Uncommonly Common: A Chapter 13 Validation of the Seventh Circuit's Interpretation of Section 1111(b)

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I. Introduction

Section 1111(b) of the Bankruptcy Code has long perplexed bankruptcy practitioners seeking to advise their clients as to its intricacies. When the Seventh Circuit issued its decision in *In re B.R. Brookfield Commons No. 1 LLC*[1] on November 4, 2013, however, many practitioners viewed it as a watershed decision granting a significant victory for nonrecourse creditors by treating them as unsecured creditors in Chapter 11 cases.[2] Despite its initial promise, very few decisions since *Brookfield Commons* have addressed whether the holder of a nonrecourse deficiency claim is entitled to an allowed general unsecured claim in a Chapter 11 bankruptcy case. Nevertheless, a significant body of case law has developed surrounding this issue in Chapter 13 cases.[3] While these decisions reflect a split of authority, both lines of cases support the Seventh Circuit's holding that section 1111(b) provides a wholly undersecured nonrecourse creditor with an allowed[4] unsecured claim in a Chapter 11 bankruptcy.

II. Relevant Statutory Provisions

Although the language is relatively straightforward, the application of section 1111(b)(1)(A) is anything but straightforward. In relevant part, that section provides: "A claim secured by a lien on property of the estate shall be allowed or disallowed under section 502 of this title the same as if the holder of such claim had recourse against the debtor on account of such claim, whether or not such holder has such recourse . . ."[5] While not expressly stated, this section can be read as an exception to the claim disallowance provisions of section 502(b)(1), which disallows a claim if it is "unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."[6] Because nonrecourse claims, by definition, are unenforceable against the debtor personally, section 502(b)(1) would seem to disallow nonrecourse claims absent the addition of section 1111(b).

This otherwise routine statutory analysis, however, is complicated by the existence of section 506(a), which provides a secured creditor with an allowed secured claim only to the extent of the value in the collateral and an

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unsecured claim for the deficiency.[8] Further, section 506(d) voids a lien that "secures a claim against the debtor that is not an allowed secured claim . . ."[9] Thus, a debtor could argue that section 506(d) voids a fully (or even partially) undersecured nonrecourse lien,[10] which would render section 1111(b)(1) inapplicable. This was precisely the argument before the Seventh Circuit in *Brookfield Commons.*

III. Revisiting *Brookfield Commons*

A. Background

B.R. Brookfield Commons No. 1, LLC and B.R. Brookfield Commons No. 2, LLC (together, "Brookfield") owned a shopping center secured by a first mortgage of approximately $8,900,000 and a second mortgage of approximately $2,539,375.[11] ValStone Asset Management, LLC ("ValStone") held an interest in both mortgages.[12] The parties did not dispute that the second mortgage was a nonrecourse loan agreement secured by a valid and enforceable lien on the shopping center.[13] Brookfield filed its Chapter 11 petition on June 10, 2011 and elected to retain ownership of the shopping center in its proposed plan of reorganization.[14]

Because of Brookfield's decision to keep the property, the bankruptcy court was required to establish a judicial value for the property. The parties agreed that "absent a significant and unexpected increase in value" of the shopping center, the second mortgage would be completely underwater.[15] Brookfield objected to the second lien claim, arguing that it should be disallowed because ValStone could not pursue a deficiency claim against Brookfield under state law or section 1111(b).[16] Conversely, ValStone argued that its second lien claim should be allowed because section 1111(b)(1)(A) treats its nonrecourse claim as if it had recourse.[17] Both the bankruptcy court and the district court agreed with ValStone and allowed its claim.[18]

B. Seventh Circuit's Analysis

The only issue on appeal was whether ValStone's second lien claim should be disallowed.[19] Recognizing that the resolution of this issue required an interpretation of section 1111(b)(1)(A), the Seventh Circuit identified this issue as one of first impression.[20] Ultimately, the Seventh Circuit agreed with ValStone and affirmed the lower courts' decisions.

Beginning with "well-established principles of statutory construction," the Seventh Circuit found that the plain language of section 1111(b)(1)(A) was clear and unambiguous that "the only prerequisite is that a claim be 'secured by a lien on property of the estate.' "[21] Thus, the court found that ValStone's second lien claim should be treated as a recourse claim against Brookfield.[22] Because the language of the statute was clear, the Seventh Circuit found that its "only function is to enforce the statute according to its terms."[23]

The parties, however, cited two cases that differed in their interpretations of how to enforce the statue.[24] Brookfield relied on *In re SM 104 Ltd.*,[25] which completely disallowed a creditor's nonrecourse claim because it was

wholly unsecured by any value in the collateral.[26] Conversely, ValStone relied upon *In re Atlanta West VI*, which interpreted section 1111(b)(1)(A) to require a fully unsecured, nonrecourse claim to be "classified and provided for in the debtors' plan."[27]

