

**Blaine F. Bates**  
Clerk

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE TENTH CIRCUIT**

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IN RE JONATHAN ISAAC  
SCHUPBACH and AMY MARIE  
SCHUPBACH,

Debtors.

BAP No.    KS-13-068

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BANK OF COMMERCE & TRUST  
COMPANY,

Plaintiff – Appellant,

v.

JONATHAN ISAAC SCHUPBACH and  
AMY MARIE SCHUPBACH,

Defendants – Appellees.

Bankr. No.    11-13633  
Adv. No.    12-05047  
Chapter    11

**ORDER GRANTING  
MOTION TO DISMISS**

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

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Before THURMAN, Chief Judge, CORNISH, and MICHAEL, Bankruptcy Judges.

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MICHAEL, Bankruptcy Judge.

A creditor sought review of the bankruptcy court’s interpretation of the filing deadline for a false pretenses nondischargeability complaint when a debtor’s case has been converted from Chapter 13 to Chapter 11. After oral argument, debtors filed a motion to dismiss the appeal as moot, alleging creditor’s claim giving rise to the adversary proceeding had been satisfied in full. Because creditor no longer holds a claim against debtors, we dismiss the appeal as moot.

**I.    BACKGROUND AND BANKRUPTCY COURT PROCEEDINGS<sup>1</sup>**

In 2001, debtors Jonathan I. Schupbach and Amy M. Schupbach, husband and wife (the “Schupbachs”), became engaged in the business of buying, renovating, and then reselling homes in low income areas of Wichita, Kansas. Doing business through Schupbach Investments LLC (the “LLC”), the Schupbachs began obtaining financing from the Bank of Commerce (“Commerce”) in 2004. Over time, mutual trust and a pattern of business practices developed between the parties. Commerce typically loaned the LLC an amount equal to between 70% and 80% of the appraised value of a property to be purchased and renovated. Commerce made loans to the LLC for the renovation of over 40 properties, and the Schupbachs personally guaranteed these loans. The dispute underlying this appeal involves loans made during the period September 2007 to April 2010 with respect to only six properties.

In late 2009, Commerce became aware that the improvements it had funded for at least one of the six homes in question had not been made, but did not make further inquiry into the situation. Commerce alleges “it had every reason to believe the improvements would be made.”<sup>2</sup> Commerce subsequently learned that the Schupbachs had used the proceeds of the six loans at issue for the general business operations of the LLC, and not directly for renovation of the six homes.

In May 2011, the LLC filed for relief under Chapter 11 of the Bankruptcy Code. Commerce filed a proof of claim in that case in the amount of \$748,748.72, and stated that, based on appraisals, the value of the collateral

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<sup>1</sup> Unless otherwise indicated, the facts are taken from the bankruptcy court’s *Memorandum Opinion and Order Granting in Part and Denying in Part Debtors’ Motion to Dismiss*, which is published at 473 B.R. 423 (Bankr. D. Kan. 2012).

<sup>2</sup> Opening Brief at 3.

securing the debt was in excess of \$1.3 million.<sup>3</sup> Commerce's claim was based on a promissory note executed October 26, 2010, that consolidated and refinanced eleven prior outstanding notes executed between September 2007 and August 2010.<sup>4</sup>

Two months after the LLC filed for Chapter 11 relief, the Schupbachs filed for individual Chapter 13 protection. As a result of their personal guarantees of the loans made to the LLC, the Schupbachs listed Commerce as an unsecured creditor on their Schedule F. Commerce filed a proof of claim in the Schupbachs' case identical to the proof of claim it filed in the LLC case.<sup>5</sup>

The bankruptcy court clerk gave notice that the Schupbachs' Chapter 13 meeting of creditors would take place on August 18, 2011, thus establishing the deadline to challenge dischargeability of certain debts as October 17, 2011.<sup>6</sup> During August 2011, two creditors and the Chapter 13 trustee filed separate motions to dismiss the Schupbachs' case,<sup>7</sup> arguing the Schupbachs did not qualify for relief under Chapter 13 because their unsecured debts exceeded the limits of 11 U.S.C. § 109(e).<sup>8</sup> One day before the scheduled hearing on eligibility, the Schupbachs filed a motion to convert their case to one under Chapter 11. The bankruptcy court granted the Schupbachs' motion to convert, and on November

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<sup>3</sup> *Proof of Claim filed June 13, 2011, in Appellees' App. to Motion to Dismiss at 111.*

<sup>4</sup> *Id.* at 2, *in Appellees' App. to Motion to Dismiss at 112.*

<sup>5</sup> *Proof of Claim filed October 24, 2011, in Appellees' App. to Motion to Dismiss at 13.*

<sup>6</sup> *See Federal Rule of Bankruptcy 4007(c)* ("a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a)").

