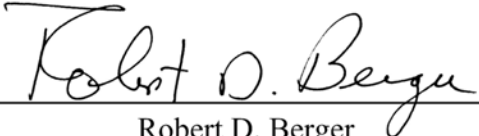


The relief described hereinbelow is SO ORDERED.

SIGNED this 10th day of June, 2026.




Robert D. Berger
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

TIMOTHY J. STEGER,

Case No. 24-21309

Chapter 13

Debtor.

**ORDER OVERRULING WELLS FARGO'S OBJECTION TO
CONFIRMATION OF SECOND AMENDED CHAPTER 13 PLAN**

Debtor Timothy Steger and his wife own their Kansas home as joint tenants. In 2022, they granted creditor Wells Fargo Bank, N.A., a second-priority mortgage on their home as security for a \$609,000.00 loan to Steger's LLC, which used the money to purchase a lawn-care business. Steger also personally guaranteed the loan, but his wife did not. (Thus, although Wells Fargo has a mortgage on property

owned in joint tenancy by Steger and his wife, only Steger is liable for the underlying debt.)

On October 1, 2024, Steger filed a voluntary Chapter 13 bankruptcy petition. Creditor Onslow Bay Financial LLC, which holds the first-priority mortgage on the Stegers' home, filed a secured claim for \$239,227.91.¹ Wells Fargo filed a claim for \$495,309.07, asserting that \$208,769.08 of that amount is secured by its second-priority mortgage.² Steger's proposed Chapter 13 plan, however, treats only \$79,531.08 of Wells Fargo's claim as secured.³ The plan also contains a nonstandard provision that requires Wells Fargo to release its lien on Steger's wife's interest in the home upon entry of Steger's Chapter 13 discharge.⁴

This matter is before the Court on Wells Fargo's objection to plan confirmation.⁵ Wells Fargo argues that Steger's plan was not "proposed in good faith" as required by 11 U.S.C. § 1325(a)(3) because it (according to Wells Fargo) undervalues the Stegers' home and impermissibly benefits Steger's non-debtor

¹ Claim 5-1.

² Claim 6-1; *cf.* 11 U.S.C. § 506(a)(1) ("An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property.").

³ *See* Second Am. Plan § 10.5, ECF 28.

⁴ *See id.* § 18.

⁵ ECF 33. This Court has jurisdiction under 28 U.S.C. § 157(b)(1) because plan confirmation arises under 11 U.S.C. § 1325(a) and is a core proceeding under 28 U.S.C. § 157(b)(2)(L). Venue is appropriate under 28 U.S.C. § 1409(a). Wells Fargo appears by attorneys Thomas Fritzlen and Beverly Weber. Steger appears by attorney Colin Gotham.

spouse.⁶ Having conducted a valuation hearing and reviewed the parties' post-hearing briefs, the Court concludes that the plan does not undervalue Steger's home, does not impermissibly benefit Steger's non-debtor spouse, and was proposed in good faith under § 1325(a)(3). For those reasons, the Court will overrule Wells Fargo's objection to confirmation.

I. Findings of Fact

Timothy Steger is a strategic-sourcing engineer-slash-specialist for Collins Aerospace.⁷ He and his wife have been married for nine years and have three children.⁸ The two younger children are college-aged; the eldest has high-functioning autism and is unable to live independently.⁹

A. Steger's home (Wells Fargo's collateral)

Steger and his wife own their home in Overland Park, Kansas, as joint tenants.¹⁰ They purchased it for \$326,300 in May 2021.¹¹ The \$326,300 purchase price included \$9,275 for personal property including furniture, appliances, and

⁶ See Obj. to Confirmation ¶¶ 5, 7, ECF 33.

⁷ Tr. 9, ECF 58.

⁸ Tr. 9.

⁹ Tr. 9.

¹⁰ See Mortgage, Claim 5-1 Part 2.

¹¹ Tr. 18-19.

arcade-style video games.¹² Creditor Onslow Bay Financial has a first-priority mortgage on the home.¹³

The Stegers' home was built in 1987.¹⁴ It has four bedrooms, two full bathrooms, and two half bathrooms, one of which is in the basement and does not add to the home's value.¹⁵ The home is located on a busy street and faces apartment buildings to the east and southeast.¹⁶ Its back yard looks onto two single-family homes that are currently rented out.¹⁷

The Stegers' home has a number of significant issues. The basement floods in heavy rain; Steger has to use a Shop-Vac to minimize the standing water.¹⁸ The middle of the garage floor has sunk by four inches, creating a bowl for water that Steger removes with a squeegee.¹⁹ The garage is sinking away from the foundation.²⁰ The foundation itself is cracked, as is the basement floor.²¹ The basement drywall is peeling away from the ceiling and an adjacent wall.²² The

¹² Tr. 19-21.

¹³ See Mortgage, Claim 6-1 Part 3; *cf.* Transfer of Claim Servicing, ECF 48 (transferring servicing from Flagstar Bank, N.A., to Nationstar Mortgage LLC).

¹⁴ Tr. 22.

¹⁵ Tr. 35, 71.

¹⁶ Tr. 31, 66, 72-73, 89.

¹⁷ Tr. 31.

¹⁸ Tr. 22, 24, 71-72; Ex. I, Debtor - 000129; Ex. P.

¹⁹ Tr. 24-25; Ex. I, Debtor - 000129; Ex. J, Debtor - 000147; Ex. O.

