RECENT CASE

[EDITOR'S NOTE: *The following Recent Case analyzes a Fifth Circuit Court of Appeals decision interpreting § 506(a) of the federal Bankruptcy Code. Since this Recent Case was prepared for publication, the Supreme Court addressed this issue in* Associates Commercial Corp. v. Rash, *117 S. Ct. 1879 (1997). The* Journal *has chosen to publish both the Recent Case on the Fifth Circuit decision and a Recent Development on the Supreme Court opinion beginning on page 921 of this issue.*]

CRAMMING DOWN THE HOUSE: THE VALUATION OF COLLATERAL IN *In re Taffi*, 96 F.3d 1190 (1996).

Since the enactment of the Bankruptcy Reform Act of 1978,[1] ("the Act"), courts have attempted to discern congressional intent as to the proper balance between the claims of creditors and the needs of debtors. The Act's purpose was to reform the bankruptcy laws and to "protect hard-pressed consumer debtors from overreaching by their creditors."[2] Toward the latter goal, cram down provisions[3] allow individual debtors who meet the requirements of the Act to be held liable only for secured debts.[4]

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1. The Bankruptcy Reform Act of 1978, P.L. 95-598 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, et seq.

2. 124 CONG. REC. H11089 (daily ed. Sept. 20, 1978) (statement by Hon. Don Edwards, Chairman of the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, upon introducing the House Amendment to the Senate Amendment to H.R. 8200), *reprinted in* 1978 U.S.C.C.A.N. 6436. The Act was also intended to "encourage[ ] business reorganizations.... protect the investing public, protect jobs, and help save troubled businesses." *Id.*

3. Cram down provisions allow a court to confirm a debtor's proposed bankruptcy plan even if some of the creditors refuse to accept the plan. To be eligible for cram down, a plan must meet the general standards for confirmation by the court. Essentially, the plan's proponent must ask for confirmation, the plan must be fair and equitable, the plan cannot discriminate unfairly, and the plan must be accepted by at least one party who is disadvantaged by the plan. *See* 11 U.S.C. §§ 1129, 1325 (1994); *see also* Kenneth Klee, *All You Ever Wanted to Know About Cram Down Provisions Under the New Bankruptcy Code*, 53 AM. BANKR. L. J. 133, 136-38 (1979).

4. A debt is secured if the creditor is entitled to take from the debtor specified property of value equal to or greater than the debt if the debtor fails to pay the debt. The specified property is called "collateral." A loan with no collateral is an unsecured debt. A

This limitation of liability extends even to taxes owed to the Internal Revenue Service and state tax authorities.[5] Section 506(a) of the Act governs the valuation of creditors' secured and unsecured claims.[6] In essence, § 506(a) defines debts as secured to the extent that they do not exceed the value of the underlying collateral. Thus, the valuation of that collateral is a key step in determining the amount of debt that will be discharged and what amount the debtor still must pay. Recent cases have focused on the valuation of property belonging to a debtor who wishes to keep that property while seeking bankruptcy protection. Contradictory interpretations of § 506(a) have led courts to reach widely disparate conclusions about how to value such collateral that debtors seek to retain[7] while in bankruptcy.

In September 1997, an en banc panel of the Ninth Circuit announced in *In re Taffi*[8] that such valuations should be made according to a "fair market value" standard.[9] In so holding, the

debt may also be partly secured and partly unsecured. For example, a loan of $20,000 secured by collateral (such as an automobile) worth only $8,000 would be secured for $8,000 and unsecured for $12,000 (the amount of the loan in excess of $8,000).

5. *See infra* text accompanying notes 16-32.

6. The statute reads:

> An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (1994).

7. The Act provides that debtors need not liquidate automatically all of their assets when they enter bankruptcy. One of the policy aims of the Act is to allow debtors to get back on their feet by not requiring them to contribute all of their assets toward their debts. With court approval, a debtor who wishes to keep a house or car may be allowed to do so under the Act. *See supra* note 3.

