Equal Monthly Payments

Cases:

In re: Newberry, 2007 WL 2029312 (Bkrtcy.D.Vt.) **7/10/07**

"The Amended Plan calls for a substantial portion of the debt to be satisfied via a balloon payment to be made after 60 monthly payments are made. The well reasoned cases that have addressed whether chapter 13 plans may pay mortgage debts under this provision with a combination of monthly payments and a balloon payment have concluded that such treatment categorically violates the directive for equal monthly payments. ... In [*Lemieux & Wagner*], the Bankruptcy court held that the plain language of the statute required the debtors to satisfy the short term mortgage claim in full during the term of the plan through payments that were equal and monthly; and found that the proposed treatment, which paid only a portion of the claim through equal monthly payments with the remaining portion being paid through a balloon payment, failed to met the requirements of § 1325(a)(5)(B)(iii)(I). This Court finds the reasoning of these courts to be sound and because the Debtor's Amended Plan calls for the Debtor to pay a portion of the Bank's claim through a balloon payment, it finds the plan fails to satisfy the confirmation standards."

In re: Denton, B.R. 441 (Bkrtcy.S.D.Ga.) **6/12/07**

"I conclude that "periodic payments ... in equal monthly amounts" as provided by § 1325(a)(5)(B)(iii)(I) refers without distinction to all post-confirmation payments on an allowed secured claim. Further, secured creditors must begin receiving these payments in the Trustee's first disbursement following confirmation."

Cited by: *Perez v. Peake*, 2007 WL 2302381 (S.D.Tex.).

Mentioned by: *In re: Porter*, 2007 WL 2084890 (Bkrtcy.E.D.Pa.).

In re: Hill, 2007 WL 499622 (Bkrtcy.M.D.N.C.) **2/12/07**

"This Court agrees with the *DeSardi* court that the amount of the adequate protection payments do not need to be the same as the equal monthly payments. The only requirement is that the equal monthly payments be in an amount sufficient to provide adequate protection. 11 U.S.C. § 1325(a)(5)(B)(iii)(II). Thus, in most instances, the equal monthly payments will be greater than the adequate protection payments."

"Beginning sometime after confirmation, the debtor must begin to pay equal monthly payments to the secured creditor. Such equal monthly payments should be made monthly, in equal amounts, and at the minimum level necessary to afford the secured creditor adequate protection; they must terminate when the secured creditor is fully paid. There is no requirement that equal monthly payments extend throughout the length of the plan."

"Equal monthly payments to a car lender need not begin immediately after confirmation so long as car lender receives adequate protection; plan can pay attorney's fees and other costs allowed under § 507(a)(2) after payment of adequate protection to car lender and before equal monthly payments begin." Lundin, *Recent Developments in Chapter 13 Bankruptcy* § 448.1 discussing *Hill.*

Criticized by: *Denton,* 370 B.R. 441.

Cited by: *Singer*, 368 B.R. 435; *Robson*, 369 B.R. 377.

In re: Tonioli, 359 B.R. 814 (Bkrtcy.D.Utah) **2/5/07**

"In this case, the Debtors seek to modify their plan to abate delinquent plan payments. As with any proposed modification, the Court may grant the relief requested only if the modifications will comport with § 1325(a). The effect of the abatement will be that GMAC, a secured creditor receiving payments under the plan, will not receive equal monthly payments of $303.00 as required by the Court's confirmation order. If GMAC objected to the proposed modification, the Court would be required under §§ 1329(b)(1) and 1325(a)(1)(B)(iii) to deny the Debtor's Motion to Abate. But GMAC's silence with regards to the proposed modification is significant, as it constitutes acceptance of the modification under § 1325(a)(5)(A). The Court concludes that the Debtor's proposed abatement is appropriate because it conforms with the requirements of § 1325(a), and specifically with § 1325(a)(5). The Debtors need not propose a modified plan providing equal monthly payments to GMAC because GMAC has accepted the modified plan."