²⁰ Tr. 22. The trim on the door between the garage and the house is popping out of the frame. Tr. 25; Ex. J, Debtor - 000143.

²¹ Tr. 23-24; Ex. J, Debtor - 000144-146; Ex. P.

²² Tr. 26; Ex. I, Debtor - 000129; Ex. N.

floors are worn; the carpet is at the end of its life and the wood flooring needs to be re-sanded and re-stained.²³ The HVAC system is aged and requires frequent repair.²⁴ The roof is likely original to the house.²⁵ Some of the interior wood trim has been chewed by the Stegers' Great Dane.²⁶ And the weekend before the valuation hearing, Steger noticed wood rot on the deck.²⁷

The home's condition has worsened since the Stegers purchased it in 2021.²⁸ At that time, the basement was not leaking; the ceiling was not peeling; and the wood trim, carpets, and garage floor were in better shape.²⁹ To the extent the current issues existed in 2021, Steger was not aware of their severity.³⁰ The Stegers' financial problems have prevented them from making the necessary repairs.³¹

Appraiser Richard Cunningham³² assessed the overall condition of the Stegers' home as "fair," meaning that the home is livable, but needs a lot of work.³³

²³ Tr. 22, 30-31, 73.

²⁴ Tr. 22, 27-29.

²⁵ Tr. 30.

²⁶ Tr. 22, 29.

²⁷ Tr. 30.

²⁸ Tr. 40, 60-61.

²⁹ Tr. 38-39.

³⁰ Tr. 39-40.

³¹ Tr. 21, 29, 40, 61.

³² Cunningham, who appraised the home for Steger, has been in the appraisal business since 1970. Tr. 64. He started his own business in 1975 and has been licensed since the mid-1980s. *Id.* He appraises properties every week. *Id.*

³³ Tr. 67-68. This assessment did not include the issues with the HVAC system or the potential age of the roof, which Cunningham testified would have affected his valuation. Tr. 68, 71, 74.

He rated the condition of the foundation, interior floors, interior walls, and trim as “fair” and the rest of the exterior as “average.”³⁴ He estimated the home’s effective age as 40 years.³⁵ He testified that it would take approximately \$30,000 in repairs to improve the home’s overall condition to “average.”³⁶ Cunningham used comparable sales from December 2022 and January 2023 to value the home at \$310,000.³⁷ He testified that properties do not always increase in value, and that the value of the Stegers’ home had not increased since 2021 due to its deferred maintenance.³⁸

On cross, Cunningham agreed that in general, more recent sales are a better indication of market value.³⁹ However, he disagreed that “best practices” require comparable sales to have occurred within 6 months of an appraisal, or that sales more than a year old are necessarily “less reliable.”⁴⁰

Appraiser Aaron Johnson⁴¹ assessed the overall condition of the Stegers’ home as “C4,” meaning that the home features minimal deferred maintenance and

³⁴ Tr. 65.

³⁵ Tr. 66.

³⁶ Tr. 66-67, 74.

³⁷ Residential Appraisal Report, Ex. I, Debtor - 000121. Cunningham testified that he should have adjusted his valuation based on the home’s location on a busy street. Tr. 77-78.

³⁸ Tr. 78.

³⁹ Tr. 84.

⁴⁰ Tr. 83-84.

⁴¹ Johnson, who appraised the home for Wells Fargo, has been in the appraisal business since 2002. Tr. 99. He became licensed in 2004 and has worked independently since 2008. *Id.*

requires minimal repairs.⁴² He rated the condition of the foundation as “good” and the rest of the exterior as “average.”⁴³ He valued the home as if it had a third full bathroom.⁴⁴ He estimated the home’s effective age as 20 years.⁴⁵ Johnson used comparable sales from June, August, and December 2024 to value the home at \$450,000.⁴⁶ In selecting comparable sales, Johnson excluded all properties sold for less than \$328,250.⁴⁷

On cross, Johnson testified that if he had observed all of the problems described by Steger and Cunningham—failing HVAC, sinking garage floor, foundation problems, water infiltration, pet damage, older roof, and inadequate paint and flooring—he would have downgraded his rating to “C5.”⁴⁸ Johnson stated that he should have rated the foundation’s condition as “average” and that the home

⁴² Tr. 107-08; Uniform Appraisal Dataset (UAD) Definitions Addendum, Ex. 4, Wells Fargo - 000076. The two appraisals were different because Cunningham’s was for homeowners, whereas Johnson’s was for finance. Tr. 69.

⁴³ Tr. 107, 109.

⁴⁴ Tr. 124-25; Uniform Residential Appraisal Report, Ex. 4, Wells Fargo - 000065.

⁴⁵ Tr. 127-28.

⁴⁶ Tr. 113; Uniform Residential Appraisal Report, Ex. 4, Wells Fargo - 000065.

⁴⁷ Uniform Residential Appraisal Report, Ex. 4, Wells Fargo - 000065. Similarly, Johnson’s market analysis only considered properties sold between \$350,000 and \$550,000. *See* Market Analysis, Trial Ex. 5, Wells Fargo - 000098. The Court affords the market analysis, which Wells Fargo offered to demonstrate “sales trends,” Tr. 114-15, zero weight because Wells Fargo offered no evidence that the analysis was statistically significant or that Johnson was qualified under Fed. R. Evid. 702 to offer an expert statistical opinion.

