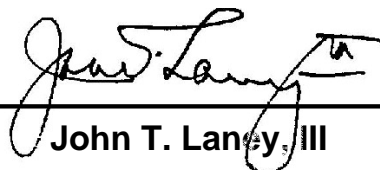


**SO ORDERED.**

**SIGNED this 22 day of December, 2025.**





**John T. Laney, III**  
**United States Bankruptcy Judge**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION**

<b>In re:</b>	)	
	)	
<b>BARRY SIMMONS,</b>	)	<b>CHAPTER 13 BANKRUPTCY</b>
	)	
<b>Debtor.</b>	)	<b>CASE NO. 25-40429-JTL</b>
	)	

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**MEMORANDUM OPINION ON CREDITOR'S  
OBJECTION TO CONFIRMATION**

This contested matter came before the Court during confirmation of the plan filed by the Debtor, Mr. Barry Simmons, and an objection to confirmation filed by Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as certificate trustee of Bosco Credit II

Trust Series 2010-1, the “Creditor.” The Court overrules the Creditor’s objection and will proceed with confirmation of the plan accordingly.

## **I. FACTUAL FINDINGS AND PROCEDURAL POSTURE**

In 2007, the Debtor executed a Promissory Note to Mortgage Electronic Registration Systems, Inc. for a second mortgage on his property located at 2128 Milano Dr, Columbus, Georgia 31903, the “Property”. Proof of Claim 12, p. 17. The Property was already encumbered by a first mortgage, held by Deutsche Bank, which has a proof of claim in the case for \$64,227.05. Proof of Claim 18. The Debtor’s wife did not execute the Promissory Note. Proof of Claim 12, p. 17. She did, however, cosign the Security Deed pledging the property as collateral for the Note. *Id.* at p. 21. The mortgage was assigned from Mortgage Electronic Registration Systems, Inc. to the Creditor in April 2021. *Id.* at p. 24-25.

On June 18, 2025, the Debtor filed this Chapter 13 case. In his schedules, the Debtor listed the value for the Property at \$60,000. Chapter 13 Vol. Pet., Doc. 1. The Debtor filed his Plan, with the following provision:

The property securing the 2nd mortgage with Franklin Credit Management has \$0.00 value above the 1st mortgage and, therefore, upon completion of the Plan, the debt will be discharged and the lien satisfied. Franklin Credit Management or any successor shall file a lien satisfaction with the Superior Court of Muscogee County, Georgia, after the discharge is entered.

Chapter 13 Plan, Doc. 4. Part 6.2.<sup>1</sup> The Creditor objected to the Plan’s confirmation on July 8, 2025, and supplemented its objection on November 19, 2025. Obj. to Confirmation, Doc. 15; Suppl. Obj. to Confirmation, Doc. 23.

The Debtor’s Plan came before the Court for confirmation on December 15, 2025. Hr’g Held, Doc. 27. The Court heard testimony from the parties’ expert witnesses at that time. Hr’g

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<sup>1</sup> Franklin Credit Management Corporation is the servicer of the debt to the Creditor. Proof of Claim 12, p. 5.

Held, Doc. 27. The Court continued oral argument and closing statements to December 18, 2025, at which point the Court heard the parties' arguments and took the matter under advisement.

## **II. LEGAL ANALYSIS**

The Creditor argued that the provision cramming down its interest was inappropriate because the Debtor undervalued the Property and § 506(a)(1) did not apply. Obj. to Confirmation, Doc. 15. The Court finds, given the weight of the evidence that the Property is in disrepair, the Property is worth less than the senior mortgage and the Debtor could strip off the Creditor's mortgage under § 506(a)(1). The Creditor also argued that, because the Debtor's wife signed the Security Deed, the provision releasing the lien to the Property unjustly gives her the benefit of the bankruptcy discharge without her filing bankruptcy herself. Suppl. Obj. to Confirmation, Doc. 23. The Court also finds that the Debtor's wife is not personally obligated under the Promissory Note and the lien must be released as a matter of law both to the Debtor and to his wife upon the Debtor's discharge.