In re: Schultz, 363 B.R. 902 (Bkrtcy.E.D.Wis.) **1/12/07**

"This court is not persuaded that subsection 1325(a)(5)(B)(iii) does not apply when only a portion of the allowed secured claim, i.e., current payments and the arrearage, are being paid pursuant to the plan. If that were the case, the balance would be paid after the plan is completed, presumably according to its original terms or a refinance. The payments under the plan, however, are still "property distributed pursuant to this subsection," they are "periodic payments," and they are "with respect to [an] allowed secured claim provided for by the plan." 11 U.S.C. § 1325(a)(5). Section 1322(b)(5) just means that the entire secured claim need not be paid in full under certain circumstances allowing cure of default, but the claim is still an allowed secured claim. This court holds that periodic payments must be equal, period. This applies when the default is cured and only current payments and the arrearage are being paid pursuant to the plan pursuant to 11 U.S.C. § 1322(b)(5) and when a long-term or matured debt are paid in full under the plan. Accordingly, we find the statutory interpretation of the equal payment provision in *Wagner* more persuasive than in *Davis*."

Cited by: *Tonioli*, 359 B.R. 814; *Averhart*, 372 B.R. 441; *Smith*, 2007 WL 1544366.

In re: Lemieux, 347 B.R. 460 (Bkrtcy.D.Mass.) **8/16/06**

Accordingly, in order to obtain confirmation, the Debtor's plan must provide for equal monthly payments to New Falls Corporation over the life of the plan until the lien claim is satisfied. Such treatment cannot then allow for a balloon payment in the final month, as proposed by the Debtor. Accordingly, the Debtor's April 18, 2006 Amended Plan is not confirmable under § 1325(a)(5)(B).

Cited by: *Tonioli*, 359 B.R. 814; *Hill*, 2007 WL 499622; *Newberry*, 2007 WL 2029312; *Schultz*, 363 B.R. 902.

In re: Davis, 343 B.R. 326 (Bkrtcy.M.D.Fla.) **5/3/06**

Based upon the historical analysis of the interplay between Section 1322(b)(5) and Section 1325(a)(5) (under which Section 1325(a)(5)(b)(iii) falls), the Court finds that equal monthly payments are not required as the claim at issue is one in which arrears on long term debt are being cured. Thus, Creditor's claim falls outside the ambit of

requirements contained under Section 1325(a)(5). As the Court has found Section 1325(a)(5)(b)(iii) to be inapplicable, there is no need for the Court to reach a determination as to the parameters of what qualifies as "equal monthly payments."
Cited by: *Blevins*, 2006 WL 2724153.
Criticized, Cited by: *Schultz*, 363 B.R. 902.
Distinguished by: *Lemieux*, 347 B.R. 460 ("[*Davis*], however, is distinguishable because the debtor was relying upon § 1322(b)(5) to cure and maintain payments on her mortgage on which the last payment was due after the date on which the final plan payment was due.").

In re DeSardi, 340 B.R. 790 (Bkrtcy.S.D.Tex.) **4/21/06**

"The equal payment provision does not state that its requirements must be met beginning in month one of the plan. Nor does the section state that payments must be equal "as of the effective date of the plan...The Court understands this clause to require payments to be equal once they begin, and to continue to be equal until they cease."
Disagreed with by: *Denton*, 370 B.R. 441; *Kinsey*, 368 B.R. 888; *Hill*, 2007 WL 499622; *Green*, 348 B.R. 601.
Declined to follow by: *Kampf*, 2007 WL 1673764.
Cited by: *Dispirito* 371 B.R. 695; *Blevins*, 2006 WL 2724153; *Robson*, 369 B.R. 377; *Schultz*, 363 B.R. 902; *Perez v. Peake*, 2007 WL 2302381; *Morris*, 370 B.R. 796; *Scruggs*, 342 B.R. 571; *Lowder*, 2006 WL 1794737; *Lemieux*, 347 B.R. 460; *Brooks*, 344 B.R. 417; *Trejos*, 352 B.R. 249; *NJ Affordable Homes Corp.*, 2006 WL 2128624; *Doddroe*, 2007 WL 1310177; *Singer*, 368 B.R. 435; *Hill*, 2007 WL 2021897; *Gentry*, 2006 WL 3392947; *Wagner*, 342 B.R. 766; *Smith*, 2007 WL 1577668; *Fifer*, 2007 WL 1231677; *Solis*, 356 B.R. 398; *Chapter 13 Fee Applications*, 2006 WL 2850115; *Bufford*, 343 B.R. 827; *Tonioli*, 359 B.R. 814; *Brill*, 350 B.R. 853.