⁴⁸ Tr. 124. “C5” means that the home features obvious deferred maintenance and needs some significant repairs. Uniform Appraisal Dataset (UAD) Definitions Addendum, Ex. 4, Wells Fargo - 000076. Cunningham testified that he would have rated the home’s overall condition as “C5.” Tr. 69.

did not have a third full bathroom, but testified that correcting those mistakes would not change his valuation.⁴⁹ Johnson thought that the home's location across the street from an apartment complex did not affect its value, reasoning that one of his three comparable sales backed onto a cemetery and had sold in seven days.⁵⁰

Steger's testimony was entirely credible, as was Cunningham's. Johnson's testimony was somewhat credible, but less so than Steger's or Cunningham's. Consequently, the Court adopts Cunningham's valuation and finds that the value of Steger's home is \$310,000 for purposes of plan confirmation.

B. The lawn-care business (Wells Fargo's loan)

Steger's company, T&A Support LLC, borrowed \$609,000 from Wells Fargo in 2022 to purchase a lawn-care business.⁵¹ As collateral for the loan, Steger and his wife granted Wells Fargo a second-priority mortgage on their home.⁵² Steger also personally guaranteed the loan, but his wife did not.⁵³ Thus, Steger's wife is not personally liable for the debt to Wells Fargo.

Steger bought the lawn-care business because he wanted additional income to help pay for his children's college educations.⁵⁴ However, he "proved to be a

⁴⁹ Tr. 124-25.

⁵⁰ Tr. 126.

⁵¹ Tr. 9-10; *see* Promissory Note, Claim 5-1 Part 2.

⁵² Tr. 10; *see* Mortgage, Claim 5-1 Part 2. Because the Property is the Stegers' homestead, Steger could not grant the mortgage without his wife's consent. *See* Kan. Const. Art. 15, § 9.

⁵³ *See* Commercial Guaranty, Claim 5-1 Part 2.

⁵⁴ Tr. 9.

novice very quickly,” and the business went underwater almost immediately.⁵⁵ By May 2022, Steger had lost his entire workforce and two-thirds of his customers.⁵⁶ He stopped paying himself anything from the business in August 2022.⁵⁷ He took money from his personal savings, cashed in a long-term IRA, and withdrew from his children’s savings and college accounts to keep the business afloat into 2023.⁵⁸ In the summer of 2023, he unsuccessfully attempted to restructure the loan with Wells Fargo.⁵⁹ He was working 60 hours per week at the lawn-care business for no pay in addition to working 40 hours at his regular job.⁶⁰ He developed insomnia, stress, and other medical concerns.⁶¹ By the fall of 2023, the business had only \$10,000 in the bank but needed \$100,000 to continue through the first mow of the next year.⁶²

Around December 2023, Steger decided to close the business.⁶³ He did everything he could to assist Wells Fargo with collecting and auctioning the trucks, mowers, and fertilizer equipment that served as collateral for its loan.⁶⁴ Due to his remaining debt, he filed for bankruptcy in October 2024.⁶⁵

⁵⁵ Tr. 10.

⁵⁶ Tr. 10-11.

⁵⁷ Tr. 11.

⁵⁸ Tr. 11.

⁵⁹ Tr. 11-12.

⁶⁰ Tr. 12.

⁶¹ Tr. 12.

⁶² Tr. 12.

⁶³ Tr. 12-13.

⁶⁴ Tr. 13-14.

⁶⁵ Tr. 14.

II. Procedural History

Steger filed his voluntary Chapter 13 bankruptcy petition on October 1, 2024.⁶⁶ His Schedule A/B listed the current value of his interest in the home as \$290,000.00.⁶⁷ Onslow Bay Financial, which holds the first-priority mortgage on the home, filed a secured claim for \$239,227.91.⁶⁸ Wells Fargo filed a claim for \$495,309.07 and asserted that \$208,769.08 of that amount is secured by its second-priority mortgage.⁶⁹

Steger originally proposed a Chapter 13 plan that treated \$48,769.08 of Wells Fargo's claim as secured and paid nothing to unsecured creditors.⁷⁰ The plan also contained a nonstandard provision:

Completion of the Chapter 13 Plan will extinguish the second mortgage of Wells Fargo (SBA), and upon entry of the Order of Discharge, Wells Fargo (SBA) shall release its mortgage on the Debtor and the Debtor's spouse's interest in the real property.⁷¹

⁶⁶ Voluntary Petition for Individuals Filing for Bankruptcy, ECF 1.

⁶⁷ Schedule A line 1.1, ECF 1.

⁶⁸ Claim 5-1.

⁶⁹ Claim 6-1.

⁷⁰ Chapter 13 Plan §§ 3.1, 10.5, ECF 2. Steger likely arrived at the \$48,769.08 figure by subtracting \$241,230.92, the amount of Onslow Bay's secured claim listed on his Schedule C, from the \$290,000 value of the home listed on his Schedule A/B.

⁷¹ Chapter 13 Plan § 18, ECF 2.