### **a. The Valuation of The Debtor's Property is Less Than the Senior Mortgage, Allowing the Debtor to "Strip Off" the Creditor's Junior Mortgage Under § 506(a)(1).**

The first issue in this case is whether the value of the Property can support the Creditor's lien or whether it can be "stripped off" by virtue of § 506(a)(1). The Court finds that the value of the Debtor's home is insufficient to support the Creditor's lien and § 506(a)(1) applies.

Section 506(a)(1) of the Bankruptcy Code allows a debtor to treat as unsecured a secured debt beyond the valuation of collateral. The Creditor, in this case, holds a second mortgage on the Property. The senior mortgage holder filed a proof of claim for \$64,227.05. Proof of Claim 18. The Debtor's plan valued the property at \$60,000 making the Creditor's security interest eligible for cramdown under § 506(a)(1). Chapter 13 Vol. Pet., Doc. 1. The Debtor's plan

proposes to pay \$0 to the Creditor and requires the Creditor to release the lien on the Property at discharge. Chapter 13 Plan, Doc. 4. Part 6.2. The Creditor argues that the value of the home exceeds \$64,227.05, making their claim at least partially secured and not subject to total cramdown. Obj. to Confirmation, Doc. 15. During the hearing, evidence of valuation was presented by both parties. Hr'g Held, Doc. 27; Hr'g Held, Doc. 29. The Court finds that the Debtor's Property is worth less than \$64,227.05 and cramdown under § 506(a)(1) is permissible.

Neither party disputes that the Property is in a state of disrepair. The home's condition was largely agreed upon by the Debtor, the Creditor's witness, and the Debtor's two witnesses. The witnesses highlighted that the home lacks appropriate heating and cooling, the floors are soft and unsafe to walk on, and the foundation shows signs of significant issues. Hr'g Held, Doc. 27; Hr'g Held, Doc. 29. The expert witness testimony was also consistent with the photographic evidence presented to the Court of the condition of the home. Debtor's Ex. 6. While the Court could continue enumerating the issues with the home, because the parties largely agreed that the home is in poor condition, the Court will instead turn to the disagreement as to how the home's condition affects the Property's valuation.

The Creditor's expert witness, a professional appraiser named John J. Cabral II, provided his report that the Property was worth about \$98,000 considering the repairs necessary. Creditor's Ex.1. p 1. He estimated the house would need \$129,000 in repairs. Hr'g Held, Doc. 27; 41:40, Creditor's Ex.1. p 1. The witness admitted his valuation of the repairs had no supporting estimates or quotes because his client did not request those. Hr'g Held, Doc. 27, 31:48-33:42. The witness's report also includes, as comparable homes, homes that are in considerably better condition than the Debtor's Property. Creditor's Ex.1. p 2, 7-8.

The Debtor's two witnesses testified that the Property was worth significantly less than the Creditor's witness. The Debtor's first witness, a real estate agent named Michael Benson, testified and included in his report that the Debtor's Property was worth \$58,556. Hr'g Held, 27, 1:20:42. Debtor's Ex. 1. Mr. Benson used comparable houses in similar condition with different amenities or sizes to the Debtor's in supporting that valuation because he testified the poor condition of the home was most determinative to determine the market value of the Property. Hr'g Held, Doc. 27, 1:32:20-1:36:59. He also admitted that this would be the top value of the Property and appropriate as a starting asking price. Hr'g Held, Doc. 27, 1:22:00-1:22:26.

The Debtor's second witness, a professional home inspector who had previously worked in home construction named Mickey Ellis, inspected the Property extensively in 2021 and briefly again in 2025. Hr'g Held, Doc. 27, 1:43:00-1:43:57. Mr. Ellis called the home "not livable" in its current condition. Hr'g Held, Doc. 27, 1:54:07. Mr. Ellis's 2021 inspection report summary was admitted into evidence and full inspection was docketed. Debtor's Ex. 4; Exs. filed by Barry Simmons, Doc. 26. He averred that he determined during his brief return to the property in 2025 that the problems reported in the 2021 inspection report had not been repaired and some issues have gotten worse. Hr'g Held, Doc. 27, 1:54:10-1:55:45. Therefore, Mr. Ellis estimated, in total, it would cost the Debtor somewhere between \$204,000 and \$224,000 to repair and brought up to code. Hr'g Held, Doc. 27, 1:58:11- 2:05:07. Mr. Ellis testified that the value of the Property is the land on which it sits, and he would pay \$35,000 to \$40,000 for the lot. Hr'g Held, Doc. 27, 1:56:00-1:56:32.

The Court finds that the weight of the evidence does not support a valuation of the Property above \$64,227.05. The evidence demonstrated that the home is in severe disrepair and cannot be sold as a livable home in its current condition. The comparable houses that formed the

foundation for the Creditor's witness's valuation were not in similar condition to the Debtor's home. The Creditor did not provide evidence or expert testimony to support Mr. Cabral's estimation of the cost to repair the property to the comparable condition. The Court was persuaded by the Debtor's real estate agent's appraisal with comparable homes in disrepair and the repair estimations given by Mr. Ellis, and the Court finds that the Debtor's home is worth, at most, \$58,000. The Creditor's interest in the Debtor's Property is wholly unsecured and can be crammed down in accordance with § 506(a)(1). Thus, the Court overrules the Creditor's objection on this ground.

**b. The Debtor's Plan Provision Releasing the Lien on The Debtor's Property Both as to the Debtor and to The Debtor's Non-Filing Spouse is Permissible.**

The Creditor argued that, even if the Debtor can strip the lien as to his liability and interest in the Property, the Debtor's bankruptcy case cannot compel the Creditor to release the lien as to the Debtor's wife. Because the Debtor and his wife, a non-filing spouse, owned their home as joint tenants, the Creditor claims that the Debtor's Promissory Note binds both the Debtor and his wife as joint tenants. As stated previously, only the Debtor signed the Promissory Note. Proof of Claim 12, p. 17. The Creditor argued that, although only the Debtor signed the Promissory Note, the Debtor's indebtedness encumbered his wife's interest because they own the Property as joint tenants with right of survivorship. The Court finds that Georgia law does not support this finding.

The Debtor cited to the Court, filed as a supplemental brief, the case *Lopez v. Specialized Loan Servicing LLC (In re Lopez)*, 2019 Bankr. LEXIS 3190 (Bankr. E.D. Va. Oct. 7, 2019) to support his opposition to the Creditor's claims. The Debtor argued that the court in *Lopez* found that a lien held in joint tenancy can be stripped both as to the debtor and a non-filing joint tenant.

The Creditor argued *Lopez* was decided based on Virginia property law and Georgia property law would have a different outcome.

The Court agrees with the Creditor that Virginia law formed the basis of the finding by the court in *Lopez* but disagrees with the Creditor's interpretation of Georgia law. The Creditor specifically cited O.C.G.A § 44-6-190(a)(4) to support its argument which, as the Debtor pointed out in argument, applies to the disposition of property in divorce. The Court instead must look at Georgia case law specific to the effect of financial instruments on the joint tenancy relationship described in generally.

The Georgia Supreme Court addressed this issue in *Biggers v. Crook*, 283 Ga. 50, 656 S.E.2d 835 (2008). In *Biggers*, William Biggers and Linda Crook inherited a home as joint tenants with right of survivorship. *Id.* at 50. Mr. Biggers executed a promissory note and deed to secure debt with his interest in the property. *Id.* at 51. The Georgia Supreme Court was asked if, under § 44-6-190, Mr. Biggers severed the joint tenancy relationship by filing the security deed and, if not, whether the promissory note and deed were effective against the joint tenant after the termination of his property interest. *Id.* at 52.

The Georgia Supreme Court made two findings. First, that “the execution of a deed to secure debt by a joint tenant in real property is not such a transfer of all or a part of the grantor's interest in the property as would sever the joint tenancy with right of survivorship.” *Id.* Second, that “the security agreement encumbered William Biggers's interest only” and, at his death, the security interest in his interest terminated because his interest terminated. Thus, under Georgia law, a joint tenant's personal obligation does encumber the interest of another non-signing joint tenant.

Like in the *Biggers* case, the Debtor alone signed the Promissory Note. The Debtor's Promissory Note obliges him to contractual obligations to the Debtor secured by the Debtor's house. This obligation, however, does not bind the non-filing spouse to the contractual obligations of the Debtor. Thus, the Creditor cannot bind the Debtor's wife to the Debtor's contractual obligation under the Promissory Note through her joint tenancy on the home. Discharge of the Debtor for his indebtedness under the Promissory Note is permissible, therefore, under § 506(a)(1), despite the existence of a joint tenant.

The Creditor noted that the Debtor's wife signed the Security Deed securing the Creditor's lien on the property. Proof of Claim 12, p. 21. The Creditor offered this as evidence that the lien on the Property bound the Debtor's wife's interest in the Property, as well as the Debtors. This, the Creditor argued, bars the plan from obliging the Creditor to release its lien on the Property as to the Debtor's wife because she did not declare bankruptcy. This is unpersuasive to the Court.

Under the written terms of the Security Deed, the co-signing spouse has no personal liability for the Promissory Note underlying the transaction. The Security Deed to the Property, attached to the Creditor's Proof of Claim, specifically carves out any personal liability for the Debtor's wife. The Security Deed, in paragraph 11, states: "[a]ny borrower who co-signs this deed, but does not execute the Note...(b) is not personally liable on the Note or under this Deed." Proof of Claim 12, p. 19, ¶ 11. The Debtor's wife's interest in the Property is properly pledged to the Creditor under the Security Deed, while the Promissory Note is effective as to the Debtor. The Debtor's wife's obligation under the Security Deed terminates when the Promissory Note is satisfied. The Creditor, therefore, cannot extend the lien to the Debtor's wife's interest beyond the Debtor's indebtedness under the Promissory Note.

Because the claim would be satisfied and the lien would be stripped in accordance with § 506(a)(1), the Debtor's discharge will cancel the remaining obligations of the Debtor under the Promissory Note. At the discharge of the Debtor, "the debt [to the Creditor] will be discharged and the lien satisfied." Chapter 13 Plan, Doc. 4. In Georgia, the satisfaction of the indebtedness secured by a security deed releases the security deed as a matter of law. *Nw. Carpets, Inc. v. First Nat'l Bank*, 280 Ga. 535, 538, 630 S.E.2d 407, 410 (2006). Therefore, the legal satisfaction of the Debtor's obligation will release the Security Deed by function of law for the interests of both the Debtor and his wife.

The Creditor cited *In re Jackson*, 2012 Bankr. LEXIS 5896 (Bankr. M.D. Ga. Dec. 18, 2012) to support its position that a debtor jointly liable for a debt cannot void the lien of the joint debtor. In *Jackson*, the court found that the lien as to a non-filing co-debtor cannot be released because of the discharge received by a filing co-debtor. The creditor, in that case, could still pursue the deficiency from the non-filing co-debtor after the filing debtor received his discharge.

The debtors in the *Jackson* case, however, were co-debtors and co-signatories on the underlying debt. The creditor in *Jackson* could proceed against the non-filing co-debtor *in personam* because the non-filing co-debtor had a separate personal, contractual obligation to the creditor by nature of her co-signature on the loan agreement. In this case, the Promissory Note was not co-signed by the Debtor. The Security Deed executed by the Debtor's wife pledged her interest as collateral but expressly excepted her from personal liability under the Note. Thus, the finding of enduring personal liability for a non-filing codebtor in *Jackson* is inapplicable to the facts of this case.

In accordance with the language of the Plan, at the Debtor's discharge, the claim by the Creditor to the Debtor's Property will be legally satisfied. Because the lien will be satisfied, the

underlying Security Deed will be released as a matter of law. At the Debtor's discharge, the interest pledged by the Debtor's wife through the Security Deed must be released. Thus, the Court overrules the Creditor's objection on this ground.

### **III. CONCLUSION**

For the reasons stated above, the Court overrules the Creditor's objection. The Court will enter an order stating such and setting a continued confirmation date of the Debtor's plan.

END OF DOCUMENT