In re: Blevins, 2006 WL 2724153 (Bkrtcy.E.D.Cal) **9/21/06**

"The provision seems, rather, to address the situation in which a secured creditor might receive a percentage of the amount available to all creditors during the life of the plan. Creditors holding allowed secured claims rightly need to know how much they are going to be paid each month. This is the only way they can keep track of whether the debtor is performing his obligations under the plan. Thus, requiring payments in equal monthly amounts, as opposed to a variable payment that is a percentage of an amount available for distribution to similarly situated creditors, makes sense."
Criticized by: *Denton*, 370 B.R. 441

In re: Wagner, 342 B.R. 766 (Bkrtcy.E.D.Tenn.) **5/22/06**

"[T]he Debtor's plan must provide for equal monthly payments to [the creditor] over the life of the plan until the lien claim is satisfied. Such treatment cannot then allow for a balloon payment in the final month, as proposed by the Debtor."
Distinguished by: *Schultz*, 363 B.R. 902.
Discussed by: *Lemieux*, 347 B.R. 460.
Cited by: *Blevins*, 2006 WL 2724153.

Adequate Protection

Cases:

Qmect, Inc. v. Burlingame Capital Partners II, L.P., 2007 WL 2349107 (N.D.Cal.) **8/15/07**

"Secured lenders contend that the replacement liens granted to them should have enforceable absent any other action by them or by the Bankruptcy court. They should not have been required to prove diminution in the value of their collateral before collecting on the liens, or so the argument goes. ...[T]he purpose of adequate protection is to protect lenders from diminution in the value of their collateral, so the Bankruptcy court did not err in requiring secured lenders from proving that their collateral had diminished in value."

In re: Dispirito, 371 B.R. 695 (Bkrtcy.D.N.J.) **7/17/07**

"At issue, however, is whether such post-confirmation adequate protection payments should be paid in advance of other administration expenses, such as debtor's attorneys fees. ... If attorney's fees are paid ahead of the adequate protection payments, then adequate protection fails; the funds that provide the adequate protection would be paid to someone besides the protected lender. ... [T]he Court rules that adequate protection payments have priority over payments awarded to Debtor's counsel."

In re: Denton, 370 B.R. 441 (Bkrtcy.S.D.Ga.) **6/12/07**

Pre-confirmation: "I likewise conclude that pre-confirmation adequate protection payments may be applied only to principal. Further, the Trustee must take into account this reduction in principal when setting up the post-confirmation amortized monthly payment term. The amount of principal paid as pre-confirmation adequate protection affects only the number of periodic payments to the secured creditor, as the plan already has established the amount of the payment and the applicable rate of interest under *Till v. SCS Credit Corp.*, 541 U.S. 465, 124 S.Ct. 1951, 158 L.Ed.2d 787 (2004)."

Post-confirmation: "I concur in part with both *Bufford* and *White*. Payment over the life of the plan of the present value of the claim as of the date of the petition meets the adequate protection requirement of § 1325(a)(5)(B)(iii)(II), so long as the principal reduction achieved by the equal monthly amount is sufficient to offset any depreciation of the collateral."

Cited by: *Perez v. Peake*, 2007 WL 2302381 (S.D.Tex.).

Mentioned by: *Porter*, 2007 WL 2084890 (Bkrtcy.E.D.Pa.).

In re: Robson, 369 B.R. 377 (Bkrtcy.N.D.Ill.) **5/23/07**

"Court concludes a debtor must provide a creditor with adequate protection payments under § 1326(a)(1)(C) of the Bankruptcy Code in the amount the collateral depreciates within the first month after the filing of the Bankruptcy petition. ... Chapter 13 debtors are not required to provide costly expert testimony concerning depreciation of their motor vehicles. Such testimony may be beyond the means of many Chapter 13 debtors and courts may rely on other admissible testimony even if it is less precise than testimony of a car expert."