Steger then amended his plan to provide that the combined disposable income of Steger and his wife—a total of \$30,762.00 over five years—would be paid to unsecured creditors.⁷²

After Wells Fargo objected to confirmation of the amended plan, Steger proposed the second amended Chapter 13 plan at issue here. Steger's second amended plan (which this order will refer to as "the plan" going forward) treats \$79,531.08 of Wells Fargo's claim as secured; pays nothing to unsecured creditors; and contains the same provision requiring Wells Fargo to release its lien on Steger's wife's interest in the home upon entry of Steger's Chapter 13 discharge.⁷³ Wells Fargo again objected to confirmation, arguing that Steger's plan was not "proposed in good faith" as required by 11 U.S.C. § 1325(a)(3) because it (according to Wells Fargo) "severely understates the value of the [home]" and "proposes to afford [Steger's wife] the protections of the Bankruptcy Code without joining in the bankruptcy case."⁷⁴ To the second point, Wells Fargo's trial brief adds that "the unilateral action of a single joint tenant, coupled with the fact that [neither] the

⁷² First Am. Chapter 13 Plan §§ 3.1, 10.5, 18, ECF 19; *cf.* Chapter 13 Calculation of Your Disposable Income line 45, ECF 21 (reflecting combined disposable income of \$512.70 per month).

⁷³ Second Am. Chapter 13 Plan §§ 10.5, 18, ECF 28. At the hearing, Steger's counsel stated: "[I]n the previous plan we had a -- what's called a pool for unsecured creditors [of] roughly \$30,000, and in the amended plan we took that from the unsecured creditors and simply applied it to Wells Fargo." Tr. 18. This is not quite accurate because the first amended plan would have paid unsecured creditors a total of \$30,762 over time, whereas the second amended plan increases the *present value* of the payments to Wells Fargo by \$30,762—meaning that Wells Fargo will be paid an additional \$30,762 plus interest over time.

⁷⁴ See Obj. to Confirmation ¶¶ 5, 7, ECF 33.

non-debtor nor their interest is before the court, is unable to strip or remove a lien from the joint tenancy property.”⁷⁵

III. Conclusions of Law

Under 11 U.S.C. § 1325(a)(3), a Chapter 13 plan must be “proposed in good faith and not by any means forbidden by law.”⁷⁶ Good faith is determined on a case-by-case basis under the totality of the circumstances. *See Anderson v. Cranmer (In re Cranmer)*, 697 F.3d 1314, 1318 (10th Cir. 2012). “A bankruptcy court must consider ‘factors such as whether the debtor has stated his debts and expenses accurately; whether he has made any fraudulent misrepresentation to mislead the bankruptcy court; or whether he has unfairly manipulated the Bankruptcy Code.’” *Id.* at 1319 n.5 (quoting *Educ. Assistance Corp. v. Zellner*, 827 F.2d 1222, 1227 (8th Cir. 1987)).⁷⁷ Only if there has been a showing of serious debtor misconduct or abuse should a Chapter 13 plan be found lacking in good faith. *Collier on Bankruptcy* ¶ 1325.04 (Richard Levin & Henry J. Sommer eds., 16th ed.).

⁷⁵ Wells Fargo’s Reply 5, ECF 54.

⁷⁶ The requirements of § 1325(a) are mandatory for confirmation, and the debtor has the burden of proving that they have been met. *See Wachovia Dealer Servs. v. Jones (In re Jones)*, 530 F.3d 1284, 1290 (10th Cir. 2008); *Alexander v. Hardeman (In re Alexander)*, 363 B.R. 917, 922 (B.A.P 10th Cir. 2007).

⁷⁷ Prior to BAPCPA, courts in the Tenth Circuit applied the factors listed in *United States v. Estus (In re Estus)*, 695 F.2d 311, 317 (8th Cir. 1982), and adopted in *Flygare v. Boulden*, 709 F.2d 1344, 1347-48 (10th Cir. 1983), to determine whether a Chapter 13 plan was proposed in good faith. However, BAPCPA amended the Bankruptcy Code to include § 1325(b)—which “subsumes most of the *Estus* factors” such that the good-faith inquiry now “has a more narrow focus.” *In re Cranmer*, 697 F.3d at 1319 n.5 (quoting *Zellner*, 827 F.2d at 1227).

A. Valuation

Section 1322(b)(2) of the Bankruptcy Code permits a Chapter 13 plan to “modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor’s principal residence.” Here, because Wells Fargo’s claim is secured by other collateral in addition to Steger’s home,⁷⁸ § 1322(b)(2) permits Steger’s plan to cram down Wells Fargo’s claim under §§ 506(a) and 1325(a)(5)(B).

Under § 1325(a)(5)(B), the present value of payments to a secured creditor under a Chapter 13 plan must equal the allowed amount of the creditor’s secured claim if the debtor elects to retain the collateral. The amount of the secured claim is determined under § 506(a), which bifurcates the claim into secured and unsecured portions determined by the value of the collateral:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of the such creditor’s interest in such property . . . , and is an unsecured claim to the extent that the value of such creditor’s interest . . . is less than the amount of such allowed claim.⁷⁹

11 U.S.C. § 506(a)(1); *see Assocs. Com. Corp. v. Rash*, 520 U.S. 953, 961 (1997):

For example, if creditor A has a claim in the amount of \$7,000 which is secured by property valued at \$10,000 and creditor B has a claim of \$7,000 on that same property but is junior to the claim of creditor A, then creditor A has a secured claim for \$7,000 and creditor B

⁷⁸ *See supra* page 9.

⁷⁹ 11 U.S.C. § 506(a)(1).

has both a secured claim for \$3,000 and an unsecured claim for \$4,000.⁸⁰

The senior lienholder here, Onslow Bay Financial, has filed a secured claim for \$239,227.91. Under §§ 506(a) and 1325(a)(5)(B), then, the amount of Wells Fargo's secured claim—and the minimum present value of the payments Wells Fargo must receive under Steger's Chapter 13 plan on account of that claim—are calculated by subtracting \$239,227.91 from the value of Steger's interest in the home.

