

**United States Bankruptcy Court  
Northern District of Illinois  
Eastern Division**

**Transmittal Sheet for Opinions for Posting**

**Will this order be Published? Yes**

**Bankruptcy Caption: In re Daniel and Roberta Fenn**

Bankruptcy No. 09 B 49343

**Date of Issuance: June 8, 2010**

**Judge: Judge Jacqueline P. Cox**

**Appearance of Counsel:**

Attorney for Debtor: Ariane Holtschlag

Attorney for Wells Fargo: Todd J. Ruchman

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

|                         |   |                         |
|-------------------------|---|-------------------------|
| In re:                  | ) | Chapter 13              |
|                         | ) |                         |
| DANIEL AND ROBERTA FENN | ) | Case No. 09 B 49343     |
|                         | ) |                         |
|                         | ) |                         |
| Debtors.                | ) | Judge Jacqueline P. Cox |

**ORDER ON OBJECTION TO CLAIM 2  
of Wells Fargo Bank, N.A. (Dkt. No. 43)**

Subsequent to this court's May 17, 2010 Order denying confirmation of the Debtors' April 12, 2010 Plan based on the Debtors' failure to properly provide for the retention of Wells Fargo's junior mortgage lien pursuant to 11 U.S.C. § 1325(a)(5)(B), the Debtors, on May 19, 2010, filed an Objection to Claim No. 2, Wells Fargo's junior mortgage claim. The Debtors contend that Wells Fargo's junior mortgage claim should be disallowed because their personal liability for that debt was discharged in bankruptcy case no. 09 B 18005 on September 1, 2009.

The Debtors, however, do not cite any legal authority for their position that because the creditor's secured claim is classified as an unsecured claim for plan confirmation purposes due to the operation of 11 U.S.C. § 506(a) ( making the claim unsecured because the collateral's value did not exceed the amount of the senior debt), that the unsecured claim should be disallowed. At the May 24, 2010 hearing herein counsel for the Debtors suggested that the claim should be amended.

As a secured creditor Wells Fargo retains an *in rem* claim even though the Debtors are no longer personally liable for the junior mortgage debt. *Johnson v. Home State Bank*, 501 U.S. 78, 87 (1991). Wells Fargo may seek foreclosure on the home/collateral. The lack of personal liability on the part of the Debtors does not justify disallowance of Wells Fargo's junior mortgage claim. There is no legal authority in support of the Debtors' disallowance contentions under 11 U.S.C. § 502 (b) which covers exceptions to allowance of claims.

The Debtors' options regarding providing for secured debt in the chapter 13 context are limited to the options noted at 11 U.S.C. § 1325(a)(5). Those options are with regard to each allowed secured claim provided for by the plan: (1) the secured creditor has accepted the plan - § 1325(a)(5)(A); (2) a debtor may modify the rights of the holder of each secured claim if the holder of the claim retains the lien securing the claim until the earlier of payment of the underlying debt under nonbankruptcy law or discharge under section 1328 and the value of the property to be distributed under the plan is not less than the allowed amount of the claim - § 1325(a)(5)(B) or surrender the property securing the claim pursuant to 11 U.S.C. §1325(a)(5)(C). Section 1325(a)(5)(A) does not apply as the Debtors do not allege that Wells

Fargo has accepted the proposed plan. In fact Wells Fargo has objected to the treatment of its junior mortgage lien in the April 12, 2010 Plan. Section 1325(a)(5)(B) does not help the Debtors as their proposed plan does not include the lien retention language of § 1325(a)(5)(B)(i)(I)(aa) or (bb). Their remaining option is to surrender the collateral/home pursuant to § 1325(a)(5)(C). By not surrendering the collateral, the Debtors must obtain the secured creditor's acceptance or comply with the value and lien retention provisions of § 1325(a)(5)(B).

The Debtors have not explained why the court should disallow Wells Fargo's junior mortgage claim.

The Debtors' Objection to Claim No. 2 is overruled.

**Dated: June 8, 2010**

**ENTERED:**

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**Jacqueline P. Cox**  
**United States Bankruptcy Judge**