Recent Developments in Bankruptcy Law

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Judgment obtained by creditor excepted from discharge because debt not created from actual fraud. The Court denied the Plaintiff's motion for judgment on the pleadings. In the case, the Plaintiff obtained a money judgment against the Debtors by the Maryland State Court and a subsequent judicial lien by the West Virginia State Court. The Plaintiff did not argue that the indebtedness relating to the Maryland State Court Judgment should be excepted from discharge, but rather the judicial lien granted by the West Virginia State Court. Notably, the Debtors did not contest whether they committed actual fraud; however, they did dispute whether the debt was "obtained by" fraud. The Court ultimately held that the judicial lien obtained by the Plaintiff in the West Virginia State Court was not a debt for money obtained by actual fraud which could be excepted from the Debtors' discharge under § 523(a)(2)(A) of the Bankruptcy Code. As a result, the Court also dismissed the Plaintiff's adversary proceeding as it could not state a plausible claim to relief. *Alliance Coal, LLC v. Savage*, 625 B.R. 641 (Bankr. N.D.W. Va. 2021).

Decretal judgment for interest on support payments excepted from discharge. Prior to filing Chapter 7, a state court entered a decretal judgment against the debtor for failure to comply with several provisions of a prior divorce agreement. Because the judgment arose out of domestic payments, it was nondischargeable in the bankruptcy. *Kim v. Raines*, No. 19-30420, 2021 Bankr. LEXIS 111 (Bankr. S.D.W. Va. Jan. 19, 2021).

Equitable subrogation does not apply when there is not a relationship of principal and surety. The Court granted the Defendant's motion to dismiss the Debtor's second complaint with prejudice. Despite the Defendant's arguments, the Debtor was permitted to amend its complaint for a second time. Moreover, *res judicata* did not bar litigation of the second amended complaint, because the court dismissed the previous complaint without prejudice. However, the Debtor ultimately failed to state a plausible claim regarding equitable subrogation under West Virginia law. *Glaspell v. United States*, 626 B.R. 272 (Bankr. N.D.W. Va. 2021).

Anti-Injunction Act prevents Bankruptcy Court from enjoining IRS from collecting assessed taxes. Small business debtor sought to reopen case in order to address IRS collection attempts in relation to a prior order. The Court characterized the motion as an attempt to enjoin the IRS from collecting a tax under the guise of a motion to compel. Accordingly, the Bankruptcy Court was barred from exercising jurisdiction by the Anti-Injunction Act. *In re Aero-Fab, Inc*., No. 10-30836, 2021 Bankr. LEXIS 583 (Bankr. S.D.W. Va. Mar. 12, 2021).

Certified mail is insufficient to award default judgment. Debtor served University creditor by certified mail and creditor never appeared. In debtor's motion for default judgment, the Court, applying West Virginia Civil Procedure Rules, held that absent a return receipt, default judgment cannot be awarded unless service was sent by first class mail. *Ratliff v. United States Dep't of Educ.*, No. 1-21157, 2021 Bankr. LEXIS 599 (Bankr. S.D.W. Va. Mar. 15, 2021).

Voluntary dismissal not granted when prejudicial to creditors. Debtors' Chapter 7 bankruptcy had been pending nearly two years when they filed a motion for voluntary dismissal. A mortgage creditor asserted that the debtors were abusing the automatic stay and due to their intention to refile in a different court, the motion was in bad faith. The Court denied the motion to dismiss and granted the creditor's motion for relief

from the automatic stay. *In re Lattea*, No. 19-30130, 2021 Bankr. LEXIS 597 (Bankr. S.D.W. Va. Mar. 15, 2021).

Creditor does not violate the UEFJA when collection activity is restricted to the state in which judgment was obtained. The court granted the Defendant's motion for summary judgment on the Debtor's claim that it violated the West Virginia Uniform Enforcement of Foreign Judgment Act. Despite the Debtor residing and working in West Virginia, the court found that the Defendant's enforcement of its Florida judgment by garnishing the Debtor's wages in Florida did not constitute the enforcement of its judgment in West Virginia. *Nagot v. Suncoast Credit Union*, No. 18-754, 2021 Bankr. LEXIS 616 (Bankr. N.D.W. Va. Mar. 17, 2021).