Steger's plan, which treats \$79,531.08 of Wells Fargo's claim as secured, implicitly values Steger's interest in the home at \$239,227.91 (the balance on Onslow Bay's claim) plus \$79,531.08, or \$318,758.98. By arguing that Steger's interest in the home is worth \$450,000.00, Wells Fargo is implicitly arguing that Steger's plan should treat \$450,000.00 minus \$239,227.91, or \$210,772.09, of its claim as secured—and that Wells Fargo is entitled to receive payments with a present value of \$210,772.09 under Steger's Chapter 13 plan. That said, Wells Fargo invokes neither § 506(a) nor § 1325(a)(5)(B). Instead, Wells Fargo argues *only* that Steger's plan was not proposed in good faith for purposes of § 1325(a)(3).

Cunningham, a highly-credible appraiser with more than 50 years of experience, valued Steger's home at only \$310,000. Steger's plan implicitly values

⁸⁰ *Norton Creditors' Rights Handbook* § 9.4; see *Collier on Bankruptcy* ¶ 506.03 ("In general, the amount of debt secured by senior liens must be deducted in determining the extent to which a junior creditor holds an interest in the estate's interest in the collateral and, hence, the extent to which the junior creditor holds a secured claim.").

his interest in the home at \$318,758.98, nearly nine thousand dollars above that amount. In light of Cunningham’s appraisal, the Court easily concludes that Steger’s plan was proposed in good faith under § 1325(a)(3).

B. Mortgage release

“English common law provided three legal structures for the concurrent ownership of property that have survived into modern times: tenancy in common, joint tenancy, and tenancy by the entirety.” *United States v. Craft*, 535 U.S. 274, 279 (2002) (citation omitted).

1. Forms of concurrent ownership: tenancy in common, joint tenancy, tenancy by the entirety/entireties

In a tenancy in common,⁸¹ two or more people own fractional shares in property.⁸² A tenancy in common requires “unity of possession,” meaning that each cotenant has the right to use and enjoy the entire property as would a sole owner. A tenant in common may unilaterally convey or encumber his share of the property. There is no right of survivorship; when one tenant in common dies, his fractional share passes to his heirs, not his cotenants.

⁸¹ 86 C.J.S. Tenancy in Common § 4; 2 Tiffany Real Prop. § 426 (3d ed.).

⁸² The property itself is “undivided,” meaning that it is not physically partitioned. See Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 54 (2d ed. 1984). Each fractional share includes the entire “bundle of rights” associated with the property. Cf. *Walshire v. United States*, 288 F.3d 342, 347-48 (8th Cir. 2002) (defining “undivided” for purposes of 26 U.S.C. § 2518).

In a joint tenancy,⁸³ each tenant owns the entire property. Joint tenancy requires unity of possession plus unity of interest, title, and time.⁸⁴ “Unity of interest” means that all joint tenants have interests of the same duration.⁸⁵ “Unity of title” means that the joint tenants’ interests were created by the same instrument. “Unity of time” means that the joint tenants’ interests all vested at the same time. Joint tenancy includes the right of survivorship: when one joint tenant dies, his interest passes automatically to his surviving cotenants.⁸⁶ Due to the right of survivorship, a joint-tenancy interest cannot be devised or inherited. A joint tenant may unilaterally convey or encumber his interest, but doing so severs the joint tenancy and converts it to a tenancy in common. Similarly, a joint tenant’s creditor may attach his interest, but execution would sever the joint tenancy and convert it to a tenancy in common.

⁸³ 48A C.J.S. Joint Tenancy § 1; 2 Tiffany Real Prop. § 418 (3d ed.); 20 Am. Jur. 2d Cotenancy and Joint Ownership §§ 4, 5.

⁸⁴ “In other words, joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession.” 2 Tiffany Real Prop. § 418 (3d ed.); see *Craft*, 535 U.S. at 280 (quoting 2 W. Blackstone, *Commentaries on the Laws of England* 180 (1766)).

⁸⁵ “Unity of interest” does not—at least in Kansas—require joint tenants to have the same *amount* of interest. See *In re Lasater*, 54 P.3d 1021, 1025 (Kan. Ct. App. 2002).

⁸⁶ Since each joint tenant already owns the entire property, it might be more precise to say that when a joint tenant dies, his interest in the property is extinguished. See Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 55 (2d ed. 1984) (“The deceased tenant’s ownership is simply thought to cease upon his death”); cf. *Cohen v. Chernushin (In re Chernushin)*, 911 F.3d 1265, 1273 (10th Cir. 2018) (“Upon Mr. Chernushin’s death, . . . [t]he joint tenancy held by the estate extinguished automatically.”).

In a tenancy by the entirety (or entireties),⁸⁷ a husband and wife own the entire property as a single entity. It is “essentially a form of joint tenancy, modified by the common-law theory that husband and wife are one person.”⁸⁸ Like joint tenancy, tenancy by the entireties requires the “four unities” of interest, title, time, and possession and includes a right of survivorship. However, unlike joint tenancy, neither spouse may unilaterally convey or encumber his or her interest, and one spouse cannot unilaterally sever the tenancy.