In re: Hill, 2007 WL 499622 (Bkrtcy.M.D.N.C.) **2/12/07**

"In a Chapter 13 case, adequate protection payments to a lender secured by a vehicle must begin within 30 days of the petition date and continue until equal monthly payments begin. The amount of the adequate protection payments do not need to be the same as the equal monthly payments that begin after confirmation. ... During the period that only adequate protection payments must be made, claims for the debtor's attorneys' fees and costs (and other Section 507(a)(2) claims) may be paid each month after the adequate protection payment has been made."
Criticized by: *Denton*, 370 B.R. 441.

In re: Carter, 2006 WL 3377032 (Bkrtcy.C.D.Ill.) **11/20/06**
"The Debtor is current in her payments to the Trustee. The lack of payment on Ford Motor Credit Company's secured claim to date results from the long-standing practice in this District of allowing Chapter 13 Trustee's to pay certain administrative claims in full prior to making distributions to secured creditors. Once the administrative claims have been paid, the Chapter 13 Trustee will begin distributing an amount to Ford Motor Credit Company which will actually exceed the monthly payment stated in the Debtor's Amended Chapter 13 Plan until such time as any post-confirmation arrearages on the secured claim are cured in full. After Ford Motor Credit Company's secured claim is current, the Trustee will distribute the sum of $147.54 per month for the remaining period of Debtor's Amended Chapter 13 Plan. There are no facts before the Court to indicate that the instant case is not proceeding as it should under standing practice. ... Ford Motor Credit Company[] has failed to establish lack of adequate protection pursuant to 11 U.S.C. § 362(d)(1). Although Movant has not yet begun receiving payments through the Chapter 13 Trustee, the record reflects that the Debtor is current on her payments to the Trustee. Additionally, the Movant continues to have a perfected security interest on the Debtor's vehicle which will remain in place until such time as Movant's secured claim is paid in full, plus interest. All of the facts and circumstances known at present point to Debtor's successful completion of her confirmed plan."

In re: White, 352 B.R. 633 (Bkrtcy E.D.La.) **9/29/06**
"Once the plan is confirmed, the requirements of confirmation have always dictated that the secured claim (historically calculated as an amount equal to the value of the collateral) be paid in real, or present value, terms. Thus, the payment of interest substitutes for adequate protection by providing the present value of the claim. The addition of a requirement for adequate protection on confirmation is somewhat curious given that § 1325(a)(5)(B)(ii) already requires payments under the plan which equal the present value of the claim. Thus, in order for this provision to be relevant, the payment stream proposed by the plan would have to equal the present value of the claim but not adequately protect the value of the collateral. This situation might occur if the collateral were depreciating at a rate greater than the level of plan payments. ... Capital One failed to present any evidence at trial that the terms of the Plan, including the payments proposed, do not adequately protect its interest in the collateral. Therefore, I find that the Plan satisfies the provisions of § 1325(a)(5)(B)(iii)(II)."
Disagreed with by: *Medina* 362 B.R. 799; *Kinsey* 368 BR 888.
Declined to follow by: *Martinez* 363 B.R. 525.
Distinguished by: *Flores*, 363 B.R. 799.

In re: Bufford, 343 B.R. 827 (Bkrtcy.N.D.Tex.) **6/13/06**

"In the context of § 362, the Fifth Circuit has stated that "[a]dequate protection, properly defined, is the amount of an asset's decrease in value from the petition date." ... The Court finds, especially in light of the fact that Velocity has not objected to the amount of the payments provided under the Plan, other than to the interest rate provided, that payment of its claim in full over the life of the Plan at an interest rate that protects the "value" of this claim as of the petition date, as provided for in *Till,* is adequate to meet this standard."

Rejected by: *White*, 352 B.R. 633.

Followed with reservation by: *Denton* 370 B.R. 441.

Cited by: *Pringle*, 2006 WL 2528502; *Morris*, 370 B.R. 796; *Lowder*, 2006 WL 1794737; *Hill*, 2007 WL 499622.