Co-administrators of decedent's estate bound to honor contract. The Court found that after the decedent entered into a binding contract with the Debtor for the sale of real property, the Defendants as co-administrators of the Decedent's death estate were under a duty to pay the purchase price for the benefit of the death estate. *Positech Int'l, Inc. v. Caprehart*, No. 19-866, 2021 Bankr. LEXIS 617 (Bankr. N.D.W. Va. Mar. 17, 2021).

Conflicting evidence as to state of mind in a dischargeability hearing prevents summary judgment. Multiple women were employed and allegedly paid significantly less than they were entitled to by eventual debtor. They filed lawsuits against the former employer in state court and during its pendency, the employer filed Chapter 7. The women then filed motions to determine that the owed wages were non-dischargeable. The parties offered conflicting evidence as to the former employer's "subjective mind set." Thus, the Court lacked answers to conclude there had been willful and malicious intent to result in nondischargeability and denied summary judgment. *Elliot v. Mucklow*, No. 19-20450, 2021 Bankr. LEXIS 717 (Bankr. S.D.W. Va. Mar. 23, 2021); *Halstead v. Mucklow*, No. 19-20450, 2021 Bankr. LEXIS 841 (Bankr. S.D.W. Va. Mar. 30, 2021); *Adkins v. Mucklow*, No. 19-20450, 2021 Bankr. LEXIS 842 (Bankr. S.D.W. Va. Mar. 30, 2021).

Bankruptcy dismissed where no secured creditors and all remaining parties agree to dismissal. Debtor had no secured creditors and case was dismissed. However, attorney creditors sought to have the Court include certain terms in the dismissal to avoid the debtor receiving distribution of the assets. The Court, noting the Supreme Court's decision in *Czezewski v. Jevic Holding Corp.*, 137 S.Ct. 973 (2017) as guidance, opined that a structured dismissal which would provide distribution to the attorney creditors would ignore the other creditors. Such a decision would be contrary to the Bankruptcy Code and *Jevic*, and the Court denied the attorney creditors' request to structure the dismissal pursuant to their proposed distribution. *In re Bluefield Women's Ctr.*, No. 18-10063, 2021 Bankr. LEXIS 840 (Bankr. S.D.W. Va. Mar. 30, 2021).

Bankruptcy dismissed when sole purpose is to stay state litigation. In dismissing the Debtor's Chapter 11 case based upon a finding of bad faith, the court found as significant the fact that the Debtor liquidated several months prepetition. In short, there was no bankruptcy purpose—reorganization or liquidation—to be served by the Debtor's case. *In re BK Techs.,* No. 20-170, 2021 Bankr. LEXIS 911 (Bankr. N.D.W. Va. Mar. 30, 2021).

Failure to properly serve debtor prohibits lifting of the automatic stay to transmit tax deed to the auction purchaser. Corporate debtor owned two pieces of property which were sold in a tax sale for failure to pay real estate taxes. The purchaser sent a notice for each purchase, and one was returned as unclaimed. The purchaser made no further effort to notify the owner. One day before the redemption period expired, the debtor filed Chapter 11. The purchaser sought to modify the automatic stay and force abandonment of

the property, but the Court held that the failure to take additional steps towards notification regarding the property prohibited the lifting of the stay as to that property. *In re Corotoman, Inc.*, No. 19-20134, 2021 Bankr. LEXIS 843 (Bankr. S.D.W. Va. Mar. 31, 2021).

Debtor not entitled to award of fees when filing a complaint without first conducting an investigation. The Debtor alleged that the Plaintiff filed a complaint in bad faith and proceeded without first conducting a reasonable investigation in violation of Fed. R. Bankr. P. 9011. When Rule 9011 sanctions are sought by motion, the movant must comply with the safe-harbor provision of Rule 9011(c)(1)(A), which requires the offending party to be given notice and an opportunity to cure the offending conduct. Because the Debtor did not comply with that requirement, the motion for sanctions was denied. *In re Panthera Enters.,* LLC, No. 19-787, 2021 Bankr. LEXIS 859 (Bankr. N.D.W. Va. Apr. 1, 2021).