2. Good faith

As stated above, Steger’s Chapter 13 plan requires Wells Fargo to release its lien on Steger’s wife’s interest in the home upon entry of Steger’s Chapter 13 discharge. Wells Fargo argues that this provision was not proposed in good faith “because it proposes to afford [Steger’s wife] the protections of the Bankruptcy Code without joining in the bankruptcy case,”⁸⁹ adding that “neither she nor her interest in the property is currently before the court.”⁹⁰ To support its argument, Wells Fargo cites three cases: *Hunter v. Citifinancial, Inc. (In re Hunter)*, 284 B.R. 806 (Bankr. E.D. Va. 2002); *In re Pierre*, 468 B.R. 419 (Bankr. M.D. Fla. 2012); and *Alvarez v. HSBC Bank USA, N.A. (In re Alvarez)*, 733 F.3d 136 (4th Cir. 2013).

⁸⁷ 41 C.J.S. Husband and Wife; Spouses § 18; 2 Tiffany Real Prop. § 430 (3d ed.). Kansas no longer recognizes tenancy by the entirety as a form of property ownership. *M & I Marshall & Ilsley Bank v. Higdon*, 556 P.3d 498, 504 (Kan. 2024).

⁸⁸ 2 Tiffany Real Prop. §430 (3d ed.).

⁸⁹ Obj. to Confirmation ¶ 7, ECF 33.

⁹⁰ Wells Fargo’s Reply 5, ECF 54.

In *In re Hunter*, a Chapter 13 debtor brought an adversary proceeding under 11 U.S.C. § 506(d) to void a wholly-unsecured second-priority lien⁹¹ on property he owned in Pennsylvania as tenants by the entirety with his non-filing⁹² wife. *See* 284 B.R. at 809. Hunter’s argument had two steps: first, that the lien was void under § 506(d) as to *his* entireties interest because there was no equity in the property; and second, that if the lien was void as to *his* entireties interest, the lien would be ineffective as to his *wife’s* interest “because property owned as tenants by the entirety is not subject to the debts, liens or judgments of only one spouse.” *Id.* The bankruptcy court held that the first step of Hunter’s plan—voiding the lien as to his *own* entireties interest, but not that of his wife—was impermissible under Pennsylvania law:

[T]his requires a severance of a portion of the entireties estate by the debtor. Pennsylvania law envisions neither such a division of a tenancy by the entireties estate nor the unilateral severance of any portion of the entireties estate. . . .

. . .

Pennsylvania law . . . prohibits both individual creditors and an individual tenant from severing the estate. Here, one tenant by the entirety seeks to sever the estate as to one aspect only. This he cannot accomplish. An individual debtor cannot avoid a lien—whether partially or wholly

⁹¹ *But see Dewsnap v. Timm*, 502 U.S. 410 (1992) (holding that Chapter 7 debtor could not use § 506(d) to strip down partially-secured lien); *Bank of Am. v. Caulkett*, 575 U.S. 790 (2015) (holding that Chapter 7 debtor could not use § 506(d) to strip off wholly-unsecured lien); *Woolsey v. Citibank, N.A. (In re Woolsey)*, 696 F.3d 1266, 1279 (10th Cir. 2012) (holding that Chapter 13 debtor could not use § 506(d) to strip off wholly-unsecured lien).

⁹² This order uses “non-filing” to describe someone who was not a debtor in the bankruptcy case.

unsecured—on tenants by the entirety property under 11 U.S.C. § 506(d).

Id. at 813-14 (citations omitted). As for Hunter’s non-filing wife, the court observed:

Neither she nor her interest in the Pennsylvania property is before the court. The debtor seeks to provide her with the benefit of having filed bankruptcy without her having borne the burden.

Id. at 813.

In *In re Pierre*, a Chapter 13 debtor sought to use 11 U.S.C. § 1322(b)(2) to strip down a partially-unsecured first-priority lien on Florida property she owned in tenancy by the entirety with her non-filing husband, who had recently discharged his own debt to the lienholder in a separate Chapter 7 case. 468 B.R. at 421. The bankruptcy court held that she could not, holding that “a prerequisite to stripping down a secured lien under § 1322(b)(2) of the Bankruptcy Code is that both co-owner spouses must be debtors in the same Chapter 13 case.”⁹³ *Id.* To support that proposition, the bankruptcy court cited *In re Hunter*:

In *In re Hunter*, Judge Mayer carefully reviewed applicable TBE law and concluded that individual debtors simply are prohibited from stripping down or off a mortgage unless the other spouse also is a joint debtor in the Chapter 13 case. . . . Judge Mayer concluded that

⁹³ *In re Pierre* also held that even if *both* Pierres were debtors in the same Chapter 13 case, they could not strip down the lien because Mr. Pierre—having recently discharged his debts in Chapter 7—was not eligible to receive a discharge under § 1328. 468 B.R. at 427-28. The court reasoned: “[A]llowing a debtor to discharge his debts in a Chapter 7 and then immediately filing a Chapter 13 to strip off or cram down a mortgage claim would be equivalent to modifying the mortgage in the Chapter 7, which a debtor cannot do.” 468 B.R. at 424; *but see In re Scantling*, 754 F.3d 1323, 1330 (11th Cir. 2014) (holding that “Chapter 20” debtor could strip off worthless lien in Chapter 13, explaining that “§ 1325(a)(5) is not involved” when lien is valueless).

allowing an individual debtor to lien strip or cramdown TBE property would constitute a unilateral severance of the estate, which violates the fundamentals of TBE law.