Acknowledging the danger posed by differing interpretations of the same statute, the Seventh Circuit turned to legislative history.[28] The Seventh Circuit found that the Congressional Record described section 1111(b)(1) as "the general rule that a secured claim is to be treated as a recourse claim in chapter 11 whether or not the claim is nonrecourse by agreement or applicable law."[29] It also noted that Congress enacted section 1111(b) in response to the harsh result in *Pine Gate*, which permitted a debtor to cram down a plan that paid the secured lender only the current value of the collateral.[30] Finally, the Seventh Circuit relied on the discussion of section 1111(b) in *Collier on Bankruptcy* to buttress its finding that "the district court's interpretation of § 1111(b)(1)(A) is congruent with Congress' intent to strike a balance between debtor protections and equitable treatment of creditors."[31]

Having derived congressional intent, the Seventh Circuit quickly reviewed the opposing cases cited by the parties.[32] The Seventh Circuit agreed with ValStone that *Atlanta West* was analogous to the case at bar.[33] Conversely, it found that *In re SM 104 Ltd.* was distinguishable on the facts and "did not consider bankruptcy treatises, legislative history, persuasive cases, or controlling cases during its statutory interpretation."[34] Finding the analysis in *Atlanta West* to be more credible because it considered those sources in its analysis, the Seventh Circuit adopted its conclusion that section 1111(b) "does not require that the lien on the property be secured by actual value' and the creditor 'cannot be denied a claim as debtor proposes."[35] Accordingly, because "Brookfield cannot dispute that the [second lien claim] is secured by a lien on the [shopping center]" and "[t]he value in the collateral is immaterial," the Seventh Circuit held that ValStone's second lien claim could not be disallowed.[36]

IV. Allowance of Nonrecourse Claims in Chapter 13

A. Converting Recourse Liens into Nonrecourse Liens Through Discharge

Although *Brookfield Commons* has been cited in only a few 1111(b)(1)(A) decisions, several Chapter 13 cases, especially those under "chapter 20,"[37] have addressed the issue of whether nonrecourse claims held by undersecured creditors must be allowed as general unsecured claims. Given their procedural posture, Chapter 20 cases often present issues similar to the one identified in *Brookfield Commons.* Specifically, while the debtor receives a discharge of his or her personal liability to a secured creditor at the conclusion of the Chapter 7 case, the creditor's *in rem* mortgage claim survives the discharge.[38] After discharge, the lender's remaining interest in the property "has the same properties as a nonrecourse loan."[39] Whether the deficiency on these nonrecourse loans receives treatment as a general unsecured claim—

the same issue addressed in *Brookfield Commons*—has led to a split of authority among bankruptcy courts in Chapter 13 cases. Each of these approaches will be discussed in greater detail below.

B. Cases Allowing Deficiency Claims as Unsecured Claims

The first group of cases provides an undersecured nonrecourse creditor with a general unsecured claim for its deficiency. The genesis for this line of cases appears to be the Central District of California's decision in *In re Akram*.[40] In *Akram*, the Chapter 20 debtor sought to strip the creditor's lien and eliminate its general unsecured claim.[41] The court found that because the secured lien could not be stripped in the debtor's prior Chapter 7 case under *Dewsnup*,[42] discharge only removed the *in personam* liability of the debtor.[43] Because the amount of the secured lien remained unaffected by the prior discharge, the stripping of the lien in the Chapter 13 case "turned the full amount owed to each creditor (pursuant to that creditor's Note) into a general unsecured claim for chapter 13 plan purposes . . ."[44]

Later that same year, another California bankruptcy court offered "a more compelling reason for allowing the unsecured claim" in *In re Gounder*.[45] Consistent with the Supreme Court's holding in *Johnson v. Home State Bank*, *Gounder* found that the definition of "claim" in section 101(5) encompassed a "right to payment that can be satisfied from the debtor's property."[46] From that conclusion, the court found that section 506(a) resulted in a "completely undersecured claim being converted into an unsecured claim against the chapter 13 estate (as opposed to the debtor)."[47] According to the court: "This is the price of separating a claim from its security."[48]

Gounder's holding was based on the statutory language of section 506(a), but the language of that section does not, on its face, appear to draw any distinction between the debtor and the estate.[49] Nevertheless, the court noted that "[i]f the security had no value, section 506(a) would convert the nonrecourse claim *against the debtor* into a recourse claim *against the bankruptcy estate.*"[50] Additionally, the court also cited to a footnote in *In re Triple R Holdings L.P.*, but that citation offers minimal support for the court's conclusion because *Triple R Holdings* was a Chapter 11 case addressing the interplay of section 1111(b) and the new value exception.[51] Other than reciting the language of section 506(a), *Triple R Holdings* offers no analysis for its conclusion that "in the case of a nonrecourse creditor, the Code creates an unsecured deficiency claim against the estate."[52]