Sale of all assets of processing facility approved over objection of creditors. Debtor had a motion to sell assets of the estate. A creditor with interest in the equipment objected to the sale, arguing its interests were not adequately protected in the agreement. The Court, citing sound business reasons for the sale and a fair and reasonable price, approved the sale on the condition that amended documents were filed more clearly outlining the environmental cleanup duties to be assumed through the purchase. *In re Secur O&G LLC,* No. 20-60053, 2021 Bank. LEXIS 970 (Bankr. S.D.W. Va. Apr. 13, 2021).

Debtor ineligible for Chapter 13 for circumstances outside his control may extend Subchapter V deadlines to convert. Debtor originally filed in Chapter 13, but eventually came to realization that he was above the debt limits to be eligible due to the IRS filing a claim significantly higher than anticipated. Despite the deadline for electing Subchapter V having passed, the debtor at this point sought to convert to Subchapter V. The Court, in analyzing the debtor's request for extension of the deadlines in § 1188 and § 1189, noted that the debtor had fully complied with Chapter 13 requirements and only exceeded the debt limit once the IRS filed an amended proof of claim several months into his case which was much larger than anticipated. The Court addressed the few opinions which had dealt with the question and chose to side with the more forgiving decisions from the Fourth Circuit sister courts (*In re Trepetin*, 617 B.R. 841 (Bankr. D. Md. 2020); *In re Tibbens*, 2021 Bankr. LEXIS 654 (Bankr. M.D.N.C. Mar. 19, 2021)) rather than the more restrictive opinion from the Southern District of Florida (*In re Seven Stars on the Hudson Corp.*, 618 B.R. 333 (Bankr. S.D. Fla. 2020)). *In re Keffer*, 628 B.R. 897 (Bankr. S.D.W. Va. 2021).

Bankruptcy case dismissed for cause when debtor paid unsecured creditors post-petition without first seeking court approval and failed to put forth a confirmable plan. The Court found cause to dismiss the Chapter 11 Debtor's case. Among other things, the Debtor paid creditors and received an insider loan post-petition without court authorization. *In re U.S.A. Parts Supply*, 630 B.R. 487 (Bankr. N.D.W. Va. 2021).

Debtor's failure to obtain insurable title for property access excused purchaser's performance. The debtor-seller failed to provide insurable access to a hotel pursuant to an express provision in the purchase and sell agreement. The buyer was not obligated to purchase the hotel and was entitled to a return of its earnest money deposit. *Emerald Grande, LLC v. KM Hotels*, *LLC,* No. 17-21, 2021 Bankr. LEXIS 1470 (Bankr. N.D.W. Va. May 28, 2021).

Mortgage lien not avoided when equity remains. Debtors sought to avoid a mortgage lien when nearly $4,000 in equity remained after the lien avoidance formula in § 522(l). The motion was accordingly denied,

as the lien could attach to the remaining equity. *Tulloh v. Tulloh*, No. 20-30063, 2021 Bankr. LEXIS 1687 (Bankr. S.D.W. Va. June 21, 2021).

A state child support agency's notification of owed support to another interested agency does not amount to a violation of the automatic stay. Debtor owed nearly $20,000 in child support payments which were to be paid over the course of the Chapter 13 plan. Debtor's ex-spouse who was entitled to the payments, moved from West Virginia to Ohio and the West Virginia Bureau for Child Support Enforcement notified the relevant child support agency in Ohio of the owed support. The Debtor alleged this notification to violate the automatic stay. The Court, citing state police and regulatory powers under § 362(b)(4), held this notification to be exempt from the automatic stay and dismissed the complaint. *Lockhart v. Jackson (In re Lockhart)*, No. 17-532, 2021 Bankr. LEXIS 1715 (Bankr. N.D.W. Va. June 24, 2021).