. . . [Florida's] First District Court of Appeal held that any encumbrance or conveyance of [TBE property] would . . . require joint action of the selling parties under the contract, since "neither spouse can without the assent of the other, alien or forfeit any part of an estate by the entirety so as to defeat the rights of the other." Simply stated, one benefit, and perhaps sometimes burden, of TBE ownership is that any type of ownership change requires joint action by both spouses. Mrs. Pierre simply cannot reduce or eliminate a mortgage⁹⁴ encumbering real property she owns as TBE with Mr. Pierre, unless he is a debtor in this Chapter 13 case

Id. at 426-27.

In *In re Alvarez*, a Chapter 13 debtor and his non-filing wife brought an adversary proceeding under 11 U.S.C. § 506(a) to strip off a wholly-unsecured second-priority lien on property they owned in Maryland as tenants by the entirety. *See* 733 F.3d at 139. The bankruptcy court held that they were not entitled to strip off the lien because the debtor's wife had not filed for bankruptcy. *See id.* at 139-40. Citing *In re Hunter*, the Fourth Circuit affirmed:

[In *Hunter*], as in this case, only one of the tenants by the entireties had filed a petition in bankruptcy. Applying Pennsylvania law governing tenancy by the entirety, the bankruptcy court determined that it lacked authority to strip off a valueless lien on property owned by the debtor and his spouse as tenants by the entireties because only the debtor's interest in the entireties property, rather than the whole of the property, was before the bankruptcy court.

⁹⁴ *In re Pierre* did not explain how reducing or eliminating a mortgage as to the entire property would "alienate or forfeit" any part of the entireties estate.

...

Here . . . , the Alvarezes' complaint did not bring Mrs. Alvarez's interest in the property before the court. The filing of the complaint did not alter the property rights contained in Mr. Alvarez's bankruptcy estate or the power of the court to bind only the debtor and his creditors. *See* 11 U.S.C. § 1327(a). Thus, the Alvarezes were not entitled to obtain the removal of the lien against their entireties property without submitting both parties to the burden of a bankruptcy filing.

Id. at 141-42 (citing *In re Hunter*, 284 B.R. at 809, 813-14). Like the bankruptcy court in *In re Hunter*, the Fourth Circuit assumed that because the debtor's wife had not filed for bankruptcy, her interest in the property was not "before the court." *See id.* at 142.

This Court reads *In re Hunter* more narrowly than *In re Pierre* and *In re Alvarez* did. *In re Hunter* held that Pennsylvania law did not permit the debtor to void a lien as to his *own* entireties interest while leaving the lien on his *wife's* interest intact. It said nothing about whether the debtor could strip off the lien as to the *entire property*. It was not a case under § 1322(b)(2). Its observation that the wife's interest was not "before the court" (a phrase it did not define) appears to be dicta. And even if that observation were the basis for the court's holding, whether a property interest is "before the court"—assuming that phrase means "subject to the court's *in rem* jurisdiction"—is a matter of state law.

This is because "[p]roperty interests are created and defined by state law." *Butner v. United States*, 440 U.S. 48 (1979). A bankruptcy court's *in rem* jurisdiction extends to "all of the property, wherever located, of the debtor as of the

commencement of [the] case, and of property of the estate.” 28 U.S.C. § 1334(e); *cf.* 11 U.S.C. § 541(a)(1) (providing that estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case”). Because a bankruptcy court’s *in rem* jurisdiction extends to a debtor’s interest in jointly-owned property, anything within the scope of that interest—which is defined by state law—is necessarily “before the court.”

In Kansas, joint tenants “have one and the same interest.” *Simonich v. Wilt*, 417 P.2d 139, 143 (Kan. 1966). “Every joint tenant owns *an undivided whole* of the jointly owned property and the joint tenant does not own a share or a fractional part of jointly owned property.”⁹⁵ *In re Barker*, 327 P.3d 1036, 1041 (Kan. Ct. App. 2015) (citation omitted).

It is well settled that each of the joint tenants owns “*the whole and every part*, with the benefit of survivorship, unless the tenancy be severed.” *Simons v. McLain*, 51 Kan. 153, 159, 32 P. 919 (1893); *see also* *Restatement (Second) of Property: Donative Transfers* § 30.1, comment q (1987) (“Each joint tenant was seized of the whole.”); *Restatement (First) of Property* § 29, comment e (1936) (“Each joint tenant was historically regarded as having an

⁹⁵ Although some Kansas cases refer to the respective ownership interests of joint tenants, such interests only come into play when the tenancy is severed or the property is sold. *See, e.g., Walnut Valley State Bank v. Stovall*, 574 P.2d 1382, 1385 (Kan. 1978) (“Severance of the joint tenancy into a tenancy in common between a husband and wife gives rise to a rebuttable presumption of equal ownership.”). And even if Steger and his wife did have current fractional ownership interests in the home, Kansas law would not prevent Steger’s plan from treating Steger’s ownership interest as 100% of the home. *Cf. In re Crouch C Stores, Inc.*, 120 B.R. 178, 180-81 (Bankr. D. Kan. 1990) (holding that debtor/joint tenant only had bare legal title to property, such that bankruptcy estate had no interest in proceeds from sale of property); *In re Lasater*, 54 P.3d at 513-14 (permitting joint tenancy to provide for ownership interests of 99% and 1%, respectively, to govern future partition, severance, or property sale);.

estate in fee simple absolute in all the land in which the joint tenancy exists[.]”).

Id. (cleaned up).