<sup>7</sup> *See Bankruptcy Docket Sheet, Docket Nos. 26, 46, 49, in Appellee's App. at 5, 8 & 9.*

<sup>8</sup> Unless otherwise indicated, all future statutory references in text are to the Bankruptcy Code, Title 11 of the United States Code.

14, 2011, entered an order allowing them to proceed under Chapter 11 (the “Schupbach Chapter 11”).

Following conversion, the bankruptcy court clerk gave notice that the meeting of creditors in the Schupbach Chapter 11 would be held on January 6, 2012, and that the deadline for filing a dischargeability complaint was March 6, 2012. Commerce filed a complaint in the Schupbach Chapter 11 on March 6, 2012, claiming the LLC’s debts with respect to the six loans in dispute, personally guaranteed by the Schupbachs, were nondischargeable pursuant to § 523(a)(2) because the financing was obtained by false pretenses. Those six loans totaled about \$233,000, but Commerce only sought to exclude \$172,000 from discharge.<sup>9</sup> Commerce also alleged the debts were nondischargeable pursuant to § 523(a)(6) because the Schupbachs willfully and maliciously misappropriated or converted the loan proceeds for their own use.<sup>10</sup>

The Schupbachs responded to Commerce’s adversary complaint with a motion to dismiss it as untimely. They argued the conversion of their case to Chapter 11 did not create a new deadline to file a nondischargeability adversary proceeding, and as a result, Commerce’s § 523(a)(2) claim was untimely because its was not filed by the October 17, 2011 deadline set in their original Chapter 13 case. With respect to Commerce’s § 523(a)(6) claim, the Schupbachs argued it should be dismissed for failure to state a claim.

On June 7, 2012, the bankruptcy court entered a Memorandum Opinion and

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<sup>9</sup> *Memorandum Opinion and Order Denying Complaint for Exception of Debt from Discharge*, 500 B.R. 22, 26-27, 30 (Bankr. D. Kan. 2013). Based on the record before us, we are not able to reconcile these exact figures, but the difference represents, at least in part, the purchase price of the properties and approximately \$1,000 per property in closing costs.

<sup>10</sup> Whether the Schupbachs represented to Commerce that the loan proceeds would be used exclusively for direct renovation and remodeling of the properties and then employed the funds for the general business operations of the LLC was disputed, but it is not germane to the issue on appeal before this Court.

Order Granting in Part and Denying in Part Debtors' Motion to Dismiss ("Dismissal Order").<sup>11</sup> The bankruptcy court ruled that although a conversion from Chapter 13 to Chapter 11 constitutes a new order for relief and requires a new meeting of creditors, Federal Rule of Bankruptcy Procedure 1019, which creates new filing periods when a Chapter 11, 12, or 13 case is converted to a Chapter 7 case, does not apply by analogy when a Chapter 13 case is converted to Chapter 11. The bankruptcy court reasoned that conversion from one reorganization chapter to another should not afford Commerce a second opportunity to timely object to discharge of a debt under § 523(a)(2) when there has been no change in the relevant discharge rights.<sup>12</sup> As to Commerce's § 523(a)(6) claim, the bar date in a Chapter 13 case for that type of claim is set after the debtor moves for discharge under § 1328(b).<sup>13</sup> Thus, the bankruptcy court dismissed the § 523(a)(2) count of Commerce's complaint as untimely, but ruled the § 523(a)(6) count was timely filed.

After dismissal of its § 523(a)(2) claim, Commerce proceeded with litigating the § 523(a)(6) claim, i.e., whether the Schupbachs' actions constituted willful and malicious misappropriation or conversion of the LLC's loan proceeds. A two-day trial took place in July 2013. On September 10, 2013, the bankruptcy court entered a Memorandum Opinion and Order Denying Complaint for Exception of Debt from Discharge ("Order Denying Complaint").<sup>14</sup>

Commerce timely appealed the bankruptcy court's orders to this Court on September 19, 2013. Commerce's notice of appeal relates to both the Dismissal

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<sup>11</sup> *Dismissal Order*, 473 B.R. 423 (Bankr. D. Kan. 2012).

