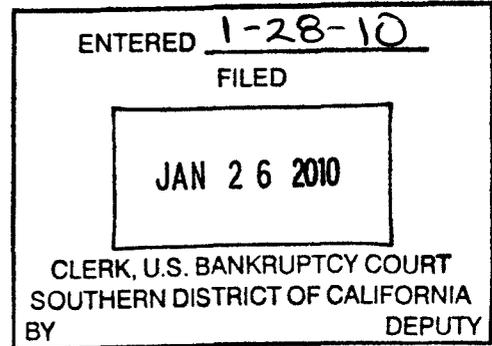


1 **WRITTEN DECISION - NOT FOR PUBLICATION**



8 UNITED STATES BANKRUPTCY COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10

11 In re) Case No. 09-05946-A13

12 ROSE GALLEGOS,)

13 Debtor.)

14

15 This case involves two issues: 1) whether debtor can claim

16 as an expense on her form B22 the payments she is contractually

17 obligated to make on her junior liens which she intends to strip

18 off pursuant to In re Zimmer, 313 F.3d 1220 (9th Cir. 2002); and

19 2) whether debtor may properly invoke the strip off mechanism of

20 In re Zimmer, *supra*, when debtor is not eligible for discharge

21 because of a prior chapter 7 discharge. See 11 U.S.C. § 1328(f).

22 This Court has subject matter jurisdiction over this

23 proceeding pursuant to 28 U.S.C. § 1334 and General Order

24 No. 312-D of the United States District Court for the Southern

25 District of California. This is a core proceeding under

26 28 U.S.C. § 157(b)(2)(a)(1).

1 Consistent with the result reached by the BAP in
2 In re Martinez, 418 B.R. 347 (2009). This Court very recently
3 concluded that a debtor may not claim an expense for payments
4 "contractually due" on junior liens when those junior liens are
5 wholly unsecured because the statute allows such an expense only
6 for secured debts. In re Grant, No. 09-04223-PB13 (Jan. 2010).
7 The premise of debtor's proposed lien strip is that those liens
8 are wholly unsecured - indeed, that is the only way those liens
9 could be stripped off. Debtor cannot have it both ways: Debtor
10 cannot claim the liens as secured debts for B22 expense purposes
11 and, at the same time, claim they are wholly unsecured on
12 Schedule D and propose to strip them off pursuant to Zimmer.

13 Because the Court has concluded that debtor may not properly
14 claim those expenses on her Form B22, the Court finds and
15 concludes that the Chapter 13 Trustee's objection to confirmation
16 of debtor's plan on that ground should be, and hereby is
17 sustained.

18 As noted, this case also raises an important issue
19 concerning whether a debtor ineligible for discharge under
20 11 U.S.C. § 1328(f) may nevertheless invoke the lien strip
21 process of In re Zimmer. Given the Court's resolution of the
22 first issue which, on its own, results in the denial of
23 confirmation of debtor's proposed plan, resolution of the second
24 issue at this time would be advisory because it is not ripe. The
25 Court does not know whether debtor will attempt to amend her
26 ///

1 proposed plan, or whether such a proposal would be feasible.
2 Until the issue ripens, the Court will reserve its analysis.

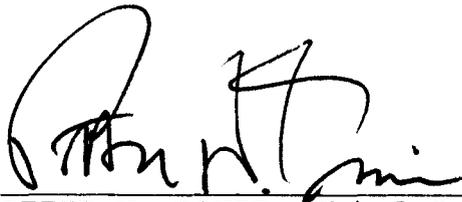
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4 Conclusion

5 For the foregoing reasons, the Chapter 13 Trustee's
6 objection to confirmation of debtor's Chapter 13 plan is
7 sustained on the ground that debtor has failed to commit all
8 disposable income to funding of the plan. Debtor has improperly
9 claimed as an expense on her Form B22 expenses for payments on
10 her junior liens that she elsewhere contends are wholly unsecured
11 obligations. She cannot do both.

12 Debtor shall have thirty (30) days from the date of entry of
13 this Memorandum Decision to file and serve an amended plan. If
14 no amended plan is filed within that time, the Chapter 13 Trustee
15 is authorized to submit an order of dismissal of this case,
16 without prejudice.

17 IT IS SO ORDERED.

18 DATED: JAN 26 2010

19
20 
21 PETER W. BOWIE, Chief Judge
22 United States Bankruptcy Court
23
24
25
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