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**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA**

In re:

**CHARMAINE ALLISON  
BRANNAN,**

Debtor.

Case No. **19-60484-12**

**ORDER CONFIRMING CHAPTER 12 PLAN  
and SUSTAINING OBJECTION TO CLAIM**

At Butte in said District this 5<sup>th</sup> day of February, 2020.

In this Chapter 12 bankruptcy, after due notice, a hearing was held February 4, 2020, in Billings on confirmation of Debtor's Fourth Amended Chapter 12 Plan ("Plan") filed at ECF No. 92 and Debtor's Objection to Proof of Claim No. 6 filed by Wilmington Savings Fund Society, FSA, as trustee of Stanwich Mortgage Loan Trust D ("Wilmington") filed at ECF No. 32, ("Initial Objection") Although the Initial Objection was resolved by a stipulation of the parties agreeing that the collateral securing Wilmington's claim was \$145,000, additional briefing by Wilmington, ECF No. 72, a brief by Debtor at ECF No. 85, a response by Wilmington at ECF No. 109, and a further reply by Debtor at ECF No. 113, raise additional issues regarding treatment and allowance of Wilmington's claim.

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**I. Debtor's Objection to Wilmington's Proof of Claim No. 6.**

Debtor's continuing and unresolved objection to Wilmington's Claim is premised on the parties' stipulation that the collateral securing Wilmington's claim has a value of \$145,000, and a chapter 7 discharge she received in a prior case. The loan that is the basis of Wilmington's claim was obtained by Debtor in 2005 ("2005 Loan"). Claim 6-1. Debtor received a chapter 7 discharge in U.S. Bankruptcy Case No. 14-60082, District of Montana, September 23, 2014. ECF No. 67. Carrington Mortgage Services, LLC is the current servicer of the 2005 Loan and filed Wilmington's claim in this case. According to the Proof of Claim, the balance owing on the 2005 Loan on the petition date was \$276,960.58. In essence, Debtor argued in her Supplemental Objection at ECF No. 85, that under § 506(a)(1), Wilmington's secured claim is limited to the stipulated value of the collateral, \$145,000, and her prior chapter 7 discharge extinguished any personal liability that would permit Wilmington to have an unsecured claim for the difference between \$145,000 and \$276,960.58, or \$131,960.58. The parties neither dispute that § 506(a)(1) provides for the bifurcation of claims into secured and unsecured components, nor that any unsecured claim would be the amount of the claim in excess of \$145,000.

Wilmington's pleadings argue that "the amount of the remainder of the claim would not be affected by any of the Debtor's previous filings." ECF No. 72. In support of this contention, Wilmington relies on § 1322(b)(2) and *In re Leonidas*, 2019 Bankr. LEXIS 1880, 2019 WL 2527884 (June 19, 2019, Bankr. C.CA). However, these authorities are not persuasive because this is a Chapter 12 case, and the analysis in *Leonidas* is unique to Chapter 13 cases. More persuasive are the cases cited by Debtor, *Johnson v. Home State Bank*, 501 U.S. 78, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991), *In re Osborne*, 323 B.R. 489, 493 (Bankr. D.Or. 2005), *Davis v.*

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*Bank of America (In re Davis) (Davis I)*, 2012 WL 3205431 (9th Cir. BAP Aug. 3, 2012). While these cases are instructive, the cited cases do not address specifically whether a debtor’s prior discharge in a chapter 7 case eliminates the unsecured component of creditor’s claim after bifurcation under § 506(a) in a later chapter 12 case.

Notably, in *Free v. Malaier*, 542 B.R. 492 (9th Cir. BAP 2015), the BAP considered whether a wholly unsecured junior lienholder’s debt should be included in the eligibility calculation under § 109(e), when the debtor’s personal liability for the debt had been discharged in a prior chapter 7 case. The BAP concluded:

Assuming the case is filed in good faith and proper chapter 13 purposes—such as curing an arrearage on a first mortgage or paying priority tax debt—are present, it makes no sense to include in the debt limit calculation a claim for which the right to payment has been discharged. Neither the Code nor case law compels inclusion of the discharged *in personam* liability in such calculation.