In re: DeSardi, 340 B.R. 790 (Bkrtcy.S.D.Tex.) **4/21/06**

"Prior to its amendment, § 1325(a)(5) did not explicitly require adequate protection payments-a chapter 13 plan could "provide payment to secured claim holders in an amount not sufficient to keep pace with depreciation of the underlying collateral. ... Section 1325(a)(5)(A)(iii)(II) now protects against that abuse by assuring-through adequate protection payments-that the lender's position will not worsen during the initial stages of a chapter 13 case. ... The second perceived abuse was for a chapter 13 plan to propose a balloon payment at the end of the sixty-month term of the plan. The interim payments would not fully amortize the car loan. At the end of the term, the car would be worth less than the balloon payment that was due. The lender would be left only with its depreciated automobile as collateral. The lower monthly payments allowed a debtor to prove that the debtor could make the monthly payments under his proposed budget. All of the risk was placed on the car lender. Section 1325(a)(5)(A)(iii)(I) appears to be intended to address this balloon payment issue. By requiring full amortization over the life of the traditional plan payments, the debtor's feasibility burden was increased and the car lender's risk decreased."

Disagreed with by: *Denton*, 370 B.R. 441; *Kinsey*, 368 B.R. 888; *Hill*, 2007 WL 499622; *Green*, 348 B.R. 601.

Declined to follow by: *Kampf*, 2007 WL 1673764.

Cited by: *Dispirito* 371 B.R. 695; *Blevins*, 2006 WL 2724153; *Robson*, 369 B.R. 377; *Schultz*, 363 B.R. 902; *Perez v. Peake*, 2007 WL 2302381; *Morris*, 370 B.R. 796; *Scruggs*, 342 B.R. 571; *Lowder*, 2006 WL 1794737; *Lemieux*, 347 B.R. 460; *Brooks*, 344 B.R. 417; *Trejos*, 352 B.R. 249; *NJ Affordable Homes Corp.*, 2006 WL 2128624; *Doddroe*, 2007 WL 1310177; *Singer*, 368 B.R. 435; *Hill*, 2007 WL 2021897; *Gentry*, 2006 WL 3392947; *Wagner*, 342 B.R. 766; *Smith*, 2007 WL 1577668; *Fifer*, 2007 WL 1231677; *Solis*, 356 B.R. 398; *Chapter 13 Fee Applications*, 2006 WL 2850115; *Bufford*, 343 B.R. 827; *Tonioli*, 359 B.R. 814; *Brill*, 350 B.R. 85.

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 206

File Name: 07a0202p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

In re: PATRICK GLANCE,

Debtor.

PATRICK GLANCE,

Appellant,

v.

KRISPEN S. CARROLL, Trustee,

Appellee.

No. 06-1630

Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.
Nos. 05-74841; 05-51905—
Bernard A. Friedman, Chief District Judge.

Argued: April 23, 2007

Decided and Filed: June 1, 2007

Before: SUHRHEINRICH, CLAY, and SUTTON, Circuit Judges.

COUNSEL

ARGUED: Elizabeth M. Abood, Livonia, Michigan, for Appellant. Krispen S. Carroll, OFFICE OF CHAPTER 13 TRUSTEE, Detroit, Michigan, for Appellee. **ON BRIEF:** Elizabeth M. Abood, Charles J. Schneider, Livonia, Michigan, for Appellant. Krispen S. Carroll, OFFICE OF CHAPTER 13 TRUSTEE, Detroit, Michigan, for Appellee.

OPINION

SUTTON, Circuit Judge. Is a security interest in a debtor's property a "noncontingent, liquidated, secured debt[]" under § 109(e) of the Bankruptcy Code, which at the time of this filing contained a $922,975 debt limit for filing a Chapter 13 petition? It is, we conclude, and accordingly we affirm the dismissal of Patrick Glance's bankruptcy petition.

I.

On April 14, 2005, Patrick Glance filed a petition for relief under Chapter 13 of the Bankruptcy Code. Among his assets, Glance listed two houses—one in Plymouth, Michigan, one in Pinckney, Michigan—that he owned jointly with his wife. The Plymouth house, worth $1,200,000, was subject to a mortgage of $980,000; the Pinckney house, worth $302,000, was subject to a mortgage of $133,000. Because Glance's wife alone signed the promissory notes in connection with each loan, Glance was "not personally obligated to pay the sums secured" by either mortgage. JA 125. Glance co-signed the mortgage papers, however, giving each lender a mortgage lien on the jointly owned property.