More recent cases have reached the same conclusion as *Gounder*, but they have relied on section 502, instead of section 506 alone.[53] For example, the court in *In re Hill* reasoned that because the secured creditor had filed a proof of claim in the Chapter 13 case, that claim was "deemed allowed" under section 502 unless the debtor or another party in interest objected to its allowance.[54]

In a recent decision from Idaho, *In re Hoffman*, the court took the *Hill* analysis one step further and found that a nonrecourse secured creditor's unsecured claim in a Chapter 13 case must be allowed under section 502 as

long as the liens remained on the debtor's property.[55] Unlike the other cases discussed herein, *Hoffman* was a traditional Chapter 13 bankruptcy case where the debtor was not personally liable under the secured liens because she inherited the property from her parents subject to the existing liens.[56] The debtor proposed a plan to bifurcate the first lien and strip the fully undersecured second lien from the property and pay both deficiency claims as general unsecured claims.[57] The Chapter 13 trustee objected, arguing that these claims were not entitled to treatment as unsecured creditors because the debtor was not personally liable for the obligations.[58]

The court went through an analysis similar to *Gounder* in finding that a nonrecourse secured lender has an allowed unsecured claim in a Chapter 13 case.[59] While the court "tend[ed] to agree" with the holding in *Gounder*, it proceeded to analyze whether the claim would be allowed under section 502.[60] In applying section 502, the court found that "a claim is only disallowed if it is unenforceable against the debtor and the debtor's property '*for a reason other than because such claim is contingent.*' "[61] Because the fully underwater lien was retained pending completion of the plan and the partial avoidance of the first lien only occurred upon completion of the plan,[62] the court found that the lenders' general unsecured claims were contingent and not subject to disallowance.[63] Accordingly, as long as the creditors' liens remain potentially enforceable against the debtor's property, the court would be required to allow their claims even in the face of an objection to those claims.[64]

C. Cases Denying Unsecured Treatment to Deficiency Claims

Contrary to the cases discussed above, other recent cases have rejected the reasoning of *Gounder* and its progeny and have found that a fully undersecured nonrecourse creditor does not have an allowed unsecured claim in a Chapter 13 case.[65] While these cases generally disagree with the reasoning of the cases discussed above, they also found Congress's failure to include a Chapter 13 corollary to section 1111(b) to be a dispositive factor in the analysis. This section discusses the cases taking this approach.

Sweitzer appears to be the first published case barring a holder of a nonrecourse secured claim from receiving treatment as an unsecured creditor in a Chapter 13 case.[66] In *Sweitzer*, the creditor's lien had been avoided earlier in the Chapter 13 bankruptcy pursuant to court order.[67] As a result, the court found that the secured creditor "no longer has the *in rem* rights stated in its proof of claim for purposes of this case; nor does it have a valid argument that it holds an allowable unsecured claim under *Johnson.*"[68] Because the creditor's *in personam* rights and claims were discharged in the debtor's prior Chapter 7 case, the court found that those "rights and claims cannot now be resurrected as an unsecured claim in this case in contravention of that discharge simply because [the creditor's] *in rem* rights were stripped off in this case."[69] Accordingly, the creditor was left with no allowable claim against the debtors or their property in the Chapter 13 case.[70]

The next court to take up the issue was *In re Rosa.*[71] Agreeing with the

first part of the analysis in *In re Hill*, the *Rosa* court found that section 506(a)(1) determines only the treatment of a secured claim, not whether it should be allowed.[72] Next, the court analyzed the opinions in *Akram* and *Gounder*, but respectfully disagreed with their analysis.[73] Instead, the court refused to "impose liability on the chapter 13 bankruptcy estate where none exists for the chapter 13 debtor."[74] The court pointed to the definition of creditor in section 101(10) in finding that "if these creditors do not have an allowable unsecured claim against the Chapter 13 debtor, they do not have an allowable unsecured claim that must be paid through the Chapter 13 plan."[75] The court also noted that section 1111(b) demonstrated that Congress knew how to convert a nonrecourse claim into a recourse claim, and the lack of similar language in section 506(a)(1) means that it cannot effect such a conversion.[76] Finally, the court noted that its holding is consistent with the treatment of non-recourse secured claims for purposes of determining Chapter 13 eligibility under section 109(e).[77]

The most recent case denying an allowed unsecured claim to a nonrecourse secured creditor was *In re Sandrin.*[78] Like *Hoffman*, *Sandrin* involved a traditional Chapter 13 case where the secured creditor held a traditional nonrecourse loan.[79] Unlike *Hoffman*, however, the court ruled that providing the secured creditor with an allowed unsecured claim would give the creditor a right that it did not hold outside of bankruptcy, and that this right would dilute the rights of other creditors that had full recourse against the debtor.[80] Similar to the reasoning in *Rosa*, the court found that if section 502 permitted a nonrecourse claim to receive recourse claim treatment, section 1111(b) would be superfluous.[81] Like *Rosa*, the court also found its conclusion to be consistent with the treatment of non-recourse claims for eligibility purposes.[82]

