain divided today.⁵

Over time, however, some of the issues tangential or critical to the specific question of lien release have been clarified or resolved. Courts agree that, under § 506 of the Bankruptcy Code, an undersecured creditor with a perfected security interest in collateral such as a vehicle holds a claim that can be bifurcated – into the secured portion, which is equal to the value of the collateral, and an unsecured portion, which represents the balance of the debt (the amount of the allowed claim that exceeds the value of the collateral). In a chapter 13 plan, a debtor may treat each as a separate claim and classify each of them distinctly. *See* § 1325(a)(5). If the debtor wants to keep the collateral, under chapter 13 he may retain it over the objection of the creditor as long as the creditor retains the lien that secures the claim and as long as the debtor makes payments to the creditor, over the life of the plan, that covers the present value of the allowed secured claim, which is the value of the collateral. *See*

⁵ Cases holding that the lien is released only upon completion of the plan and/or discharge include *In re Smith*, 287 B.R. 882 (Bankr. W.D. Tex. 2002); *In re Moore*, 275 B.R. 390 (Bankr. D. Colo. 2002); *In re Woods*, 257 B.R. 876 (Bankr. W.D. Tenn. 2000); *In re McPherson*, 230 B.R. 99 (Bankr. E.D. Ky. 1999); *In re Thompson*, 224 B.R. 360 (Bankr. N.D. Tex. 1998); *In re Pearson*, 214 B.R. 156 (Bankr. N.D. Ohio 1997); *In re Zakowski*, 213 B.R. 1003 (Bankr. E.D. Wis. 1997); *In re Pruitt*, 203 B.R. 134 (Bankr. N.D. Ind. 1996); *In re Scheierl*, 176 B.R. 498 (Bankr. D. Minn. 1995); *In re Wilson*, 174 B.R. 215 (Bankr. S.D. Miss. 1994); and *In re Jones*, 152 B.R. 155 (Bankr. E.D. Mich. 1993).

Cases holding that the lien is released when the secured portion of the debt is paid include *Bank One, Chicago, NA v. Flowers*, 183 B.R. 509 (N.D. Ill. 1995); *In re Rheume*, 296 B.R. 313 (Bankr. D. Vt. 2003); *In re Castro*, 285 B.R. 703 (Bankr. D. Ariz. 2002); *In re Townsend*, 256 B.R. 881 (Bankr. N.D. Ill. 2001); *In re Shorter*, 237 B.R. 443 (Bankr. N.D. Ill. 1999); *In re Nicewonger*, 192 B.R. 886 (Bankr. N.D. Ohio 1996); *In re Lee*, 156 B.R. 628 (Bankr. D. Minn. 1993), *aff'd*, 162 B.R. 217 (D. Minn. 1993); and *In re Murry-Hudson*, 147 B.R. 960 (Bankr. N.D. Cal. 1992).

§ 1325(a)(5)(B)(ii); § 506(a); *see also Associates Commercial Corp. v. Rash*, 520 U.S. 953, 956, 117 S. Ct. 1879, 1882, 138 L.Ed.2d 148 (1997).

When a plan provides that, once the secured claim is paid, the unsecured portion of the debt is a void lien and the creditor shall release the lien, such a provision is called “lien-stripping.” *See* § 506(d); *In re Harvey*, 213 F.3d 318, 319 (7th Cir. 2000) (expressly setting aside the question whether GMAC could have been forced to accept lien stripping; ruling on alternate grounds). The Supreme Court held that lien stripping is not allowed in Chapter 7 cases. *See Dewsnap v. Timm*, 502 U.S. 410, 417, 112 S. Ct. 773, 116 L.Ed.2d 903 (1992) (holding “that § 506(d) does not allow petitioner to ‘strip down’ respondents’ lien, because respondents’ claim is secured by a lien and has been fully allowed pursuant to § 502”). A year later, the Supreme Court again narrowed the use of lien stripping by ruling that a chapter 13 debtor may not modify or strip down a creditor’s security interest in the debtor’s home. *See Nobelman v. Am. Sav. Bank*, 508 U.S. 324, 325-26, 113 S. Ct. 2106, 124 L.Ed.2d 228 (1993) (holding that “§ 1322(b)(2) prohibits a Chapter 13 debtor from relying on § 506(a) to reduce an undersecured homestead mortgage to the fair market value of the mortgaged residence”). However, the question whether a secured creditor can “be compelled to release its security interest without payment of the debt in full, prior to the completion of the debtor’s plan and the granting of a discharge,” remains unresolved. *See In re Smith*, 287 B.R. 882, 883 (Bankr. W.D. Tex. 2002).