On October 7, Krispen Carroll (the chapter 13 trustee) moved to dismiss Glance's bankruptcy petition, claiming Glance's secured debts exceeded the $922,975 cap for filing a Chapter 13 petition. *See* 11 U.S.C. § 109(e). After a hearing on the motion, the bankruptcy court dismissed Glance's petition. The district court affirmed the bankruptcy court's order.

II.

The "principal purpose of the Bankruptcy Code is to grant a fresh start to the honest but unfortunate debtor." *Marrama v. Citizens Bank of Mass.*, 127 S. Ct. 1105, 1107 (2007) (internal quotation marks omitted). Chapter 13 provides one avenue for obtaining relief, allowing a relatively small debtor to reschedule his payment obligations to his creditors, "retain his property and avoid the stigma of a straight bankruptcy." *In re Pearson*, 773 F.2d 751, 753 (6th Cir. 1985). To ensure that only relatively small debtors invoke the protections of Chapter 13, the Code contains the following eligibility criteria:

> Only an individual with regular income that owes, on the date of the filing of the petition, . . . noncontingent, liquidated, secured debts of less than $922,975 . . . may be a debtor under chapter 13 of this title.

11 U.S.C. § 109(e). Even though Glance had no personal obligations on the promissory notes that his wife signed, the question here is whether the mortgages on the two properties (worth a total of $1,113,000) amount to (1) debts attributable to Glance that are (2) liquidated, (3) secured and (4) noncontingent. In our view, they are, and accordingly the limitation applies.

First, the mortgages are "debts" within the meaning of the Bankruptcy Code. The Code defines "debt" as "liability on a claim." *Id.* § 101(12). And the Code defines "claim" to mean a

> (A) *right to payment*, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (B) *right to an equitable remedy* for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

Id. § 101(5) (emphases added).

By defining "debt" in terms of "claim," Congress has made "the meanings of 'debt' and 'claim' . . . coextensive." *Penn. Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 558 (1990), *superseded on other grounds by* Criminal Victims Protection Act of 1990, Pub. L. No. 101–581, § 3, 104 Stat. 2865. "[A] creditor has a 'claim' against the debtor; the debtor owes a debt to the

creditor." *In re Knight*, 55 F.3d 231, 234 (7th Cir. 1995) (internal quotation marks omitted). And by defining "claim" broadly, Congress has "adopt[ed] the 'broadest possible' definition of 'debt,'" *Davenport*, 495 U.S. at 564, the broadest possible definition in other words of any "right to payment," *see In re Mazzeo*, 131 F.3d 295, 302 (2d Cir. 1997), and of any "right to an equitable remedy." These rights, we are told, mean "nothing more nor less than an enforceable obligation." *Davenport*, 495 U.S. at 559.

In *Johnson v. Home State Bank*, 501 U.S. 78 (1991), the Court applied the definition of "claim" to a mortgage lien. The individual signed a promissory note with the bank and gave the bank a security interest in his farm. After the individual defaulted on the promissory note and the bank began foreclosure proceedings, he filed a liquidation petition under Chapter 7 of the Bankruptcy Code. When the bankruptcy court discharged his personal liability on the note and lifted the automatic stay, the bank began foreclosure proceedings again on the theory that the Chapter 7 discharge removed the individual's *personal* liability on the note but not his *in rem* liability on the lien. *Id.* at 80. The individual sought protection from the bankruptcy court again, this time under Chapter 13, and the bankruptcy court again prevented the bank from foreclosing because the lien was a "claim" in his bankruptcy estate. *Id.* at 81.

In agreeing with the bankruptcy court's construction of the definition of "claim," the Supreme Court reasoned that, "[e]ven after the debtor's personal obligations have been extinguished, the mortgage holder still retains a 'right to payment' in the form of its right to the proceeds from the sale of the debtor's property." *Id.* at 84. "Alternatively," the Court added, "the creditor's surviving right to foreclose on the mortgage can be viewed as a 'right to an equitable remedy' for the debtor's default on the underlying obligation. Either way, there can be no doubt that the surviving mortgage interest corresponds to an 'enforceable obligation' of the debtor." *Id.* "[A] bankruptcy discharge," the Court concluded, "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*." *Id.*