Although the court could have stopped its analysis after finding that a nonrecourse secured creditor was not entitled to an allowed unsecured claim in the Chapter 13 case based on a plain reading of the relevant statutory provisions, the court further supported its conclusion by referring to legislative history.[83] First, the court cited to a discussion of section 506(a), which indicated that "the holder of a nonrecourse loan will not have an unsecured claim for the deficiency."[84] Second, the court noted that the legislative history of section 102 provides that while it is intended to provide a nonrecourse creditor with a claim against the debtor, "it would not entitle the holders of the claim to distribution other than from the property in which the holder had an interest."[85] Finally, in discussing the legislative history of section 502, the court found that when claims are unenforceable against the debtor and his or her property, section 502(b)(1) "is intended to result in the disallowance of any claim for deficiency by an unsecured creditor on a nonrecourse loan or under a state antideficiency law, special provision for which is made in section 1111, since neither the debtor personally, nor the property of the debtor is liable for such a deficiency."[86] After discussing these provisions, the court concluded that congressional intent was clear that absent a special provision such as section 1111(b), the bankruptcy code should treat

nonrecourse obligations the same as nonbankruptcy law and that its ruling honored that intention.[87]

V. Applying the Chapter 13 Analysis

Regardless of which approach ultimately prevails in the Chapter 13 context, the cases discussed above all support the Seventh Circuit's decision in *Brookfield Commons.* Whether a nonrecourse wholly undersecured creditor has an allowed unsecured claim in a Chapter 11 case by operation of section 502(b), 506(a) or 1111(b), the cases leave little doubt that the claim must be allowed in a Chapter 11 case.

A. Claims Allowed in Chapter 13 Must Be Allowed in Chapter 11

Section 506(a) bifurcates a nonrecourse undersecured claim against the pre-petition debtor into two claims against the Chapter 13 estate: a secured claim for the value of the property securing the claim and an unsecured deficiency claim for the remaining amount outstanding.[88] Under *Gounder*, if the security has no value, the creditor has recourse against the estate in the form of an unsecured claim for the full amount outstanding.[89] Because section 506 applies in both Chapter 11 and Chapter 13 cases,[90] the result in *Gounder*, if correct, would apply with equal force in a Chapter 11 case, irrespective of section 1111(b).

A similar result would be required under the combined section 502/506(a) analysis articulated in *Hoffman.* Assuming section 506(a), standing alone, provides an insufficient basis to justify the allowance of an unsecured claim, section 502(a) deems the claim to be allowed absent an objection from a party in interest.[91] Although the permanent statutory contingency identified in *Hoffman* (i.e. section 348(f)(1)(C)(i)) does not apply in Chapter 11 cases, section 502(b)(1) does not disallow a nonrecourse claim in a Chapter 11 by operation of section 1111(b)(1).[92] Thus, under the analysis in *Hoffman*, even if an objection were filed, the nonrecourse undersecured creditor would have an allowed unsecured claim for its deficiency in a Chapter 11 case.

B. Claims Disallowed in Chapter 13 Are Allowed in Chapter 11 by Operation of Section 1111(b)

Even assuming *Gounder* and *Hoffman* were wrongly decided, the other line of Chapter 13 cases also supports the Seventh Circuit's holding in *Brookfield Commons.* In particular, *Sweitzer*, *Rosa*, and *Sandrin* all refused to award nonrecourse undersecured creditors an allowed unsecured claim under section 502 because doing so would obviate the need for section 1111(b).[93] Logically, these holdings imply that section 1111(b) exists specifically to provide a nonrecourse undersecured creditor with an allowed unsecured deficiency claim in a Chapter 11 case.

None of the cases cited in *Brookfield Commons* are inconsistent with the foregoing analysis. For example, the court in *680 Fifth Avenue Associates* found that Congress drafted section 1111(b) to avoid the result in *Pine Gate.*[94] In doing so, Congress changed existing law by treating "all liens encumbering property of the debtor [as] recourse, regardless of whether the creditor's

lien was recourse or nonrecourse under nonbankruptcy law."[95] Whether the nonrecourse lien is consensual or nonconsensual is irrelevant; "[t]he only precondition to the statute's application is a claim secured by a lien on property of the estate."[96] Likewise, the court in *Atlanta West* found that section 1111(b) is triggered by the existence of a lien on the property, "not the existence of value to secure it."[97] The Seventh Circuit cited both of these cases with approval in *Brookfield Commons.*