8. 96 F.3d 1190 (9th Cir. 1996).

9. *Id.* at 1192-93. A district court recently explained the relationship between the various terms used to designate value. *See In re Gallup*, 194 B.R. 851, 852-53 n.1 (Bankr. W.D. Mo. 1996). In the case of residences, the "fair market" value is the price that would be negotiated between a willing and informed buyer and a willing and informed seller. The "liquidation" or "forced sale" value is the price obtainable through foreclosure—that is, by repossession and immediate sale of the residence by the holder of the mortgage. In the case of automobiles, "retail" value is analogous to residential fair market value—retail value is the price of a car if sold through a dealership. "Wholesale" value is analogous to forced sale value—wholesale value is the price of a car if repossessed and resold immediately. *See id.*

court correctly overruled its earlier decision in *In re Mitchell*[10] that valuations of collateral should be based on a wholesale standard.[11] The result in *Taffi* created a direct conflict with the Fifth Circuit,[12] which had adopted *Mitchell*'s wholesale rule in the en banc rehearing of *In re Rash*.[13] As Judge Kozinski correctly noted in his dissent to the panel decision in *Taffi*, "[t]his is an area where consistency matters a great deal because valuation of assets is at the heart of most bankruptcy proceedings."[14]

Under the standard set out by the *Taffi* court, creditors and debtors face the impossible task of estimating the risks associated with negotiating loans when the consequences of bankruptcy for such loans are unclear. Without resolution of the conflict by the Supreme Court, debtors and creditors would be at the mercy of varying standards for the valuation of collateral that debtors intend to retain under bankruptcy. The Court recently granted certiorari to *In re Rash*,[15] and now has an opportunity to standardize bankruptcy laws in this area. The Court should establish the *Taffi* rule as the rule for all circuits, because it best reflects the language and intent of § 506(a) while providing a clear and workable standard.

Donald and Madelaine Taffi filed for Chapter 11 bankruptcy on May 22, 1991.[16] The Internal Revenue Service (IRS) had determined that the Taffis owed $490,940 in taxes, and the California Franchise Tax Board (FTB) had determined that the Taffis owed California an additional $89,940.[17] Both the IRS and the FTB filed tax lien notices.[18] The Taffis asked the bankruptcy court for confirmation of a plan that would invoke cram down to limit their liabilities to the secured value of their property.[19]

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10. 954 F.2d 557 (9th Cir. 1992).

11. *See id.* at 559-562.

12. In 1995, the First and Eighth Circuits adopted the retail rule. *See In re Winthrop Old Farm Nurseries*, 50 F.3d 72 (1st Cir. 1995) (holding in the Chapter 11 context that real property should be valued according to a fair market standard); *In re Trimble*, 50 F.3d 530 (8th Cir. 1995) (setting the valuation standard for a car as the lesser of the car's retail value or the principal balance of the remaining debt).

13. 90 F.3d 1036 (5th Cir. 1996) (holding that the retail value should apply to a truck intended to be retained by the debtor).

14. *In re Taffi*, 68 F.3d 306, 311 (9th Cir. 1995) (Kozinski, J., dissenting).

15. *See Associates Commercial Corp. v. Rash*, 117 S. Ct. 758 (1997).

16. *See Taffi*, 68 F.3d at 307.

17. *See id.*

18. A tax lien has the legal effect of creating a debtor-creditor relationship between the taxpayer in arrears and the government.

19. *See Taffi*, 68 F.3d at 307.