Johnson controls us here. If, as *Johnson* concludes, a lien is a "claim against the debtor," then it follows, under the Code's equivalent treatment of the terms, that a lien is a "debt" owed by the debtor. *Johnson*, 501 U.S. at 84, 86 (noting that "the mortgage interest that passes through a Chapter 7 liquidation . . . has the same properties as a nonrecourse loan," which gives the creditor rights against the property of the debtor but not against the debtor personally). Much like the individual in *Johnson*, Glance does not have personal liability on the promissory notes but he continues to have *in rem* liability on the liens. Nor need the debtor be personally liable on a claim for it to be valid; the Code provides that a "claim against the debtor" "includes [a] claim against property of the debtor." 11 U.S.C. § 102(2); *see Johnson*, 501 U.S. at 85.

Glance responds that we should not treat "debts" and "claims" the same in this setting. Equating the two, he says, will "enable a creditor to have a debtor's case dismissed by merely filing a claim for an amount that exceeds the limits . . . regardless of whether the creditor's claim has any legal basis." Br. at 16–17. An initial obstacle to this argument, as we have noted, is that Congress (and the Supreme Court) have already spoken on the matter: The National Legislature intended "the meanings of 'debt' and 'claim' [to] be coextensive." *Davenport*, 495 U.S. at 558; *see Johnson*, 501 U.S. at 84 n.5. A second obstacle is that the eligibility requirements of § 109(e) create a gateway into the bankruptcy process, not an ongoing limitation on the jurisdiction of the bankruptcy courts. "Chapter 13 eligibility should normally be determined by the debtor's schedules checking only to see if the schedules were made in good faith." *In re Pearson*, 773 F.2d at 757. Because a *debtor* cannot fairly be accused of bad faith for omitting a creditor's demand that has no "legal basis," we are hard pressed to foresee when or how Glance's scenario would arise. A third obstacle is that a creditor's demand without "any legal basis" is not even a "claim" under the Code. One cannot [illegible] a "right to payment" (and thus a "claim," 11 U.S.C. § 101(5)) absent at least some "legal basis

And if such a demand is not a "claim," it is not by Glance's own logic a "debt" that could render a debtor ineligible for Chapter 13. In the final analysis, just as a debtor may seek protection from a bank's foreclosure on a lien because it is a "claim" under the Code, *see Johnson*, 501 U.S. at 85, so a debtor must treat the same lien as a "debt" in determining whether he has exceeded the debt limitations for filing a Chapter 13 petition.

Second, the mortgage liens are "liquidated" debts, which is to say debts whose "amount is readily ascertainable." *In re Pearson*, 773 F.2d at 754; *see also* 2 Collier on Bankruptcy ¶ 109.06[2][c], p. 109-45 (rev. 15th ed. 2006). Glance affixed a value to each mortgage in his original schedules, and the papers securing the mortgage on the Plymouth house confirm his valuation of that debt at $980,000. At no point in his appellate brief has Glance argued that this lien or the other lien should be valued at any amount other than the full value of the mortgage.

Third, the mortgage liens are "secured." Glance nowhere disputes that the creditors secured the liens against the Plymouth and Pinckney houses.

Fourth, these liens are "noncontingent." "[A debt] is noncontingent when all of the events giving rise to liability for the debt occurred prior to the debtor's filing for bankruptcy." *In re Mazzeo*, 131 F.3d at 303; *see* 2 Collier on Bankruptcy ¶ 109.06[2][b], p. 109-44 ("[I]f a debt does not come into existence until the occurrence of a future event, the debt is contingent."). In this instance, no future events need to occur in order for the creditors to have an interest in Glance's properties. The creditors secured their claims to Glance's properties when Glance signed the respective mortgage papers, and he signed those papers long before he sought bankruptcy protection.