Despite the prior holdings in *680 Fifth Avenue Associates* and *Atlanta West*, the court in *SM 104 Ltd.* found that section 1111(b) is only available to creditors whose liens are secured by value in the property.[98] The court's analysis spanned two paragraphs and did not cite any case or treatise for its conclusion.[99] Instead, the court cited the statutory text of sections 502(b)(1), 506(a) and 1111(b) in reaching its conclusion.[100] As discussed above, those provisions do not support the conclusion that a nonrecourse creditor cannot have an allowed deficiency claim in a Chapter 11 case. Thus, the Seventh Circuit's determination that this decision was an "outlier opinion" appears correct.[101]

Because the case law overwhelmingly supports the Seventh Circuit's holding in *Brookfield Commons*, a review of the legislative history should not be necessary; nevertheless, that history lends additional support to the Seventh Circuit's decision. As discussed in *Sandrin*, the legislative history for sections 102 and 506(a) supports the conclusion that Congress did not intend for an undersecured nonrecourse creditor to have an allowed unsecured claim for its deficiency.[102] Nevertheless, the legislative history for section 502 notes that section 1111 makes special provisions for the allowance of these deficiency claims.[103] Although the legislative history for section 1111(b) may not completely resolve the issue of whether a nonrecourse deficiency claim must be allowed as an unsecured claim,[104] a collective review of the legislative history behind other applicable provisions demonstrates that section 1111(b) provides an exception to the general rule of disallowance of nonrecourse obligations.[105]

VI. Conclusion

Faced with an issue of first impression, the Seventh Circuit reached the correct conclusion in *Brookfield Commons.* That conclusion was supported by the legislative history underlying the adoption of section 1111(b) and passages from *Collier on Bankruptcy.* A review of Chapter 13 cases both before and after the Seventh Circuit's decision provides ample additional support for its conclusion. While a split of authority has emerged in Chapter 13 cases, both lines of cases support the Seventh Circuit's decision that a nonrecourse fully undersecured creditor in a Chapter 11 case has an allowed unsecured claim against the debtor's estate. Whether this conclusion is mandated by the application of section 506(a) alone, or in combination with section 502 or section 1111(b) may be subject to continued debate, but there should be little doubt that these claims must be allowed in Chapter 11.

NOTES:

[1]In re B.R. Brookfield Commons No. 1 LLC, 735 F.3d 596, 58 Bankr. Ct. Dec. (CRR) 190, 70 Collier Bankr. Cas. 2d (MB) 1098, Bankr. L. Rep. (CCH) P 82533 (7th Cir. 2013).

[2]See Katherine Catanese & Derek Wright, "Nonrecourse Claimants Have a Claim in Bankruptcy" (Dec. 11, 2013), http://www.foley.com/files/Publication/5607aa49-6bd0-41a8-98f7-b60854386d28/Presentation/PublicationAttachment/7d1887e8-9129-4547-a75b-b65792ccfeb6/NonrecourseClaimantsHaveaClaiminBankruptcy.pdf; William Choslovsky, "An Unsecured Lender's Best Friend in Bankruptcy: Section 1111(b)" (Jan. 24, 2014), http://www.insidecounsel.com/2014/01/29/an-undersecured-lenders-best-friend-in-bankruptcy.

[3]Most of these cases arise in the so-called "chapter 20" context.

[4]This article uses the term "allowed" based on an assumption that the underlying claim is not subject to disallowance on a substantive basis.

[5]11 U.S.C.A. § 1111(b)(1)(A) (2015). The application of the exceptions to this general rule and the 1111(b) election, while also a source of significant confusion, are outside the scope of this Article.

[6]11 U.S.C.A. § 502(b)(1) (2015).

[8]11 U.S.C.A. § 506(a)(1) (2015).

[9]11 U.S.C.A. § 506(d) (2015).

[10]A debtor's ability to "strip" a lien is the subject of an expansive body of case law and commentary following the Supreme Court's decision in Dewsnup v. Timm, 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903, 22 Bankr. Ct. Dec. (CRR) 750, 25 Collier Bankr. Cas. 2d (MB) 1297, Bankr. L. Rep. (CCH) P 74361A (1992). The permissibility of lien stripping in Chapter 11 is beyond the scope of this Article.

[11]Brookfield Commons, 735 F.3d at 597.

[12]Brookfield Commons, 735 F.3d at 597.

[13]Brookfield Commons, 735 F.3d at 597.

[14]Brookfield Commons, 735 F.3d at 597.

[15]Brookfield Commons, 735 F.3d at 598.

[16]Brookfield Commons, 735 F.3d at 598.

[17]Brookfield Commons, 735 F.3d at 598.

[18]Brookfield Commons, 735 F.3d at 597.

[19]Brookfield Commons, 735 F.3d at 598.

[20]Brookfield Commons, 735 F.3d at 598.