Their only significant property was their house,[20] but the Taffis had already taken out four deeds of trust secured by the value of the house totaling $233,942.38.[21] The parties stipulated the fair market value of the house at $300,000.[22] The bankruptcy court held that the value of the Taffis' house should be limited to its forced sale value, stipulated at $240,000.[23] The four deeds of trust were senior to the IRS lien, which in turn was senior to the FTB lien.[24] Taking the senior liens into account, the IRS would receive only $6,057.62 if the forced sale value were used in the calculation.[25] Because the sum of the senior liens and the IRS lien exceeded the secured forced sale value of the house, the bankruptcy court treated the entire FTB lien as unsecured and therefore void under the proposed bankruptcy plan. The court approved the Taffis' reorganization plan on February 27, 1992.[26] The unsecured portion of the IRS's lien was eliminated, as specified in the plan.[27]

The United States appealed the case to federal district court, and the Taffis cross-appealed. The district court held that the house should be valued according to the fair market standard rather than the forced sale standard and that hypothetical costs of sale should not be deducted.[28] The district court also decided that the unsecured portion of the IRS's lien would not be canceled upon the confirmation of the debtor's reorganization plan.[29] Therefore, the Taffis would continue to be liable for the unsecured portion of the IRS's loan. The Taffis appealed.

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20. The Taffis also owned personal property worth approximately $10,000. *See id.*

21. *See id.* A deed of trust, though different in form from a mortgage, is essentially a security on real property. *See* BLACK'S LAW DICTIONARY 414 (6th ed. 1990).

22. *See Taffi*, 68 F.3d at 307. The question of how to value collateral retained by the debtor also raises the question whether hypothetical sale costs should be deducted. Such hypothetical sale costs are usually relevant only when the valuation standard involves a hypothetical sale at fair market value. The hypothetical costs of sale were stipulated to be $27,000, or nine percent of the $300,000 sale price. The bankruptcy court in *Taffi* did not address the question of hypothetical costs because the court adopted the forced sale value. *See In re Taffi*, 1993 WL 558844, at *2 (C.D. Cal. 1993).

23. *See Taffi*, 68 F.3d at 307.

24. *See id.*

25. *See id.* The forced sale value of the house, $240,000, minus the value of the four senior deeds of trust, $233,942.38, equals $6,057.62.

26. *See id.*

27. *See id.*

28. *See Taffi*, 68 F.3d at 307.

29. *See id.*

A Ninth Circuit panel upheld the district court's application of the fair market standard[30] and agreed that hypothetical sale costs should not be deducted,[31] but it reversed the district court's decision not to cancel the unsecured portion of the IRS's lien.[32] Writing for the panel, Judge Wallace reasoned that the application of a forced sale value is inappropriate "when no forced sale is contemplated."[33] Judge Wallace relied upon the legislative history accompanying § 506(a), which states that forced sale value is not necessarily what is meant by the use of the word "value" in the statute.[34] Judge Wallace based his opinion partly on the Ninth Circuit "cautionary rule, counseling against creating intracircuit conflicts,"[35] because three other circuits had adopted the fair market standard.[36] Finally, Judge Wallace distinguished the Ninth Circuit's earlier *Mitchell* decision,[37] in which the court had held that the wholesale value rather than the retail value should apply in determining the value of a creditor's secured claim in an automobile that the debtor intended to retain.[38] Judge Wallace reasoned that "[t]he wholesale value and retail value of an automobile are not the same as the fair market value and forced sale value of a residence."[39] Judge Wallace did not, however, explain why these two standards are different except to indicate that one applies to cars and the other to houses. He argued it was not inconsistent for the panel to decide that a residence should be valued according to its fair market value whereas an automobile should be valued according to its wholesale value. Judge Wallace then determined that the hypothetical costs of sale should not be

30. *See id.* at 309.

31. *See id.* at 310.

32. *See id.* at 306.

33. *Taffi*, 68 F.3d at 308.

34. *See* P.L. 95-598 at 356 (1977), *reprinted in* 1978 U.S.C.C.A.N. at 6312. "'Value' does not necessarily contemplate forced sale or liquidation value of the collateral; nor does it always imply a full going concern value. Courts will have to determine value on a case-by-case basis, taking into account the facts of each case and the competing interests in the case." *Id.*

35. *Taffi*, 68 F.3d at 308 (citing *United States v. Chavez-Vernaza*, 844 F.2d 1368, 1374 (9th Cir. 1987)).