Interception of a tax refund to offset owed child support not a stay violation. Debtor alleged a violation of the automatic stay and sought declaration of contempt against a county child support agency and the IRS when his COVID-19 economic stimulus payment was intercepted to offset arrearages. Debtor claimed that the stimulus payment was a credit not subject to offset, but agency guidance and effective application renders the payment to be characterized as a tax refund. As a refund, interception under the Treasury Offset Program was excepted from the automatic stay under 11 U.S.C. § 362(b)(2)(F). *Lockhart v. Jackson*, No. 17-532, 2021 Bankr. LEXIS 1698 (Bankr. N.D.W. Va. June 24, 2021).

Garnishment of wages in Ohio does not violate UEFJA solely based on debtor's residence in West Virginia. In granting the Defendant summary judgment on Counts I through III, the Court found that the defendant's collection of its Kentucky judgment via a wage garnishment in Ohio did not violate the Uniform Enforcement of Foreign Judgments Act despite the Plaintiff-Debtor residing in West Virginia. Also, the court denied summary judgment to the Plaintiff on Count IV alleging a preference action based upon disputed material facts, particularly whether the Defendant, a judgment lien creditor, obtained more than it would have in a case under Chapter 7. *Coots v. Ford Motor Credit Co., LLC*, 631 B.R. 698 (Bankr. N.D.W. Va. 2021).

Court may exercise considerable discretion in altering award of attorney fees when inadequately reported. The court determined the reasonableness of the prevailing party's attorneys' fees under a contractual fee shifting provision. *Emerald Grande, LLC v. KM Hotels, LLC*, No. 17-21, 2021 Bankr. LEXIS 1982 (Bankr. N.D.W. Va. July 27, 2021).

Unannounced appraisal of debtor's residence due to innocent clerical error not a "willful violation" of the automatic stay. Debtor sought sanctions against junior lienholder for sending an appraiser to her home unannounced. Debtor claimed the visit interfered with her workday and left her emotionally distraught as a result. The creditor asserted that the visit occurred without prior notice due to a clerical error and noted that the only damages asserted were "stress and annoyance and inconvenience." The Court denied the motion and punished the creditor only to the extent that it ordered any future appraisals to be conducted as explicitly required under Civil Procedure Rule 34. *Montgomery v. Wilmington Trust, N.A.,* No. 20-50167, 2021 Bankr. LEXIS 2039 (Bankr. S.D.W. Va. July 30, 2021).

No fiduciary relationship exists where bank only performs contractual obligations. The Court determined that it had the authority to enter a final order in the case. Because the court found that the debtor-creditor relationship did not rise to the level of a "special relationship" under West Virginia law that was sufficient to support a cause of action for breach of a fiduciary duty, the Court dismissed that cause of action

in the complaint and dismissed a cause of action for an accounting. *U.S. Bank, Nat'l Ass'n v. Tara Retail Grp., LLC*, 604 B.R. 509 (Bankr. N.D.W. Va. Aug. 10, 2021).

Administrative student loan discharge which is later revoked has no application on bankruptcy dischargeability. Debtors received a discharge and later successfully received an administrative discharge of student loans on the basis of disability. One requirement of the administrative discharge was the disclosure of income for three years. When the debtor failed to do so, the discharge was revoked, and the Department began collection attempts again. Because any previous discharge had not been within the bankruptcy code, the debtors' complaint failed to state a claim upon which relief could be granted and was dismissed. *Ratliff v. United States Dep't of Educ.*, No. 1-21157, 2021 Bankr. LEXIS 2358 (Bankr. S.D.W. Va. Aug. 27, 2021).

Pleading factual allegations which raise a right to relief above the speculative level enough to overcome motion to dismiss. In a turnover action regarding a coal lease, the Court found a dismissal was improper because the Plan Administrator had met the necessary preliminary burden of proof under the *Iqbal* standard. *Bernstein v. Wayne Cty. Land & Mineral Co.*, No. 16-30247, 2021 Bankr. LEXIS 2471 (Bankr. S.D.W. Va. Sep. 8, 2021).