[21]Brookfield Commons, 735 F.3d at 598–99 (noting that this interpretation was in alignment with the Second Circuit's interpretation of section 1111(b) in In re 680 Fifth Ave. Associates, 29 F.3d 95, 25 Bankr. Ct. Dec. (CRR) 1445, 31 Collier Bankr. Cas. 2d (MB) 1085, Bankr. L. Rep. (CCH) P 75987, 142 A.L.R. Fed. 789 (2d Cir. 1994)).

[22]Brookfield Commons, 735 F.3d at 599.

[23]Brookfield Commons, 735 F.3d at 599 (citing U.S. v. Ron Pair Enterprises, Inc., 489 U.S. 235, 109 S. Ct. 1026, 103 L. Ed. 2d 290, 18 Bankr. Ct. Dec. (CRR) 1150, Bankr. L. Rep. (CCH) P 72575, 89-1 U.S. Tax Cas. (CCH) P 9179, 63 A.F.T.R.2d 89-652 (1989)).

[24]Brookfield Commons, 735 F.3d at 599.

[25]In re SM 104 Ltd., 160 B.R. 202, 216, Bankr. L. Rep. (CCH) P 75443 (Bankr. S.D. Fla. 1993).

[26]Brookfield Commons, 735 F.3d at 599.

[27]Brookfield Commons, 735 F.3d at 599 (quoting In re Atlanta West VI, 91 B.R. 620, 624, 18 Bankr. Ct. Dec. (CRR) 520, 20 Collier Bankr. Cas. 2d (MB) 148, Bankr. L. Rep. (CCH) P 72469 (Bankr. N.D. Ga. 1988).

[28]Brookfield Commons, 735 F.3d at 599.

[29]Brookfield Commons, 735 F.3d at 599 (citing 124 Cong. Rec. 32406 (1978)).

[30]Brookfield Commons, 735 F.3d at 599 (discussing Great Nat'l Life Ins. Co. v. Pine Gate Assocs., Ltd., 2 B.C.D. 1478 (Bankr. N.D. Ga. 1976).

[31]Brookfield Commons, 735 F.3d at 600 (discussing 7 Collier on Bankruptcy ¶ 1111.03 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2013)).

[32]Brookfield Commons, 735 F.3d at 600.

[33]Brookfield Commons, 735 F.3d at 600.

[34]Brookfield Commons, 735 F.3d at 601.

[35]Brookfield Commons, 735 F.3d at 600 (quoting In re Atlanta West VI, 91 B.R. at 624).

[36]Brookfield Commons, 735 F.3d at 600.

[37]A Chapter 20 case occurs when a debtor that previously filed a Chapter 7 case subsequently files a Chapter 13 petition. The United States Supreme Court has expressly approved this form of serial filing. Johnson v. Home State Bank, 501 U.S. 78, 87, 111 S. Ct. 2150, 115 L. Ed. 2d 66, 21 Bankr. Ct. Dec. (CRR) 1293, 24 Collier Bankr. Cas. 2d (MB) 1171, Bankr. L. Rep. (CCH) P 73993 (1991) (noting that the presence of express prohibitions on other forms of serial filings "convinces us that Congress did not intend categorically to foreclose the benefit of Chapter 13 reorganization to a debtor who previously has filed for Chapter 7 relief").

[38]Johnson, 501 U.S. at 84 ("[A] bankruptcy discharge extinguishes only one mode of enforcing a claim—namely, an action against the debtor *in personam*—while leaving intact another—namely, an action against the debtor *in rem.*").

[39]Johnson, 501 U.S. at 86. Importantly, these interests are treated as nonrecourse obligations regardless of how they came into existence. Johnson, 501 U.S. at 86–87.

[40]In re Akram, 259 B.R. 371, 37 Bankr. Ct. Dec. (CRR) 146 (Bankr. C.D. Cal. 2001).

[41]Akram, 259 B.R. at 372.

[42]See generally Dewsnup v. Timm, 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903, 22 Bankr. Ct. Dec. (CRR) 750, 25 Collier Bankr. Cas. 2d (MB) 1297, Bankr. L. Rep. (CCH) P 74361A (1992).

[43]Akram, 259 B.R. at 377–78.

[44]Akram, 259 B.R. at 378.

[45]In re Gounder, 266 B.R. 879, 881, 38 Bankr. Ct. Dec. (CRR) 125 (Bankr. E.D. Cal. 2001), order aff'd, 2001 WL 1688479 (E.D. Cal. 2001).

[46]Gounder, 266 B.R. at 881.

[47]Gounder, 266 B.R. at 881.

[48]Gounder, 266 B.R. at 881; see also In re Haque, 331 B.R. 524 (Bankr. D. Mass. 2005) (following *Gounder* in concluding that the bankruptcy code provides an undersecured creditor in a Chapter 20 case with an unsecured claim against the debtors' estate).

[49]See 11 U.S.C.A. § 105(a)(1) (2015) (using only the word "estate").

[50]Gounder, 266 B.R. at 881(emphasis added).