<sup>12</sup> *Id.* at 427-28.

<sup>13</sup> *See* Federal Rule of Bankruptcy 4007(d) ("On motion by a debtor for a discharge under § 1328(b), the court shall enter an order fixing the time to file a complaint to determine the dischargeability of any debt under § 523(a)(6)[.]").

<sup>14</sup> *Order Denying Complaint*, 500 B.R. 22 (Bankr. D. Kan. 2013).

Order and the Order Denying Complaint. However, in its briefs on appeal, Commerce argued only that the bankruptcy court erred when it dismissed the § 523(a)(2) claim as untimely, and therefore waived appeal of the Order Denying Complaint. Following oral argument, the Schupbachs filed a motion to dismiss this appeal as moot, which was referred to this panel for resolution.<sup>15</sup> The parties were afforded oral argument on the motion to dismiss by telephone conference on June 20, 2014.

## II. APPELLATE JURISDICTION

This Court has jurisdiction to hear timely filed appeals from “final judgments, orders, and decrees” of bankruptcy courts within the Tenth Circuit, unless one of the parties elects to have the district court hear the appeal.<sup>16</sup> Neither party elected to have this appeal heard by the United States District Court for the District of Kansas. The parties have therefore consented to appellate review by this Court.

A decision is considered final “if it ‘ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.’”<sup>17</sup> Here, the bankruptcy court’s orders appealed by Commerce terminated the nondischargeability adversary proceeding, and therefore are final for purposes of review. In addition to determining whether the appealed orders are “final” as required under 28 U.S.C. § 158(a)(1), this Court must examine the jurisdictional issue of whether the appeals are moot, including whether they are moot in the

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<sup>15</sup> See *Order Referring Motion to Dismiss to Merits Panel*, Docket No. 47.

<sup>16</sup> 28 U.S.C. § 158(a)(1), (b)(1), and (c)(1); Fed. R. Bankr. P. 8002; 10th Cir. BAP L.R. 8001-3.

<sup>17</sup> *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)).

constitutional sense, i.e., that there is no case or controversy.<sup>18</sup>

Federal law dictates that an appeal is moot when there is no case or controversy because some event has occurred post-appeal that makes it impossible for a court to grant any effectual relief whatever.<sup>19</sup> As this Court has previously indicated in *In re Egbert Development, LLC*,<sup>20</sup>

[A] case is moot when the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome. A controversy is no longer “live” if the reviewing court is incapable of rendering effective relief or restoring the parties to their original position. . . . [I]f an event occurs while a case is pending on appeal that makes it impossible for the court to grant “any effectual relief whatever” to a prevailing party, the appeal must be dismissed.<sup>21</sup>

For the reasons discussed below, we grant the Schupbach’s Motion to Dismiss Commerce’s appeal as moot.

### III. ANALYSIS

In their Motion to Dismiss, the Schupbachs contend Commerce’s appeal of the bankruptcy court’s order dismissing the § 523(a)(2) nondischargeability count of its adversary complaint is moot because Commerce’s claim, which includes the six loans in dispute here, has been satisfied in full. We agree.

#### A. Commerce’s Claim against the LLC and the Schupbachs

Commerce filed identical proofs of claim in the LLC and the Schupbachs’ personal bankruptcy cases. Its claim in the amount of \$748,748.72 covered loans made to the LLC with respect to over 40 real properties, including the six forming the basis of its § 523(a)(2) nondischargeability complaint. On its proof of claim,

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<sup>18</sup> See U.S. Const. art. III, § 2, cl. 1; *Yellow Cab Coop. Ass’n v. Metro Taxi, Inc.* (*In re Yellow Cab Coop. Ass’n*), 132 F.3d 591, 594-95 (10th Cir. 1997); *In re L.F. Jennings Oil Co.*, 4 F.3d 887, 889 (10th Cir. 1993); see also *Arizonans for Official English v. Ariz.*, 520 U.S. 43, 73 (1997) (court has an obligation to satisfy itself that it has jurisdiction to hear an appeal).

<sup>19</sup> *In re Milk Palace Dairy, LLC*, 327 B.R. 462, 466-67 (10th Cir. BAP 2005).

<sup>20</sup> 219 B.R. 903 (10th Cir. BAP 1998).