*Id.* at 501. Similarly, if the personal liability for a debt has been discharged, it would not make sense to provide for its payment as an unsecured claim under a chapter 12 plan.<sup>1</sup>

Ultimately, Wilmington has not persuaded this Court that under the facts and circumstances of this case, it should have an allowed unsecured claim in the amount of \$131,960.58. Debtor’s discharge in 2014 eliminated her personal liability for repayment of the debt associated with the 2005 Loan. § 727(b). Further, the discharge “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor.” § 524(a)(2).

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<sup>1</sup> For a discussion of the different rationales courts have considered when parsing through these issues, see *In re Hoffman*, 538 B.R. 57, 62 (Bankr. D. Idaho 2015); and, *In re Scantling*, 465 B.R. 671, 681 (Bankr.M.D.Fla.2012).

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The parties stipulated that the value of the collateral securing the 2005 Loan was \$145,000. Under § 506(a), the secured, *in rem* portion of Wilmington's claim is \$145,000. Any remaining obligation would be unsecured and *in personam*, which was effectively discharged in 2014. Wilmington's arguments are hard to reconcile with §§ 727(b) and 524(a)(2), and the Court is not persuaded that Debtor's personal liability should be revived under the legal theories presented.

**II. Confirmation of Debtor's Plan.**

The Court shall confirm a plan if the requirements of § 1225(a) are fulfilled.<sup>1</sup> The Chapter 12 Trustee recommends that the Court confirm Debtor's Plan. *See* ECF No. 96. The Internal Revenue Service consented to confirmation of Debtor's Plan. *See* ECF No. 101. On January 21, 2020, Debtor and Wilmington filed a stipulation that resolved Wilmington's objections to confirmation of Debtor's Plan. *See* ECF No. 110. There are no continuing objections to confirmation of Debtor's Plan. Additionally, no appearance was made at the hearing in opposition to confirmation. Upon review of the Debtor's Plan, in the absence of any continuing objection, and after notice and a hearing, this Court finds that Debtor's Plan has reasonable income and expense projections and that it satisfies all of the provisions of 11 U.S.C. § 1225. Accordingly, the Plan is confirmed.

**III. An Administrative Issue.**

At the hearing, the parties explained that a new issue had arisen. Specifically, Wilmington advanced funds post-petition for an expense, insurance premiums, but paid the expense for the year. This, in addition to paying the premium for the gap period between the petition date and confirmation, it paid the premium due post confirmation. Although it seemed the parties were on

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<sup>1</sup> Subsection (b) of § 1225 does not apply in this case.

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their way and capable of resolving the issue, a resolution was not presented at the hearing. The Trustee noted that the issue could be addressed by him, it was an administrative issue, and not an impediment to confirmation.

IT IS ORDERED:

1. Debtor's Fourth Amended Chapter 12 Plan filed at ECF No. 92 is CONFIRMED;
2. The Debtor shall pay over to the Trustee all amounts set forth in the Plan, at the times set forth in the Plan;
3. The value of the collateral securing debts due holders of secured claims is fixed at the value stated in the Plan;
4. That upon completion of the Plan, according to its final terms, all judgments and U.C.C. filings shall be satisfied; and
5. Pursuant to 11 U.S.C. § 326(b), the Chapter 12 Trustee, Joseph V. Womack is awarded compensation of five percent of all payments under the plan and reimbursement for actual, necessary expenses.

IT IS FURTHER ORDERED that Debtor's Objection to Proof of Claim No. 6 filed by Wilmington Savings Fund Society, FSA, as trustee of Stanwich Mortgage Loan Trust D, ECF No. 32 as supplemented at ECF No. 85, is sustained; Proof of Claim No. 6 shall be allowed as a secured claim in the amount of \$145,000; and the unsecured portion of Proof of Claim No. 6 is disallowed.

BY THE COURT:



Hon. Benjamin P. Hursh  
United States Bankruptcy Court  
District of Montana