[51]See generally In re Triple R Holdings, L.P., 134 B.R. 382, 22 Bankr. Ct. Dec. (CRR) 567, 26 Collier Bankr. Cas. 2d (MB) 356, Bankr. L. Rep. (CCH) P 74410 (Bankr. N.D. Cal. 1991).

[52]Triple R Holdings, 134 B.R. at 387 n.6.

[53]See, e.g., In re Hill, 440 B.R. 176, 184 (Bankr. S.D. Cal. 2010) ("Section 506(a) only prescribes how a secured claim is to be treated, not whether the underlying claim is allowed or disallowed. Instead, § 502 serves that function.") (citations omitted); In re Jennings, 454 B.R. 252, 258–59 (Bankr. N.D. Ga. 2011) (finding that the secured creditors' rights to payment are "allowed per section 502 and unsecured per section 506(a)").

[54]Hill, 440 B.R. at 184.

[55] In re Hoffman, 538 B.R. 57 (Bankr. D. Idaho 2015).

[56]In re Hoffman, 538 B.R. 57 (Bankr. D. Idaho 2015).

[57]In re Hoffman, 538 B.R. 57, 59-60 (Bankr. D. Idaho 2015).

[58]In re Hoffman, 538 B.R. 57, 60 (Bankr. D. Idaho 2015).

[59]In re Hoffman, 538 B.R. 57, 65 (Bankr. D. Idaho 2015).

[60]In re Hoffman, 538 B.R. 57, 65 (Bankr. D. Idaho 2015).

[61]In re Hoffman, 538 B.R. 57, 66(Bankr. D. Idaho 2015) (quoting 11 U.S.C.A. § 502(b)(2) (emphasis in original).

[62]Importantly, section 348(f)(1)(C)(i) provides that, notwithstanding any valuation of a secured claim, upon the conversion of a case from Chapter 13 to a case under another chapter, a creditor that holds security as of the petition date shall continue to be secured by that security unless paid in full prior to conversion. 11 U.S.C.A. § 348(f)(1)(C)(i) (2015). Thus, *Hoffman*'s recognition of a contingent lien pending plan completion would be present in all Chapter 13 cases, and the lien would remain on the property until all payments required by the Chapter 13 plan are made.

[63]In re Hoffman, 538 B.R. 57, 66(Bankr. D. Idaho 2015).

[64]In re Hoffman, 538 B.R. 57, 66 (Bankr. D. Idaho 2015).

[65]See, e.g., In re Sandrin, 536 B.R. 309, 87 U.C.C. Rep. Serv. 2d 508 (Bankr. D. Colo. 2015); In re Rosa, 521 B.R. 337, 72 Collier Bankr. Cas. 2d (MB) 1321 (Bankr. N.D. Cal. 2014); In re Sweitzer, 476 B.R. 468, 68 Collier Bankr. Cas. 2d (MB) 130, 68 Collier Bankr. Cas. 2d (MB) 634 (Bankr. D. Md. 2012).

[66]Technically, *Sweitzer* found the argument on this issue in *In re Scantling* "persuasive and applicable here." Sweitzer, 476 B.R. at 471. While *Scantling* stated that "the holder of a wholly unsecured junior mortgage lien holds neither a secured claim—by virtue of the § 506 valuation—nor an unsecured claim enforceable against the debtor—by virtue of the prior discharge," it is primarily a Chapter 13 lien stripping case. In re Scantling, 465 B.R. 671, 67 Collier Bankr. Cas. 2d (MB) 595 (Bankr. M.D. Fla. 2012), aff'd, 754 F.3d 1323, Bankr. L. Rep. (CCH) P 82652 (11th Cir. 2014).

[67]Sweitzer, 476 B.R. at 471–72.

[68]Sweitzer, 476 B.R. at 472.

[69]Sweitzer, 476 B.R. at 473.

[70]Sweitzer, 476 B.R. at 473.

[71]In re Rosa, 521 B.R. 337, 72 Collier Bankr. Cas. 2d (MB) 1321 (Bankr. N.D. Cal. 2014)

[72]Rosa, 521 B.R. at 339–40.

[73]Rosa, 521 B.R. at 340–41.

[74]Rosa, 521 B.R. at 341–42.

[75]Rosa, 521 B.R. at 342.

[76]Rosa, 521 B.R. at 342.

[77]Rosa, 521 B.R. at 342 n.3.

[78]In re Sandrin, 536 B.R. 309, 87 U.C.C. Rep. Serv. 2d 508 (Bankr. D. Colo. 2015).

[79]Sandrin, 536 B.R. at 311.

[80]Sandrin, 536 B.R. at 319.

[81]Sandrin, 536 B.R. at 320.

[82]Sandrin, 536 B.R. at 321–23.

[83]Sandrin, 536 B.R. at 323–24.

[84]Sandrin, 536 B.R. at 323 (quoting, with emphasis, H.R. Rep. 95-595, at 124 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6085).