<sup>21</sup> *Id.* at 905 (citations and internal quotation marks omitted).

Commerce valued the collateral securing its claim at \$1,319,000.<sup>22</sup> As stated above, the proof of claim Commerce filed in both cases was founded on a single promissory note executed October 26, 2010, that consolidated and refinanced eleven prior outstanding notes executed by the LLC and guaranteed by the Schupbachs between September 2007 and August 2010.<sup>23</sup>

**B.    The LLC's Plan**

In July 2012, the creditors in the LLC's Chapter 11, including Commerce, proposed a plan of liquidation.<sup>24</sup> Shortly thereafter, the personal and LLC bankruptcy cases were administratively, but not substantively, consolidated by the bankruptcy court.<sup>25</sup> The bankruptcy court confirmed the creditors' proposed plan of liquidation (the "LLC Plan") by order dated November 21, 2012.<sup>26</sup> The LLC Plan provided for the allowed secured claim of Commerce, and effected a transfer of all real property in which Commerce held a first mortgage to Commerce free and clear. Specifically, it stated:

**Class 2.**    Consists of the allowed secured claim of **Bank of Commerce & Trust** ("BOCT"). BOCT holds first mortgages in Tracts 76-91, 134-156, 161-164 as set out in Exhibit "1" attached hereto, together with all rents from the same ("cash collateral"). By prior order, the Debtor "surrendered" Tracts 134-156 and 161-164 to BOCT. All real property of the Debtor in which BOCT holds a first mortgage as of Confirmation, whether listed on Exhibit "1" or not, together with all unpaid rents, insurance, and books and records

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<sup>22</sup>    *Proof of Claim filed June 13, 2011, in Appellees' App. to Motion to Dismiss at 111 (LLC case); Proof of Claim filed October 24, 2011, in Appellees' App. to Motion to Dismiss at 13 (Schupbachs' personal case).*

<sup>23</sup>    *Proof of Claim filed June 13, 2011, at 2, in Appellees' App. to Motion to Dismiss at 112.*

<sup>24</sup>    *Creditors' Plan of Liquidation dated July 24, 2012, in Appellees' App. to Motion to Dismiss at 237.*

<sup>25</sup>    *Opinion Denying the Debtors' Requests for Substantive Consolidation, but Granting Their Requests for Joint Administration, in Appellees' App. to Motion to Dismiss at 273.*

<sup>26</sup>    *Order Confirming Creditors' Plan of Liquidation dated July 24, 2012, in Appellees' App. to Motion to Dismiss at 291.*

respecting the property, will be transferred to BOCT upon Confirmation subject to the terms of the Liquidation Trust. Entry of an Order of Confirmation of this Plan will effect a transfer of such real property to BOCT free and clear of all rights of the Debtor, or any other lien or encumbrance, except *ad valorem* real estate taxes and the BOCT mortgage(s). No merger of BOCT's title with its mortgage interest(s) will result. BOCT will retain the right to foreclose its mortgage(s) as may be necessary to confirm clear title. However, the transfer to be effected upon Confirmation will be fully effective to vest title to the real property in BOCT.<sup>27</sup>

The Tracts set forth in Exhibit "1" to the LLC Plan, referred to in the paragraph above, include the six properties at issue in the nondischargeability adversary.<sup>28</sup>

Commerce does not dispute that the bankruptcy court's order confirming the LLC Plan effected transfer of the real properties to Commerce.

### **C.    The Schupbach's Plan**

About ten months after confirmation of the LLC Plan, the bankruptcy court entered an order fully resolving Commerce's nondischargeability adversary complaint in the Schupbachs' bankruptcy case, and Commerce timely lodged this appeal. While the appeal was pending, the Schupbachs filed their proposed Chapter 11 plan and disclosure statement.<sup>29</sup> There is no dispute that Commerce received notice of the plan and disclosure statement. Commerce filed no objection to these documents, nor submitted a vote on the plan.

