

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION**

IN RE

**DONNIE L. MYERS,
JENNIE C. MYERS**

CASE NO. 17-21041

DEBTORS

ORDER SUSTAINING CLAIM OBJECTION

This matter is before the Court on Debtors Donnie and Jennie Myers' ("Debtors") Objection to Proofs of Claim (Claim #2-1) [ECF No. 27-1 ("Objection")] filed on behalf of Kentucky Tax Bill Servicing ("KTBS"). The Objection asserts KTBS' claims were discharged in Debtors' prior chapter 12 case.

KTBS responds that Debtors' chapter 12 plan did not address two of its four liens on Debtors' real estate. Therefore, KTBS argues, its liens survived the chapter 12 bankruptcy and its claim should be allowed in this chapter 13 bankruptcy. [ECF No. 29 ("Response").]

The Court held a hearing on March 13, 2018, and the matter was submitted on the record. For the reasons set forth below, the Objection is sustained.

I. Debtors' Prior Chapter 12 Case and Background.

Debtors filed a prior chapter 12 case in 2011. Debtors' Schedule A identified all of their real estate, which included two parcels of land in Robertson County:

The real property described in Robertson County Deed book 34, Pg. 97 and the real property described in Robertson County Deed Book 43, Pg. 101. Constituting roughly 126 acres, a house, 5 bent tobacco barn, and greenhouse.

[Case No. 11-22054 ("Chapter 12"), ECF No. 1 at 10.] Their Schedule D listed outstanding ad valorem taxes on both parcels. KTBS purchased four certificates of delinquency related to these

two parcels from the Robertson County Clerk and filed Proof of Claim No. 7-1 in that chapter 12 case in the amount of \$4,487.84. KTBS attached only two of the four certificates of delinquency to its claim.

Debtors' Amended Chapter 12 Plan of Reorganization provided:

The value of the Debtors' real estate, as described in Schedule A filed by the Debtors in the above captioned matter (hereinafter "the Real Estate"), shall be fixed in the amount of One Hundred Sixty-Seven Thousand and 00/100 dollars (\$167,000.00).

[Chapter 12, ECF No. 43 ("Chapter 12 Plan") at 4.] The Chapter 12 Plan also acknowledged:

"[t]he Real Estate is subject to claims for unpaid ad valorem taxes which are superior to the claims of Farmers National Bank of Cynthiana" [*id.*], and identified KTBS as a secured creditor holding a claim for ad valorem taxes:

Kentucky Tax Bill Servicing shall be treated as secured in the amount of Four Thousand Four Hundred Eighty-Sevens [sic] dollars and Eight-Four cents (\$4,487.84) Dollars; Kentucky Tax Bill Servicing holds a lien on the Real Estate of the Debtors of unpaid ad valorem taxes.

[Chapter 12 Plan at 6.]

Article X of the Chapter 12 Plan also provided that secured creditors would retain their liens until the claims are "paid in full as provided by this Plan." [Chapter 12 Plan at 10.] Upon completion of the Chapter 12 Plan:

The entry of the discharge in this matter shall operate as a release of all security interests and liens on the property of the Debtor, other than the liens of Farmers National Bank of Cynthiana, which liens shall be treated as is discussed in Article III of this plan.

[*Id.*] Thus, the Chapter 12 Plan provided that KTBS would retain its liens on all of the Real Estate until it was paid the secured value of \$4,487.84, defined in Article III of the Chapter 12 Plan. Once Debtors completed the Chapter 12 Plan, they would receive a discharge and KTBS'

liens on their Real Estate—specifically including the two parcels in Robertson County—would be released.

KTBS received notice of the Chapter 12 Plan and did not object to it. The Court confirmed the Chapter 12 Plan on March 29, 2012.

Almost three years later, on January 19, 2015, KTBS filed an amended Proof of Claim in the amount of \$12,784.29 and attached two additional certificates of delinquency (the “Subsequent Certificates”). The chapter 12 Trustee objected because the amended Proof of Claim (i) asserted a secured claim in the amount of \$12,784.29 while the Chapter 12 Plan established KTBS’ secured claim at \$4,487.84; (ii) did not provide credit for payments already made through the Chapter 12 Plan, and (iii) was untimely. The objection was sustained.

Debtors completed payments under their Chapter 12 Plan and received their discharge on September 19, 2016. But their financial difficulties continued. Nine months later, KTBS filed a motion for default and summary judgment in a pending prepetition foreclosure action to enforce its liens evidenced by the Subsequent Certificates on Debtors’ second real estate parcel. KTBS maintains that it only exercised its *in rem* rights and did not seek personal liability against Debtors.

Debtors filed this chapter 13 case on August 8, 2017. KTBS filed a Proof of Claim herein in the amount of \$10,088.11 and attached the Subsequent Certificates. To be clear, the Subsequent Certificates are the same certificates attached to the KTBS’ Amended Proof of Claim that the Court disallowed in Debtors’ prior chapter 12 case.