Once Glance signed the mortgage papers, the creditors immediately obtained a host of present rights in the two properties. For example, the creditor on the Plymouth house has "legal title to the interests granted" in the mortgage, JA 119; the creditor may "make reasonable entries upon and inspections of the Property," JA 122; and the creditor may require Glance to "defend generally the title to the Property against all claims and demands," JA 119, to "pay all taxes, assessments, charges, fines, and impositions attributable to the Property [that] can attain priority over" the mortgage, JA 121, to insure the house against fire, earthquakes, floods and other disasters, *id.*, to "maintain the Property in order to prevent the Property from deteriorating or decreasing in value," JA 122, and to "promptly repair the Property if damaged to avoid further deterioration or damage," *id.* That is not all. The creditor also has the "right to foreclose and sell the Property" if the Glances default on the mortgage, JA 119, *see, e.g., Guardian Depositors Corp. v. Powers*, 296 N.W. 675, 678 (Mich. 1941); the right to demand immediate repayment of the debt if the Glances attempt to transfer the property without prior written consent, JA 126; and the right to "require immediate payment in full of all sums secured by this Security Instrument without further demand and [to] invoke the power of sale," JA 127, if "any action or proceeding . . . is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument," JA 124.

Glance responds that the mortgage liens remain contingent debts because the lenders cannot repossess and sell the properties immediately. Analogizing his debt to a guarantee on an unsecured loan, he points out, "Without a default on the notes, there is no claim." Br. at 20. Yes, a guarantee represents a contingent debt until the principal obligor defaults. *See In re Fischel*, 103 B.R. 44, 47–48 (Bankr. N.D.N.Y. 1989). But a mortgage lien is not a guarantee, and it is not contingent. The lien gives a creditor a secured claim on the debtor's property immediately, while the guarantee gives a creditor a claim on the debtor when and only when the principal obligor defaults. The question of contingency turns on whether "all of the events giving rise to liability for the debt occurred prior to the debtor's filing for bankruptcy." *In re Mazzeo*, 131 F.3d at 303. Because a debtor's property becomes immediately "liable for the debt" upon the granting of the security interest, a mortgage lien is "noncontingent" under § 109(e).

No doubt, a similarity remains between the two instruments: In either situation, the creditor may not require payment in full absent default. But the same could be said for any loan. Neither the banker nor the merchant nor the mortgage lender may demand full repayment from a debtor on a whim; each creditor may demand only those funds immediately owed. And yet that reality does not convert every run-of-the-mine mortgage into a contingent debt. Otherwise, the outstanding balance on all thirty-year mortgages would represent "contingent" debts even though the debtor has kept pace on his payments and even though full payment generally may not be required under the mortgage instrument until a default. The courts long ago rejected such an interpretation. *See, e.g., Sec. Mortgage Co. v. Powers*, 278 U.S. 149, 155–56 (1928) (distinguishing between attorney's fees that were a "liability still contingent at the time of bankruptcy" and the "principal debt, which is secured by a lien," "was not inchoate at the time" and "had already become perfect when the principal note and the loan deed securing it were given"); *Mertz v. Rott*, 955 F.2d 596, 598 (8th Cir. 1992) (characterizing a mortgage as a "fixed liability" rather than a "contingent liability"); *In re Vickers*, 577 F.2d 683, 686 (10th Cir. 1978) (distinguishing between "mortgages" and "contingent liabilities"); *United States v. Sheehy*, 541 F.2d 123, 125 (1st Cir. 1976) (same); *Mountain Trust Bank v. Shifflett*, 255 F.2d 718, 719 (4th Cir. 1958) (distinguishing between "mortgage debts" and "contingent liability"); *Kelly v. Minor*, 252 F. 115, 116 (4th Cir. 1918) ("An ordinary lien, such as a judgment, mortgage, or deed of trust, is for a definite amount, not dependent upon any contingency, and not affected by changes in the value of the property to which it attaches.").

The question in the end is not whether the creditor may extract full repayment from the debtor (or his property) immediately; the question is whether the creditor has a "right to payment" or a "right to an equitable remedy," *see* 11 U.S.C. § 101(5), from the debtor (or his property) at the time the debtor filed his petition. The creditors here possessed such a right—as proved by the difficulty Glance would have faced if he had tried to sell the two properties without first satisfying the banks' security interests. Because the sum of the debts on the Plymouth and Pinckney houses at the time Glance filed this Chapter 13 petition was $1,113,000—or about $190,000 more than the limit of $922,975 found in § 109(e)—the bankruptcy court correctly dismissed the petition.

III.

For these reasons, we affirm.