Like this case, *In re Smith* commenced with an objection to confirmation by the chapter 13 trustee. Concluding that the debtor cannot require an early release of the lien, the Texas bankruptcy court relied on this court’s ruling in *Pruitt*, the Minnesota bankruptcy court’s influential decision *In re Scheierl*, 176 B.R. 498 (Bankr. D. Minn. 1995), and other cases. It started with an examination of the rights of secured creditors under § 506 and the differences in the way § 506 operates in chapters 7, 11, and 13. It pointed out that, under chapter 13, the debtor’s discharge is delayed until the debtor completes the plan. *See* 287 B.R. at 885 (“Indeed, most of the benefits of the Chapter 13 process are deferred until completion of the debtor’s plan.”). If, during that delayed period, the debtor’s plan fails, the debtor must convert or dismiss his case or seek a hardship discharge. “Thus,

unless the debtor completes the plan, the debtor cannot be certain that he or she will receive the benefits of Chapter 13.” *Id.*

According to *Smith*, “[i]f a Chapter 13 debtor obtains a clear certificate of title upon satisfaction of only the allowed secured claim of a creditor, the debtor has received benefits to which it is not entitled in the event that the case is later converted or dismissed.” *Id.* In the view of the Texas court, the real issue is the one set forth in *Scheierl*:

Scheierl noted at the outset that the issue before that court was not whether lien-stripping is permitted in Chapter 13. What the court faced was simply whether, as a matter of law, a debtor could force release of the certificate of title upon payment of the allowed secured claim. In order to protect the secured creditor from the problems associated with dismissing a case after a release of a lien on personal property, the lien should remain with the secured creditor until completion of the Chapter 13 plan payments and the granting of a discharge. “If the debtor wishes to sell, trade, or discard collateral before the completion of the plan, he should bear the onus of bringing on a motion for leave to do so under the color of 11 U.S.C. §§ 363(b)(1) and 363(e).”

Id. at 886 (quoting *In re Scheierl*, 176 B.R. at 507); see also *In re Thompson*, 224 B.R. 360, 365 (Bankr. N.D. Tex. 1998) (stating that the question before the court “is not whether a secured creditor’s lien rights may be modified or extinguished in Chapter 13, but rather whether they may [] be extinguished prior to a debtor’s completion of his or her Chapter 13 plan and receipt of a discharge”). This court, in *Pruitt*, was also persuaded by the position articulated in *Scheierl*. It concluded “that permitting an undersecured creditor to retain its lien pending the completion of a debtor’s plan appropriately protects the creditor’s interests in the event of a subsequent dismissal of the debtor’s case” and “that it does not jeopardize [the debtor’s] efforts to gain the ‘fresh start’ which Congress contemplated in drafting the Bankruptcy Code.” *Pruitt*, 203 B.R. at 137.

The court has considered the facts of this case and the ever-growing case law concerning lien release provisions in chapter 13 plans. It still believes that “Congress intended for Chapter 13 to be a comprehensive solution to a debtor’s problems, rather than a piecemeal strategy to obtain a fresh start.” *Pruitt*, 203 B.R. at 137. The policy underlying chapter 13 cases was well articulated in *In re Thompson*, a decision on more than 75 debtors’ chapter 13 plans that included a provision for early lien release stamped onto the face of each plan.

Chapter 13 grants a debtor the most all-encompassing discharge available under the Code. . . . This generous discharge is intended by Congress as an incentive for debtors to complete performance under their plans. Unlike Chapter 11, where the debtor is granted a discharge upon confirmation of the plan, there is a catch – in Chapter 13 a debtor must wait until all plan payments are made to get a discharge, unless a hardship discharge is granted under § 1328(b). Thus, the debtor is required to complete the plan before receiving the benefit of the bargain.

In re Thompson, 224 B.R. at 366. This court agrees with the conclusion in *Thompson*, a determination that thoughtfully considers the intent of chapter 13:

[A] secured creditor cannot be forced to release its security interest until all payments are made by the debtor under the plan and the debtor has received a discharge. This result is the least prejudicial to the parties involved, and makes the most sense in light of the Supreme Court’s decisions and the overall framework of Chapter 13.

Id. at 367. This court believes that its decision, in accord with *Thompson*’s and *Smith*’s, takes into consideration the comment by the Seventh Circuit Court of Appeals, in *In re Crawford*, 324 F.3d 539 (7th Cir. 2003), that the language of the Bankruptcy Code “should at least serve to remind bankruptcy judges that Chapter 13 is designed for the protection of creditors as well as debtors.” *Id.* at 542 (citing *In re Andrews*, 49 F.3d 1404, 1407 (9th Cir. 1995), affirming bankruptcy court’s refusal to affirm a chapter 13 plan). The appellate court noted that a debtor, when invoking chapter 13, “may not use it to deny consideration of the legitimate interest of creditors in repayment.” *Id.* (citing cases). By determining that an undersecured creditor’s lien cannot be released until the debtor completes all plan payments and receives a discharge, the court is confident that it has struck the appropriate balance of protection.

Accordingly, the Trustee’s objection to the language in the debtor’s chapter 13 Plan which provides for the early release of GMAC’s lien is sustained. The court reaffirms its decision of almost a decade ago in *Pruitt*, and again finds in this case that “the debtor may not obtain release of the lien until she successfully completes the confirmed plan and receives a discharge or obtains other appropriate relief from the court.” *Pruitt*, 203 B.R. at 137; *accord*, *In re Todd*, Case No. 05-10063 (N.D. Ind. March 9, 2005) (unpublished opinion) (Grant, J.). The court notes that none of the other prerequisites of § 1325 – good faith, feasibility, etc. – has been challenged, and

it finds that they have been met. In the view of this court, the Plan will be confirmable if the provision in ¶ 2F of the Plan is removed.

Conclusion

For the reasons stated above, the court sustains the Trustee's objection to the debtor's Chapter 13 Plan and denies confirmation of the Chapter 13 Plan of debtor Vicki Wysong.

SO ORDERED.

/s/ Harry C. Dees, Jr.
HARRY C. DEES, JR., CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT