11 U.S.C. § 1327(c)
11 U.S.C. § 1328(a)(1)

Murphy v. Lane County, Adv. No. 688-5244
In re Murphy, Case No. 686-07207, Bap NO. OR-89-1934

Snowden v Lane County, Adv. No. 689-6070
In re Snowden, Case No. 684-08688, BAP No. OR-89-2124

3/21/91 BAP affirming PSH Unpublished

On consolidated appeals, the BAP affirmed Judge Higdon's ruling that a prepetition tax lien "provided for" but no paid through a Chapter 13 plan survived bankruptcy and could not be avoided post-discharge. The liens were never paid because no proof of claim had been filed although the debts were listed as secured and payment was provided for in the plans. Held: unless successfully challenged or fully paid, liens are unaffected by a Chapter 13 discharge.

E91-6(6)

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re DAVID JAMES MURPHY & CAROLYN JEAN MURPHY/THOMAS GENE & BETTY JEAN SNOWDEN, Debtor.	BAP No. OR-89-1934-OMeR OR-89-2124-OMeR Bankruptcy No. 686-07207 684-08688 Adversary No. 688-5244-H 689-6070-H
DAVID JAMES MURPHY & CAROLYN JEAN MURPHY, Appellant(s), v. LANE COUNTY, OREGON, Appellee(s).	
THOMAS GENE & BETTY JEAN SNOWDEN, Appellant(s), v. LANE COUNTY, OREGON, Appellee(s).	JUDGMENT

FILED

MAR 21 1991

NANCY B. DICKERSON, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

ON APPEAL from the United States Bankruptcy Court for the District of OREGON.

THIS CAUSE came on to be heard on the record from the above court and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Panel that the judgment of the Bankruptcy Court is AFFIRMED.

BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT
A True Copy
Attest:
Nancy B. Dickerson, Clerk
by Deputy Clerk 4/15/91

FOR THE PANEL,

Nancy B. Dickerson
Panel Clerk

By: Cynthia E. Ashton
Deputy Clerk

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re: DAVID JAMES MURPHY and CAROLYN JEAN MURPHY, Debtors.	BAP No. OR-89-1934-OMeR Bankr. No. 686-07207 Adv. No. 688-5244-H
DAVID JAMES MURPHY and CAROLYN JEAN MURPHY, Appellants, -v- LANE COUNTY, OREGON, Appellee.	
In re: THOMAS GENE SNOWDEN and BETTY JEAN SNOWDEN, Debtors.	BAP No. OR-89-2124-OMeR Bankr. No. 684-08688-W13 Adv. No. 689-6070-H
THOMAS GENE SNOWDEN and BETTY JEAN SNOWDEN, Appellants, -v- LANE COUNTY, OREGON, Appellee.	MEMORANDUM

FILED

MAR 21 1991

NANCY B. DICKERSON, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

Argued and Submitted on
September 13, 1990 at Portland, Oregon

Filed - MAR 21 1991

Appeal from the United States Bankruptcy Court
for the District of Oregon

Honorable Polly S. Higdon, Bankruptcy Judge, Presiding

Before: OLLASON, MEYERS, and RUSSELL, Bankruptcy Judges.

The debtors in these consolidated appeals each filed a complaint to avoid a lien in favor of Appellee Lane County. The bankruptcy court held that the liens were not avoidable in both cases and the debtors appealed. We affirm.

FACTS

Debtors Murphy filed a Chapter 13 plan on February 3, 1986. On April 23, 1986, their plan was confirmed by the bankruptcy court. The plan provided for payments to appellee Lane County in the amount of $906.00. Because Lane County had a valid pre-petition tax lien on the debtors' home, the plan listed the county's claim as secured, and provided that "secured creditors shall retain their liens until their allowed secured claims have been paid."

No payments were made to Lane County under the plan or otherwise. Lane County filed no proof of claim against the estate. On November 25, 1988, debtors were discharged in bankruptcy. Thereafter, debtors commenced an adversary proceeding in the bankruptcy court to avoid the lien held by Lane County. That matter was decided on cross-motions for summary judgment based on stipulated facts. The bankruptcy court held that Lane County's lien remained enforceable, notwithstanding the bankruptcy discharge.

Debtors Snowden filed a third modified Chapter 13 plan on October 29, 1985. It provided for payments to Lane County in the amount of $9,032.00 as a secured claim. That plan also provided that "Secured creditors shall retain their liens until their allowed secured claims have been paid." That plan was

confirmed on May 2, 1986. The Snowdens were discharged in bankruptcy on March 30, 1989. On May 2, 1989, they commenced an adversary proceeding seeking to avoid Lane County's lien. It was dismissed by the bankruptcy court on October 10, 1989. In that order of dismissal, the court made reference to the dismissal in the Murphy case and incorporated by that reference the reasoning in the Murphy case.

In neither case did the debtors file a proof of claim for the county or make any effort to avoid the lien until they filed their post-discharge complaints. In the adversary complaints they alleged that since Lane County failed to file a proof of claim their claim was deemed denied notwithstanding their inclusion in the plan. They also alleged that since the plan "provided for" the obligation owed to Lane County by listing it, the property of the estate of the debtor would vest in them "free and clear of any claim or interest of any creditor. . .." 11 U.S.C. §1327(c).

ISSUE

Both consolidated appeals present the same question of law: Does the discharge order in a Chapter 13 case extinguish a lien when the underlying obligation has not been satisfied as provided in the plan? We review the bankruptcy court's conclusions of law de novo.

DISCUSSION

In both cases, debtors assert that by properly providing for a secured creditor in a Chapter 13 plan, the discharge order extinguishes the lien whether the claim is paid

or not. Debtors cite In re Work, 58 BR 868 (Bankr.D.Or. 1986), in support of that proposition.

As in the case at bar, Work involved a secured claim of a governmental entity for real property taxes. The debtors in Work mentioned the secured claim at issue in their plan, but did not correctly list it as a secured debt. Debtors here apparently seized upon the following language from Work:

> In order for a claim or interest to be provided for by a plan, the plan must acknowledge the claim or interest and make explicit provision for the treatment of the claim or interest. In re Gregory, 19 B.R. 668, 8 B.C.D. 1309 (BAP 9th Cir. 1982) [footnote omited]. Since Plaintiff's plan made no provision for the Defendant's lien in their plan, the residence which vested in Plaintiffs after confirmation remains subject to Douglas County's lien.
>
> Had the debtors desired to "provide for" the lien of the Defendant in their plan, they could have made provision therefore in paragraph 2(b). In re Work, 58 B.R. at 871.

Debtors contend that since they "provided for" the liens of appellee by properly listing them in their plans, 11 U.S.C. section 1327 has caused the liens to be extinguished. That section provides, in part:

> (b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all property of the estate in the debtor.
>
> (c) Except as otherwise provided in the plan or the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

Debtors have misconstrued the holding in Work. The benefits to be derived from providing for a secured claim in a

Chapter 13 plan are conditioned upon compliance with the plan:

> By adding the name of the Defendant to this paragraph they would have been providing that the trustee pay the debt and that the Defendant retain its lien until the amount owing upon the lien was paid. Such a provision would have been in compliance with §1325(a)(5)(B). In re Work, 58 B.R. at 871.

Section 1328(a), which controls the Chapter 13 discharge, specifically provides that secured debts which are not fully paid during the course of the plan are not affected by the discharge order. 11 U.S.C. section 1328(a)(1). See In re Hines, 20 B.R. 44, 49 (Bankr. S.D. Ohio 1982); In re Work, 58 B.R. at 873.

Work also noted the long-standing general rule that those claimants with valid, pre-petition security interests may refuse to participate in the bankruptcy proceedings and rely upon their liens for repayment. Id. at 869. That rule is now found in 11 U.S.C. §506(d), which codified judicial decisions dating back to Long v. Bullard, 117 U.S. 617, 620-21 (1886), and which provides, in essence, that liens pass through bankruptcy unaffected. See generally In re Junes, 99 B.R. 978, 980-81 (9th Cir. BAP 1989) (tracing judicial and legislative history of proposition that liens pass through bankruptcy unaffected). For that reason, the fact that Appellee never filed a proof of claim does not change the outcome. As the Work court observed: "It would be anomalous to read §1327(c) to allow a debtor to reap a windfall because of the failure of a creditor secured by a lien to file a claim."

Debtors also appear to have misconstrued their own plans, which provided, in each of these consolidated appeals,

that appellee would retain its liens until they were fully paid. Sections 1327(b) and 1327(c) do not apply, by their own terms, to circumstances where, as here, the plan or confirmation order provides a different result. As the panel recognized in Junes, supra, 99 B.R. at 981, "there appears to be no sound reason for lifting liens by operation of law at confirmation under Chapter 13." Nor is there any sound reason to extinguish the lien of a creditor who has been paid nothing under a plan which provided that the lien would remain until satisfaction of the underlying obligation. The windfall sought by the debtors is at odds with the language of their plans and the Bankruptcy Code.

CONCLUSION

Debtors' plans provided that the subject liens would remain in place until the underlying debts were paid. Although the liens were thus acknowledged, they were not satisfied due to the lack of payments. Regardless, unless successfully challenged or fully paid, liens are unaffected by a Chapter 13 discharge.

Affirmed.

PROOF OF SERVICE OF MANDATE

I, Cynthia E. Ashton, sent a certified copy of the attached judgment

to CLERK

U. S. Bankruptcy Court

at P.O. BOX 1335
(address)

EUGENE, OREGON 97440

on 4/15/91
(date)

Cynthia E. Ashton

Cynthia E. Ashton
Deputy Clerk