36. *See id.* (citing *In re Trimble*, 50 F.3d 530, 531 (8th Cir. 1995); *In re Winthrop Old Farm Nurseries*, 50 F.3d 72, 72 (11th Cir. 1995); *In re Rash*, 31 F.3d 325, 329 (5th Cir. 1994)).

37. *See Taffi*, 68 F.3d at 308 (citing *In re Mitchell*, 954 F.2d 557 (9th Cir. 1992)).

38. *See Mitchell*, 954 F.2d at 560.

39. *Taffi*, 68 F.3d at 309.

deducted.[40] He also found that the IRS had waived its claim to the unsecured portion of the lien by failing to object to the confirmation of the plan by the bankruptcy court.[41]

Judge Kozinski dissented, stating that "[t]he majority's attempt to distinguish Mitchell is unconvincing."[42] Judge Kozinski contended that it made little sense to have a wholesale standard for cars under *Mitchell* while endorsing a fair market standard for houses in *Taffi*.[43] He noted that that two of the cases cited by the majority, *In re Rash*[44] and *In re Trimble*,[45] explicitly rejected *Mitchell*.[46] *Mitchell* had adopted the wholesale valuation specifically because it represented an automobile's foreclosure value rather than its fair market value.[47] *Rash* and *Trimble* presented an opposing view, adopting a retail standard for automobiles because a retail standard approximates fair market value.[48]

Judge Kozinski rejected Judge Wallace's contention that residences and automobiles may be held to different standards without creating an intercircuit inconsistency.[49] Judge Kozinski pointed out that in a circuit where Mitchell and Taffi coexist, parties trying to value other assets "from aalii to zwieback" would not know which rule should apply to them.[50] Judge Kozinski added that, "to dismiss so lightly a prior opinion of this court that addresses the very question we confront today only gives aid

40. *See id.* at 309-10 (citing *In re Trimble*, 50 F.3d at 532; *In re Winthrop Old Farm Nurseries*, 50 F.3d at 74; *In re McClurkin*, 31 F.3d 401, 405 (6th Cir. 1994); *In re Rash*, 31 F.3d 325, 329 (5th Cir. 1994); *Lomas Mortgage USA v. Wiese*, 980 F.2d 1279, 1285 (9th Cir. 1992), *vacated on other grounds*, 508 U.S. 958 (1992); *In re Balbus*, 933 F.2d 246, 252 (4th Cir. 1991)).

41. *See Taffi*, 68 F.3d 306 at 310. "Confirmation" is a bankruptcy term for the approval of a bankruptcy plan by a court. For a description of the requirements for confirmation in the cram down context, see *supra* note 3.

42. *Taffi*, 68 F.3d at 310 (Kozinski, J., dissenting).

43. The wholesale standard for cars is analogous to a forced-sale standard for houses, whereas the fair market standard for houses is analogous to a retail standard for cars. *See supra* note 9.

44. 31 F.3d 325 (5th Cir. 1994).

45. 50 F.3d 530 (8th Cir. 1995).

46. *See Taffi*, 68 F.3d at 311 (Kozinski, J., dissenting). With regard to the principle that the Ninth Circuit should eschew conflict with other circuits, Judge Kozinski wrote, "I find it most peculiar for us to go chasing consistency with other circuits when those circuits have already declared themselves in conflict with us." *Id.*

47. *See id.*

48. *See id.*

49. *See id.*

50. *Id.* at 312.

and comfort to those who claim the Ninth Circuit cannot or will not maintain the integrity of its caselaw."[51]