Following a hearing, at which Commerce did not appear, the bankruptcy court confirmed the proposed plan by order dated April 18, 2014 (the "Schupbachs' Plan"),<sup>30</sup> noting that no objections had been filed.<sup>31</sup> The

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<sup>27</sup>     *Creditors' Plan of Liquidation dated July 24, 2012 at 5-6, in Appellees' App. to Motion to Dismiss at 241-42.*

<sup>28</sup>     *See Tracts 76, 135, 137, 139, 151, and 152 listed on Exhibit 1, in Appellees' App. to Motion to Dismiss at 260, 262.*

<sup>29</sup>     *Debtors' Amended Chapter 11 Plan dated March 4, 2014, in Appellees' App. to Motion to Dismiss at 300.*

<sup>30</sup>     *Order Approving and Confirming Debtor's [sic] First Amended Plan and Disclosure Statement dated March 4, 2014, in Appellees' App. to Motion to*

(continued...)

Schubachs' Plan provides that treatment of Commerce's claim was to allow and surrender collateral in full satisfaction.<sup>32</sup> It treats Claim 22 filed by Commerce in Class 4, general unsecured claims. There, the Schubachs' Plan provides:

4.     Class 4: All Other Allowed Unsecured Claims.

Class 4 consists of all unsecured claims allowed under Code § 502 that are not otherwise listed above. Debtor estimates the Class 4 allowable claims at \$1,354,700.21. Exhibit B is incorporated herein by reference as definitive of creditors with allowed general unsecured claims. . . .

Certain holders of unsecured claims also held secured claims against SILLC that were personally guaranteed or co-signed by the Debtors. The holders of such claims will be treated as unsecured herein. However, the full amount of their claims were secured by various real property more particularly described in the Corporate Plan [of SILLC]. The collateral for these Claims was previously owned by SILLC and was transferred to these particular creditors through the Corporate Plan. Debtor incorporates the terms of such surrender and transfer into this Plan. As a result, the holders of these claims will have their qualifying Class 4 claims limited herein in the following manner. First, the claims are determined by looking to the filed amount of the claim (or, if no claim was filed, by the undisputed amount listed on the Debtors' schedules on file herein). Second, the value of the collateral received by the holders of these claims through the Corporate Plan will be deducted from the claim. The value of the collateral will be determined by the publicly accessible county appraisal values. The resulting amount will be the allowed amount of the claim for voting and distribution purposes. These amounts and calculations are reflected on **Exhibit E** and incorporated herein by reference. If the holder of any particular claim disagrees with the allowed amount of the claim as reflected on **Exhibit E**, such holder may choose a different value for the collateral by filing an amended proof of claim not later than seven days prior to the deadline for casting a vote on this Plan. . . .

Should an amended proof of claim not be filed, [] the amount of the claim will be as reflected on Exhibit E. ***The holders of the affected claims are as follows:***

. . .

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<sup>30</sup>     (...continued)  
Dismiss at 358.

<sup>31</sup>     *Id.* at 2, in Appellees' App. to Motion to Dismiss at 359.

<sup>32</sup>     *See Exhibit B (Claims Analysis), in Appellees' App. to Motion to Dismiss at 314.*

Bank of Commerce & Trust (“Commerce”)

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The claims of Community filed in the Corporate Case are not included because the claim filed by Community herein did not include the claims against SILLC. As such, there is no undersecured portion of Community’s claim. ***Similarly, the value of the collateral for the Class 4 Claim of Commerce far exceeds the claim asserted by Commerce. As such, the treatment in the Corporate Plan shall be provided to Commerce in full satisfaction of the Class 4 Claim. Community and Commerce may nonetheless file amended claims pursuant to the procedures described above if they believe they hold deficiencies, and thus participate in Class 4.***<sup>33</sup>

The Schupbach’s Plan defines “Allowed Claim” as a claim “listed as allowed on the attached Exhibit B, which shall constitute Debtors’ ‘Schedule of Allowed Claims.’”<sup>34</sup> It further provides that “[c]onfirmation of this Plan shall act as final allowance of all claims listed on Exhibits B and E as ‘allowed.’ Allowed Claims shall be treated in accordance with this Plan.”<sup>35</sup>

Exhibit B provides that treatment of Commerce’s claim is to “[a]llow and surrender collateral in full satisfaction[.]”<sup>36</sup> Exhibit E indicates the amount of Commerce’s claim as \$748,748.72, and the value of Commerce’s collateral securing the claim as \$956,940.00.<sup>37</sup> Though permitted by the provision of the Schupbachs’ Plan set out above, Commerce did not file an amended proof of claim.

