

Victorio v. Billingslea, 470 B.R. 545, (*4-*9) (S.D. Cal. 2012) (Anello)

BY CONSIDERCHAPTER13.ORG, ON AUGUST 9TH, 2012

Chapter 20 debtor not eligible for discharge because of § 1328(f) can strip off wholly unsecured junior lien, but effect is not permanent: resulting unsecured debt must be paid in full and any unpaid amount survives closing of the case without discharge. "[T]he prior chapter 7 extinguished only Appellants' personal liability on the debt, and CitiMortgage still has a 'claim' within the meaning of § 101(5), notwithstanding the fact that the claim is unsecured. . . . [I]f Congress intended to permit 'chapter 20' debtors to permanently strip liens, they could have done so, but they chose not to. . . . [A]ny alternative that would make lien stripping permanent upon completion of the chapter 13 plan would make an end run around § 1328(f) and result in a *de facto* discharge when by statute no discharge is available. . . . [T]hat lien stripping in a 'chapter 20' is permissible, but not permanent, permits 'chapter 20' debtors to avail themselves to the benefits of chapter 13 by paying off personal debts according to a chapter 13 plan while benefitting from the automatic stay. . . . [C]losing the case without a discharge will create problems for the debtor. . . . [T]he only way a 'chapter 20' debtor can 'permanently' avoid liability on the debt is by payment in full during the course of the chapter 13 plan. . . . [A] 'chapter 20' debtor cannot permanently avoid an unsecured junior lien without a discharge or payment in full."

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