In re Taffi was granted rehearing en banc on June 3, 1996.[52] Judge John T. Noonan, Jr., wrote the opinion for a unanimous en banc panel of the Ninth Circuit,[53] affirming the judgment of the district court that the proper valuation standard is fair market value and that hypothetical sale costs should not be deducted,[54] but reversing the district court's decision not to cancel the IRS's unsecured lien upon the confirmation of the reorganization plan.[55] In a tightly written opinion, Judge Noonan interpreted § 506(a) to mean that the valuation of collateral intended to be retained by the debtor should be made according to a fair market standard.[56] Adopting Judge Wallace's reasoning that a forced sale value is inappropriate when no sale is contemplated, the en banc panel formally overruled *Mitchell* "to the extent that it held the valuation under § 506(a) should be based on determining 'what the creditor would obtain if the creditor were to make a reasonable disposition of the collateral.'"[57] In other words, the Ninth Circuit held that *Mitchell*'s wholesale standard should no longer apply to valuations under § 506(a). The Court made "no judgment whether the fair market value of an automobile is high blue book or low blue book or some other value; that value is to be determined by the facts presented to the bankruptcy court."[58]

In addition to *Taffi*'s fair market standard and *Rash*'s forced sale standard, a Seventh Circuit panel has adopted a third rule

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51. *Taffi*, 68 F.3d at 312. Judge Kozinski also disagreed with the majority's decision not to deduct hypothetical sale costs, based on the same line of reasoning. *See id.*

52. *See In re Taffi*, 86 F.3d 187 (9th Cir. 1996).

53. *See In re Taffi*, 96 F.3d 1190 (9th Cir. 1996).

54. *See id.* at 1192.

55. *See id.* at 1193.

56. *See id.* at 1192. Judge Noonan defined fair market value as "the price which a willing seller under no compulsion to sell and a willing buyer under no compulsion to buy would agree upon after the property has been exposed to the market for a reasonable time." *Id.*

57. *Id.* at 1193. When a creditor makes "a reasonable disposition of collateral," it means that the collateral is sold at wholesale. Most creditors are assumed to have little interest in devoting time and effort toward selling repossessed collateral at retail. *See In re Malody*, 102 B.R. 745, 749 (B.A.P. 9th Cir. 1989) (holding that debtor's vehicles should be assigned wholesale value for cram down purposes because the creditor would receive only wholesale value if the vehicles were repossessed, and because the vehicles were not essential to the debtor's income-producing plan).

58. *Taffi*, 96 F.3d at 1193.

basing valuation of automobiles under Chapter 13 upon the average of the retail and wholesale values.[59] The statutory language of § 506(a)[60] is the source of this confusion. Section 506(a) is intended to guide courts in bifurcating secured claims from unsecured claims. The first of § 506(a)'s interpretive difficulties is whether its first sentence merely defines that which is to be valued or whether it also prescribes how the valuation is to be performed. The phrase, "the value of such creditor's interest in the estate's interest," has been interpreted by some courts, beginning with the Ninth Circuit in *Mitchell*,[61] to mean that collateral should be valued as though it were in the hands of the creditor. Under this interpretation, houses should be valued according to a foreclosure standard, and cars should be valued according to a wholesale standard.

Other courts, beginning with the Fifth Circuit in its first *Rash* decision, have held that interpreting the first sentence in this way ignores the intent of the second sentence,[62] which states that the valuation should be "determined in light of the purpose of the valuation and of the proposed disposition or use of such property." The courts that emphasize the second sentence have concluded that the collateral should be valued in the hands of the debtor, because that is the collateral's "proposed disposition or use."[63]

In the automobile context, some bankruptcy courts have, in effect, thrown up their hands and rejected both of these interpretations in favor of an averaging rule.[64] This compromise

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59. *See In re Hoskins*, 102 F.3d 311 (7th Cir. 1996).

60. *See supra* note 6 (text of 11 U.S.C. § 506(a)).

61. *See In re Mitchell*, 954 F.2d 557 (9th Cir. 1992).

62. *See supra* note 6 (text of 11 U.S.C. § 506(a)).