II. Analysis.

The provisions of a confirmed plan bind “the debtor, each creditor, ... whether or not the claim of such creditor ... is provided for by the plan, and whether or not such creditor has

objected to, has accepted, or has rejected the plan.” 11 U.S.C. § 1227(a). A confirmed plan is thus a binding order and is *res judicata* on all matters dealt with at confirmation. *Ford Motor Credit Co. v. Bankr. Estate of Parmenter (In re Parmenter)*, 527 F.3d 606, 609-610 (6th Cir. 2008) (citing *In re White*, 370 B.R. 713, 718 (Bankr. E.D. Mich. 2007)). A creditor “may not take actions to collect debts that are inconsistent with the method of payment provided for in the plan.” *United States v. Richman (In re Talbot)*, 124 F.3d 1201, 1209 (10th Cir. 1997) (quoting 8 COLLIER ON BANKRUPTCY ¶ 1327.02[1][b] (Lawrence P. King ed., 15th ed. 1996)). The confirmed plan thus forms the “exclusive and transcendent relationship” between these Debtors and KTBS. *Salt Creek Valley Bank v. Wellman (In re Wellman)*, 322 B.R. 298, 301 (B.A.P. 6th Cir. 2004) (interpreting the parties’ rights after confirmation of a chapter 13 plan).¹

When a debtor completes a plan, the court grants a discharge “of all debts provided for by the plan.” 11 U.S.C. § 1228(a). Therefore, whether KTBS’ liens survived Debtors’ chapter 12 discharge requires a determination of whether the Chapter 12 Plan provided for those liens. If so, then KTBS cannot act inconsistently with the method of payment set out in the Chapter 12 Plan. *See Talbot*, 124 F.3d at 1209.

A. The Chapter 12 Plan Provided For All of KTBS’ Liens.

A claim is “provided for” by the plan if the plan deals with the claim or refers to it. *See generally Rake v. Wade*, 508 U.S. 464, 474, 113 S. Ct. 2187 (1993) (explaining that the phrase “provided for by the plan” was understood to mean the plan “makes a provision” for, “deals

¹ Fewer courts have interpreted the provisions of chapter 12 of the Code as have interpreted chapter 13. But “[b]ecause chapter 12 was modeled on chapter 13, and because so many of the provisions are identical, chapter 13 cases construing provisions corresponding to chapter 12 provisions may be relied on as authority in chapter 12 cases.” *Hall v. United States*, 566 U.S. 506, 132 S. Ct. 1882, 1889 (2012) (quoting 8 COLLIER ON BANKRUPTCY ¶ 1200.01[5] (Alan N. Resnick & Henry J. Sommer, eds., 16th ed. 2010)).

with,” or “refers to” the claim). Here, Debtors’ Chapter 12 Plan dealt with KTBS’ claim by establishing a secured value for all of KTBS’ tax liens on all of Debtors’ Real Estate.

A chapter 12 plan may “modify the rights of holders of secured claims.” 11 U.S.C. § 1222(b)(2). For example, a debtor may bifurcate a claim into secured and unsecured components according to the value of the collateral, and a plan may establish the value of the secured portion of the claim. 11 U.S.C. §§ 506(a), 1222(b)(2). Once a plan sets the value of the secured claim and that plan is confirmed, the value also becomes binding. *See generally In re Cleveland*, 349 B.R. 522, 534 (Bankr. E.D. Tenn. 2006) (holding that a creditor was bound to the value of its claim specified in the confirmed plan).

The Chapter 12 Plan defined Real Estate to include both parcels of property in Robertson County and acknowledged that the Real Estate was subject to ad valorem tax liens, including tax liens held by KTBS. The Chapter 12 Plan established the value of KTBS’ tax liens on all of that Real Estate at \$4,487.84. Thus, the Chapter 12 Plan: (i) manifested an intent to address all ad valorem tax debts on the Debtors’ Real Estate; (ii) unambiguously defined KTBS as a creditor with liens on the Real Estate that secured ad valorem tax debts; and (iii) provided a secured value for KTBS’ tax liens that would be satisfied through the Chapter 12 Plan.

KTBS did not object. The Chapter 12 Plan was confirmed. The Chapter 12 Plan’s valuation of KTBS’ liens on the Debtors’ Real Estate therefore was determined at confirmation and is *res judicata*. *See In re Blackaby*, Case No. 05-10755, 2006 Bankr. LEXIS 3799, at *8 (Bankr. E.D. Ky. Sept. 21, 2006) (citing *Wellman*, 322 B.R. at 301); *In re Crady*, Case No. 05-54401, Chapter 13, 2006 Bankr. LEXIS 1330, at *9 (Bankr. E.D. Ky. July 14, 2006) (citing *Wellman*, 322 B.R. at 301).

Thus, KTBS cannot seek payment for its liens beyond the secured value established by the Chapter 12 Plan. *See Talbot*, 124 F.3d at 1209. And, by completing their Chapter 12 Plan, Debtors satisfied the debt owed to KTBS in connection with its tax liens and extinguished those liens.

KTBS cites to *In re Duplechain*, 111 B.R. 576 (Bankr. W.D. La. 1990), and *Holloway v. Southeast Ala. Med. Ctr. (In re Holloway)*, 261 B.R. 490 (M.D. Ala. 2001), to support its argument that the Chapter 12 Plan failed to provide for two of its liens and, therefore, the liens survived. Those courts interpreted the specific plan language in each case in reaching the determination that the plans did not provide for the creditors' liens. In *Duplechain*, the debtor's plan failed to acknowledge that the creditor had a lien on farm equipment. *Duplechain*, 111 B.R. at 577. In *Holloway*, the plan treated a secured creditor as having an unsecured claim. *Holloway*, 261 B.R. at 491. Here, the Chapter 12 Plan unambiguously acknowledged that KTBS was a secured creditor with liens on all of Debtors' real estate and provided treatment for those liens. There is no dispute that "*only the liens actually provided for were extinguished.*"

[Response at 5.]

Debtors' confirmed and completed Chapter 12 Plan provided for all of KTBS' liens on Debtors' Real Estate. KTBS cannot now seek satisfaction of those liens in this chapter 13 bankruptcy.

Based on the foregoing, it is ORDERED that Debtors' Objection [ECF No. 27] is SUSTAINED and KTBS' Proof of Claim No. 2-1 is DISALLOWED.

The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.



Signed By:
Tracey N. Wise
Bankruptcy Judge
Dated: Friday, April 13, 2018
(tnw)