Steger and his non-filing wife own their Kansas home as joint tenants. Under Kansas law, Steger owns “an undivided whole” and “every part” of the home. Thus, the undivided whole and every part of the home is subject to this Court’s *in rem* jurisdiction. Furthermore, Steger and his wife have “one and the same interest” in the home. If the Court has *in rem* jurisdiction over Steger’s interest (which extends to the whole and every part of the home), and if Steger and his wife have one and the same interest, then the Court necessarily has *in rem* jurisdiction over Steger’s wife’s interest.⁹⁶ For that reason, the Court rejects Wells Fargo’s argument that the

⁹⁶ That state law limits *how* the Court may exercise its jurisdiction over the property is a separate issue:

The bottom line is . . . *any* interest of the debtor in property comes into the estate. It simply does not matter that the debtor cannot alienate the property, or encumber it, or take any action whatever without the other spouse’s acquiescence. The point is that he does have an interest in the property and it makes no difference that he cannot exercise that interest independently.

Hon. Frank W. Koger & Thomas N. Lane, *The Fiction is Fractured: Bankruptcy Breaks Entireties*, 1992 J. MO. BAR 507, 511. For example, the property at issue here is the Stegers’ homestead—and the Kansas Constitution provides that a homestead “shall be exempted from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife.” Kan. Const. art. 15, § 9. This provision would not be violated by submitting the property to the jurisdiction of the bankruptcy court, paying Wells Fargo’s claim, or removing Wells Fargo’s lien, none of which would serve to “alienate” any part of the Stegers’ home. *Cf. Strausbough v. Co-op Servs. Cred. Union (In re Strausbough)*, 426 B.R. 243, 250 (Bankr. E.D. Mich. 2010) (observing that none of the rights associated with tenancy by the entireties prevents one tenant “from acting to *enhance* that estate”).

interest of Steger’s wife is not “before the Court.” *Cf. In re Batista-Sanchez*, 493 B.R. 521, 525-27 (Bankr. N.D. Ill. 2013) (holding that debtor’s marital interest in property titled in non-filing spouse’s name permitted him to administer entire property in Chapter 11 plan); *In re Batista-Sanchez*, 604 B.R. 734, 738-39 (Bankr. N.D. Ill. 2019) (holding that entire [different] property had been administered in debtor’s Chapter 11 plan because debtor, as joint tenant, had undivided interest in whole property under state law).⁹⁷

The Court likewise rejects Wells Fargo’s argument that Steger’s plan impermissibly benefits his wife. Nothing in the Bankruptcy Code or Kansas law prohibits a Chapter 13 plan from benefiting a non-debtor. And more importantly, no unfair manipulation of the Bankruptcy Code has occurred here. Steger’s wife is not—and has never been—personally liable to Wells Fargo for Steger’s debt. Wells Fargo has no unsecured claim against her; it would not be entitled to any of her disposable income under § 1325(b) if she were a debtor in this case. Nor would it receive a penny more on its secured claim under § 506(a) and § 1325(a)(5) if she were a debtor, because Steger’s plan already calculates the amount of Wells Fargo’s secured claim based on the full value of the home.⁹⁸ Whatever benefit Steger’s wife

⁹⁷ To clarify, the two *Batista-Sanchez* cases involved separate properties: one in which the debtor had a marital interest, and another in which the debtor had a joint-tenancy interest.

⁹⁸ Put differently, the “price” of stripping down a lien in Chapter 13 has two components. First, the lienholder is entitled to payments with a present value equal to the amount of its secured claim under §§ 506(a) and 1325(a)(5)(B). Second, the lienholder is entitled to share in the debtor’s nonexempt assets and disposable income on account of its unsecured claim under § 1325(a)(4) and (b)(1). But if the debtor is not personally liable to the lienholder, the lienholder has no unsecured

receives through his plan does not require her participation in this Chapter 13 case. *Cf. In re Strausbough*, 426 B.R. 243, 249-50 (Bankr. E.D. Mich. 2010) (“The reality is that every day, bankruptcy courts construe and apply chapter 13 in ways that benefit non-filing spouses.”).

IV. Conclusion

The Court concludes that the plan does not undervalue Steger’s home, does not impermissibly benefit Steger’s non-debtor spouse, and was proposed in good faith under § 1325(a)(3). For those reasons, the Court hereby overrules Wells Fargo’s objection to confirmation.⁹⁹ If Steger’s Chapter 13 plan is otherwise postured for confirmation, a separate order confirming the plan will be entered by the Court.

IT IS SO ORDERED.

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claim, is not entitled to share in the debtor’s nonexempt assets or disposable income, and would only be entitled to the present value of its secured claim under §§ 506(a) and 1325(a)(5)(B). Here, by calculating Wells Fargo’s secured claim under §§ 506(a) and 1325(a)(5)(B) based on the full value of the home, Steger’s plan already pays Wells Fargo 100% of the money to which it would be entitled if his wife—who is not and has never been personally liable to Wells Fargo—were also a debtor in this case.

⁹⁹ This order constitutes the Court’s findings of fact and conclusions of law under Fed. R. Bankr. P. 7052. *Cf.* Fed. R. Bankr. P. 9014(c)(1) (providing that Rule 7052 applies to contested matters); Fed. R. Bankr. P. 7052 (providing for application of Fed. R. Civ. P. 52); Fed. R. Civ. P. 52(a)(1) (“In an action tried on the facts without a jury . . . , the court must find the facts specially and state its conclusions of law separately.”).