63. *Id.* According to *Mitchell*, the valuation of collateral may vary depending on whether the debtor intends to use the collateral in a particularly beneficial or detrimental way. *See Mitchell*, 954 F.2d at 560. The *Mitchell* court cited Judge Queenan's idea that "debtor's use should affect valuation where the . . . collateral is being used in the debtor's hands in a more profitable way than it would in others' hands, or where the . . . debtor is using the collateral 24 hours a day and causing rapid depreciation." *Id.* (citing Queenan, *Standards for Valuation of Security Interests in Chapter 11*, 92 COM. L.J. 19, 30 (1987)).

64. The Seventh Circuit adopted this rule in *In re Hoskins*, 102 F.3d 311, 316 (7th Cir. 1996). Judge Posner based his analysis on the economic argument that to adopt either the retail value or the wholesale value as the legal standard would grant a windfall to either the creditor or the debtor. *See id.* at 314. Judge Posner reasoned that the Seventh Circuit was free to adopt an averaging rule because other circuits had reached conflicting conclusions and because congressional intent in enacting § 506(a) was unclear. *See id.*

is seen as somehow giving force to both sentences of § 506(a).[65] Under the averaging rule, a court attributes the value equivalent to the average of the "high blue book" and the "low blue book" value to a car intended to be retained by a debtor.

The foreclosure approach endorsed by *Mitchell* and *Rash* stems from a misguided interpretation of the statute. Reading the first sentence of § 506(a) as an instruction for valuing collateral makes the second sentence redundant. Such a reading is contrary to the basic canon of statutory interpretation that a statute should be read so as to avoid making any part of it superfluous.[66] The first sentence is best interpreted as providing a definition of what constitutes a secured claim as opposed to an unsecured claim. Given that § 506(a) provides for the discharge of unsecured claims, the first sentence serves an important function in specifying what is to be valued before the valuation itself occurs. A reading of the first sentence that views it as both defining what constitutes a secured claim and how to value that claim neglects the language of the second sentence, which is meant to provide a valuation guideline.

To find that "creditor's interest" in the first sentence means that the collateral should be valued in the hands of the creditor is to beg the question. The whole point of § 506(a) is to determine how much the debtor will owe the creditor under the bankruptcy plan. "The creditor's interest in the estate's interest" is merely technical language for the still-remaining secured claim once previous claims have been deducted from the value of the collateral retained by the debtor. Therefore, the "creditor's interest" cannot be determined until the court has determined the value of that collateral under the criteria of the second sentence.

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65. *See In re Hoskins*, 183 B.R. 166 (Bankr. S.D. Ind. 1995) (adopting the averaging rule for the valuation of an automobile under Chapter 13); *In re Myers*, 178 B.R. 518 (Bankr. W.D. Okla. 1995) (deciding that an automobile should be valued according to the averaging rule with adjustments according to the facts of the particular case); *In re Stauffer*, 141 B.R. 612 (Bankr. N.D. Ohio 1992) (holding that a secured claim in an automobile should be valued at the average of the blue book wholesale and retail values); *In re Thayer*, 98 B.R. 748 (Bankr. W.D. Va. 1989) (valuing an automobile at the average of its adjusted retail and trade-in values for debtor's Chapter 13 plan).

66. "A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another...." 2A NORMAN J. SINGER, JABEZ GRIDLEY SUTHERLAND STATUTORY CONSTRUCTION § 46.06 (5th ed. 1992).

Likewise, the averaging rule is a compromise that is premised on an incomplete examination of congressional intent. The legislative history states that valuations are meant to occur on a "case-by-case basis."[67] The averaging rule does not comport with that intent when it is used to produce an end valuation rather than a starting point. The averaging rule is also troubling because it appears to represent a judicial abdication of the responsibility to interpret the statute. Some courts appear to be saying that their lack of certainty about the correct interpretation of the statute entitles them to adopt a standard apart from congressional intent as long as the result is within an acceptable range of valuations.[68] Although interpreting the statute requires some effort, § 506(a) is not so inscrutable that courts should feel free to adopt whatever standard they prefer.