[85]Sandrin, 536 B.R. at 323 (quoting, with emphasis, H.R. Rep. 95-595, at 315 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6272).

[86]Sandrin, 536 B.R. at 323 (quoting, with emphasis, H.R. Rep. 95-595, at 549 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6448).

[87]Sandrin, 536 B.R. at 324.

[88]In re Gounder, 266 B.R. 879, 881, 38 Bankr. Ct. Dec. (CRR) 125 (Bankr. E.D. Cal. 2001), order aff'd, 2001 WL 1688479 (E.D. Cal. 2001).

[89]Gounder, 266 B.R. at 881.

[90]11 U.S.C.A. § 103(a) (2015).

[91]11 U.S.C.A. § 502(a) (2015).

[92]11 U.S.C.A. § 1111(b)(1)(A) (2015) (providing that "a claim secured by a lien on property of the estate shall be allowed or disallowed under section 502 of this title the same as if the holder of such claim had recourse against the debtor on account of such claims . . .")

[93]See In re Sandrin, 536 B.R. 309, 320, 87 U.C.C. Rep. Serv. 2d 508 (Bankr. D. Colo. 2015) ("[Section 1111(b)] confirms that Congress did not contemplate that a nonrecourse obligation would be allowed under § 502 the same as if it were a recourse obligation. Otherwise, § 1111(b) would be superfluous."); In re Rosa, 521 B.R. 337, 342, 72 Collier Bankr. Cas. 2d (MB) 1321 (Bankr. N.D. Cal. 2014) (noting that Congress did not include language similar to section 1111(b) in section 506(a)(1)); In re Sweitzer, 476 B.R. 468, 472, 68 Collier Bankr. Cas. 2d (MB) 130, 68 Collier Bankr. Cas. 2d (MB) 634 (Bankr. D. Md. 2012) ("When Congress intended such a result, it said so expressly in 11 U.S.C.A. § 1111(b).").

[94]In re 680 Fifth Ave. Associates, 156 B.R. 726, 730–31, 24 Bankr. Ct. Dec. (CRR) 729, 29 Collier Bankr. Cas. 2d (MB) 491, Bankr. L. Rep. (CCH) P 75363 (Bankr. S.D. N.Y. 1993), decision aff'd, 169 B.R. 22 (S.D. N.Y. 1993), judgment aff'd, 29 F.3d 95, 25 Bankr. Ct. Dec. (CRR) 1445, 31 Collier Bankr. Cas. 2d (MB) 1085, Bankr. L. Rep. (CCH) P 75987, 142 A.L.R. Fed. 789 (2d Cir. 1994)).

[95]689 Fifth Ave. Assocs., 156 B.R. at 731.

[96]689 Fifth Ave. Assocs., 156 B.R. at 734.

[97]In re Atlanta West VI, 91 B.R. 620, 624, 18 Bankr. Ct. Dec. (CRR) 520, 20 Collier Bankr. Cas. 2d (MB) 148, Bankr. L. Rep. (CCH) P 72469 (Bankr. N.D. Ga. 1988). See also In re Stanley, 185 B.R. 417, 428, 27 Bankr. Ct. Dec. (CRR) 917, 34 Collier Bankr. Cas. 2d (MB) 473 (Bankr. D. Conn. 1995) (finding that even if the lien was of inconsequential value, "it would not prevent the movants' claim from automatically receiving recourse status pursuant to § 1111(b)(1)(A), which operates in the absence of an election").

[98]In re SM 104 Ltd., 160 B.R. 202, 215–16, Bankr. L. Rep. (CCH) P 75443 (Bankr. S.D. Fla. 1993).

[99]SM 104 Ltd., 160 B.R. at 215–16.

[100]SM 104 Ltd., 160 B.R. at 215–16.

[101]In re B.R. Brookfield Commons No. 1 LLC, 735 F.3d 596, 601, 58 Bankr. Ct. Dec. (CRR) 190, 70 Collier Bankr. Cas. 2d (MB) 1098, Bankr. L. Rep. (CCH) P 82533 (7th Cir. 2013).

[102]Sandrin, 536 B.R. at 323.

[103]Sandrin, 536 B.R. at 323 (quoting, with emphasis, H.R. Rep. 95-595, at 549 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6448).

[104]Brookfield Commons, 735 F.3d at 599 (discussing the treatment of section 1111(b)(1) in the Congressional Record before finding that "the congressional record alone does not provide full guidance on the function and enforcement of the statute").

[105]Sandrin, 536 B.R. at 324 ("The report, in several places, discusses the treatment of nonrecourse debts generally, and, in all cases, it is clear that the congressional intent was, *in the absence of a special provision such as § 1111*, that treatment of nonrecourse obligations under the Bankruptcy Code should mirror nonbankruptcy law.") (emphasis added).