The bankruptcy court’s order confirming the Schupbachs’ Plan has not been appealed and more than 14 days have passed since its entry. Nor has any motion

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<sup>33</sup> *Debtors’ Amended Chapter 11 Plan dated March 4, 2014* at 4-5, in Appellees’ App. to Motion to Dismiss at 303-04 (emphasis added).

<sup>34</sup> *Id.* at 1, in Appellees’ App. to Motion to Dismiss at 300.

<sup>35</sup> *Id.* at 8, in Appellees’ App. to Motion to Dismiss at 307.

<sup>36</sup> *See Exhibit B (Claims Analysis)*, in Appellees’ App. to Motion to Dismiss at 314.

<sup>37</sup> *Exhibit E (Deficiency Analysis)* at 2, in Appellees’ App. to Motion to Dismiss at 318.

to reconsider the confirmation order pursuant to Federal Rules of Bankruptcy Procedure 9023 or 9024 been filed.<sup>38</sup>

**D. Commerce’s Response to the Motion to Dismiss**

In response to the Schupbachs’ Motion to Dismiss the appeal as moot, Commerce argues that the Schupbachs’ Plan merely “provided for a mechanism for establishing unsecured claims ‘for voting and distribution purposes,’”<sup>39</sup> “specifically excepts from discharge debts falling within 11 U.S.C. 523,”<sup>40</sup> and “did not discharge the pending adversary complaint filed by Commerce nor did it determine the amount of Commerce’s claim.”<sup>41</sup> Further, Commerce urges that “substantive disputes which must be adjudicated in an adversary proceeding are not subject to the preclusive effect of a confirmed plan,”<sup>42</sup> and therefore,

the fact that the [Schupbachs’] Plan incorporated provisions of the corporate plan [of SILLC], which surrendered properties to Commerce, would have no effect on the adversary case since, the substantive issues in that proceeding involve the extent of the injuries sustained by Commerce as the result of Appellees’ securing by false pretense, false representation and actual fraud, loan proceeds on only six of the properties issue.<sup>43</sup>

Commerce is correct that the Schupbachs’ Plan did not expressly resolve its nondischargeability complaint, and that the bankruptcy court’s confirmation order

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<sup>38</sup> The bankruptcy court has now discharged the Schupbachs and entered a final decree in their case. *See Discharge of Individual Debtor(s) in a Chapter 11 Case*, Docket No. 252; *Order Granting Application for Final Decree*, Docket No. 253.

<sup>39</sup> *Response to Appellees’ Motion to Dismiss Appeal* at 3.

<sup>40</sup> *Id.* at 4.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 5. We note that the United States Supreme Court has explicitly rejected this very argument in the context of a confirmed Chapter 13 plan. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). We see no reason the analysis contained in *Espinosa* would not be equally applicable in a Chapter 11 case.

<sup>43</sup> *Id.*

may not have a directly preclusive effect on the pending adversary proceeding. But Commerce misses the larger point: it cannot pursue a nondischargeability determination with respect to a debt that has been satisfied in full.

**E.    Summary and Conclusion**

Commerce's claim against the Schupbachs is based on their personal guarantees of the loans made to the LLC. Those loans were secured by the real properties purchased for renovation, and were consolidated into one promissory note executed in October 2010. That note formed the basis of the proof of claim in the amount of \$748,748.72 that Commerce filed in both bankruptcy cases. Commerce valued the collateral securing the claim at \$1,319,000.

The LLC Plan, proposed by the creditors, including Commerce, treated Commerce's claim as an allowed secured claim. The claim was satisfied by the LLC's surrender of numerous real properties to Commerce prior to filing of the plan, and by a transfer of all mortgaged real properties to Commerce free and clear, to be effected by the bankruptcy court's order confirming the LLC's plan.

Thereafter, the Schupbachs' Plan treated Commerce's claim as allowed and fully satisfied by the LLC's surrender of all real properties securing the debt, establishing the value of such collateral at \$956,940.00. Commerce filed no objection to the Schupbachs' Plan, did not appear at the confirmation hearing, and has not appealed the bankruptcy court's confirmation order. Nor has Commerce filed any foreclosure or deficiency suits with respect to any of the real properties, as permitted by the LLC Plan and the Schupbachs' Plan. As a result, Commerce has no claim against the Schupbachs. This appeal of the bankruptcy court's determination that its nondischargeability complaint was untimely filed must be dismissed as moot.

For all of the reasons set forth above, it is HEREBY ORDERED that this appeal be, and the same hereby is, dismissed as moot.