Taffi adopts the interpretation that best comports with the statute's language. Judge Noonan straightforwardly stated, "[t]he 'property' of the estate of the debtor is the House, the 'interest of the estate' is the ownership and possession of the House."[69] Judge Noonan also determined that the "purpose of the valuation" under sentence two was "to determine how much the creditor will receive for the debtor's continued possession."[70] Foreclosure value was therefore inappropriate as a standard of valuation under the statute.[71]

Interestingly, *Taffi* does not include a discussion of the various economic justifications that have been raised for the adoption of various rules in this context.[72] Since the original panel decision in *Rash*, courts have grappled with the purported economic

67. *See supra* note 34.

68. In adopting the averaging rule, the Seventh Circuit declared, "[w]holesale price is one simple rule; retail price another; the midpoint of the two prices is a third. None is enacted or excluded by the statute." *Hoskins*, 102 F.3d at 314. Another court has said that the averaging rule "represents a compromise which in a vast majority of cases will provide an equitable result." *Myers*, 178 B.R. at 524.

69. *Taffi*, 96 F.3d at 1192. Judge Noonan, who wrote the en banc opinion in *Taffi*, dissented in *Mitchell*.

70. *Id.*

71. *See id.* Some courts have argued that fair market value is also an inappropriate standard because the debtor has no more intent to sell the house on the market than to sell at foreclosure. The point, however, is that the house is probably worth at least as much to the debtor as its fair market value, because the debtor wants to keep the house rather than sell it. Therefore, the fair market value more closely reflects the value of the house to the debtor, given that calculating such a value is a difficult task.

72. For extended analyses of these economic arguments, see *In re Rash*, 31 F.3d 325, 329-31 (5th Cir. 1994) (panel), *modified*, 62 F.3d 685 (5th Cir. 1995); *In re Rash*, 90 F.3d 1036, 1051-55 (5th Cir. 1996) (en banc).

consequences of their valuation decisions. Proponents of a retail rule in automobile valuation have argued, in part, that to adopt a wholesale rule would affect adversely relations between creditors and debtors in contexts outside of bankruptcy. If creditors are forced to absorb losses due to the bankruptcy of debtors, then the terms of loans to other debtors will become less favorable. Non-bankrupt debtors will bear the burden of higher interest rates and larger required down payments to offset the higher risk felt by creditors, as the potential losses through debtor bankruptcy increase. Meanwhile, the bankrupt debtor is seen as receiving a windfall benefit through the Bankruptcy Code beyond that intended by Congress.

The converse argument, which has sometimes been offered to support the adoption of a wholesale rule, is that the overvaluation of collateral defeats the purpose of the Bankruptcy Act by keeping the debtor buried in debt. Such an overvaluation is seen as a windfall to the creditor, who has already accounted for the risks inherent in lending through the determination of interest and other credit terms.

The inclusion of economic arguments in a bankruptcy court's decisionmaking process with regard to § 506(a) is counterproductive. First, where the statute's meaning is clear, there is no need to inquire into economic factors; courts must enforce the statute as written. Second, the effects of collateral valuations must be assessed in context of the other operative provisions of the Bankruptcy Act.[73] Third, there is very little empirical evidence regarding how the valuation itself affects the balance between creditors and debtors either inside or outside of bankruptcy. Thus, it is possible to make seemingly reasonable economic arguments for either side that may or may not have a basis in reality. The *Taffi* court wisely side-stepped this trap by adhering to the question of statutory interpretation.

To some extent, economic relationships will adjust to account for the legal entitlements of debtors who may seek the protection of the bankruptcy laws. In this regard, clear standards are necessary to promote economic efficiency. But where Congress has provided some guidance regarding the substantive content of such standards, it becomes the task of the courts to

73. This is one reason why such determinations should be made on a case-by-case basis.

reconcile congressional intent with the practical problems of applying bankruptcy law. The result in *Taffi* heeds congressional intent, simplifies the judicial task, and firmly places the responsibility for fact-finding in the hands of the bankruptcy court. The *Taffi* standard thereby offers a logical approach to the fair and efficient valuation of collateral a debtor seeks to retain.

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