

874 F.3d 787, \*, 2017 U.S. App. LEXIS 20596, \*\*;  
Bankr. L. Rep. (CCH) P83,176; 64 Bankr. Ct. Dec. 216

Second-Lien Notes are Senior Indebtedness. The judgment of the district court on that issue is, therefore, affirmed.

**[\*798] B**

As a consequence of rejecting the Plan, the Senior-Lien Notes holders received replacement notes which pay out their claim over time. [HN6] The Code permits debtors to make such "deferred cash payments" to secured creditors (*i.e.*, to "cramdown"). 11 U.S.C. § 1129(b)(2)(A)(i)(II). However, those payments must ultimately amount to the full value of the secured creditors' claims. *Id.* To ensure the creditor receives the full present value of its secured claim, the deferred payments must carry an appropriate rate of interest. See *Rake v. Wade*, 508 U.S. 464, 472 n.8, 113 S. Ct. 2187, 124 L. Ed. 2d 424 (1993).

The rate selected by the lower courts for the Senior-Lien Note holders' replacement notes was based on the "formula" rate. The bankruptcy court selected interest rates of 4.1% and 4.85%, respectively, which were largely risk-free rates slightly adjusted for appropriate risk factors. It is not disputed that this rate is below market **[\*\*21]** in comparison with rates associated with comparable debt obligations. The Debtors defend the application of the "formula" method on the ground that it is required by the plurality opinion in the Chapter 13 case of *Till v. SCS Credit Corp.*, 541 U.S. 465, 124 S. Ct. 1951, 158 L. Ed. 2d 787 (2004).

The Senior-Lien Notes holders contend that because this rate is too low, the Plan is not "fair and equitable" as required by § 1129(b). They argue that the lower courts should have applied a market rate of interest which is the rate MPM would pay to a contemporaneous sophisticated arms-length lender in the open market. The Senior-Lien Notes holders argued in the bankruptcy court that such a market exists and would generate interest in the 5-6+% range. See 15-1682 JA 464, 1941.<sup>7</sup>

<sup>7</sup> Debtors' reorganization plan proposed interest rates of 3.6% and 4.09%. See 2014 Bankr. LEXIS 3926, 2014 WL 4436335, at \*24. However, the bankruptcy court concluded that those rates should be increased by 0.5% and 0.75%, respectively, in light of the fact that the base interest rate was pegged to the Treasury rate, rather than the prime rate (which reflects additional risk). 2014 Bankr. LEXIS 3926, [WL] at \*32. On appeal to the district court, the Senior-Lien Notes holders argued the bankruptcy court erred in not requiring the prime rate, an argument the district court rejected. 531 B.R. at 334-35. The Senior-Lien Notes holders do not press this argument here.

The bankruptcy court rejected this approach, and concluded that a cramdown interest rate should "not take market factors into account." 2014 Bankr. LEXIS 3926, 2014 WL 4436335, at \*25. Viewing itself as "largely governed by the principles enunciated by the plurality opinion in *Till v. SCS Credit Corp.*, 541 U.S. 465, 124 S. Ct. 1951, 158 L. Ed. 2d 787 (2004)," it concluded that the proper rate was what the plurality in *Till* referred to as the "formula" or "prime-plus" rate (discussed more fully below). 2014 Bankr. LEXIS 3926, [WL] at \*24, \*26. The district court agreed. 531 B.R. at 332-34. The Senior-Lien Notes holders argue on appeal that the lower courts erred in concluding that the *Till* plurality opinion **[\*\*22]** is wholly applicable to this Chapter 11 proceeding. In substantial part, we agree.

At issue in *Till* was a Chapter 13 debtor's sub-prime auto loan, carrying an interest rate of 21% and providing the creditor with a \$4,000 secured claim. As with Chapter 11, Chapter 13 allows debtors to provide secured creditors with future property distributions (such as

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