Third-party plaintiff lacked standing to pursue cause of action in bankruptcy. In adjudging the Third-Party Defendants' motion for summary judgment, the court dismissed the third-party complaint—an avoidance action belonging to the bankruptcy estate—based upon the Defendant/Third-Party Plaintiff's lack of standing. Although the Defendant/Third-Party Plaintiff did not seek derivative standing, the court held that such standing is unavailable in this context. *Amore v. Ridgely*, No. 20-120, 2021 Bankr. LEXIS 2505 (Bankr. N.D.W. Va. Sep. 13, 2021).

Adversary proceeding dismissed when claims relate solely to exempt property. Debtor brought an adversary proceeding with claims related to purported violations of the West Virginia Consumer Credit and Protection Act. While the debtor had scheduled the claims in her Chapter 7 petition, the trustee chose not to pursue them and thus, they were abandoned to the debtor. Because of this, the claims could in no way affect her bankruptcy estate and were accordingly not related to the bankruptcy, prohibiting the Court from exercising jurisdiction. *McDowell v. Estate Info. Servs., LLC*, No. 18-30265, 2021 Bankr. LEXIS 2506 (Bankr. S.D.W. Va. Sep. 14, 2021).

Adversary proceeding dismissed when underlying bankruptcy was already dismissed and the West Virginia courts were better forums for the litigation. Debtors obtained a mortgage for a manufactured home and nearly ten years later consulted counsel regarding possible claims of fraud in the transaction. The debtors filed Chapter 13 a month later and filed an adversary proceeding regarding the claims, asserting a violation of several West Virginia interest and financing statutory limitations. The debtors' case was ultimately dismissed for failure to make plan payments, but the adversary proceeding continued for another year. The Court, for reasons of convenience and comity, dismissed the case to be refiled in the suitable state court. *Huff v. 21st Mortg. Corp.*, No. 17-20290, 2021 Bankr. LEXIS 2668 (Bankr. S.D.W. Va. Sep. 28, 2021).

***Res judicata* does not apply to state court judgments in the bankruptcy dischargeability context but can be used to determine that certain material facts have been established in the case.** Creditor sought a determination that debt owed to her by debtor was non-dischargeable based on *res judicata* from a prior determination in state court divorce proceedings. The Court held that while *res judicata* and collateral

estoppel cannot be used to apply a state court proceeding which did not address § 523(a)(4)'s state of mind elements to a bankruptcy non-dischargeability proceeding, it can be used to award partial summary judgment as to material facts. *Nicewander v. Nicewander*, 634 B.R. 524 (Bankr. S.D.W. Va. 2021).

Purchaser's claim for attorneys' fees involved with a failed purchase allowed as an administrative expense. A prospective hotel purchaser's award of attorneys' fees against the bankruptcy estate was entitled to administrative expense priority under section 503(b)(1) because it was a post-petition expense and it was (a) incurred in the operation of the debtor's business and (b) the prospective purchaser's approved stalking horse bid allowed the debtor to market the property to other potential purchasers at a higher price (the Court stated that the purchaser had not breached the purchase-sale agreement and had the Debtor complied with the provisions in the purchase-sale agreement, the hotel would have sold for nearly $1 million more than its eventual sales price). *In re Emerald Grande, LLC*, No. 17-21, 2021 Bankr. LEXIS 2799 (Bankr. N.D.W. Va. Oct. 7, 2021).

Agreement entered into without P.S.C. approval voidable at defrauded creditor's discretion. The Court stated that a default judgment entered against the Debtor in Virginia, after a receiver had been appointed in Tucker County, West Virginia, rendered the Virginia default judgment void because the Tucker County Court was vested with exclusive jurisdiction. On the other hand, the Court found that the underlying agreement was valid even though it had not been affirmatively approved by the WV Public Service Commission and found that the agreement was voidable by the creditor, at its option, based on material misrepresentations by the Debtor's former officers. *In re Timberline Four Seasons, Utils., Inc.*, No. 21-125, 2021 Bankr. LEXIS 2939 (Bankr. N.D.W. Va. Oct. 25, 2021).

The Fourth Circuit recently addressed a similar scenario in *Anderson v. Morgan Keegan & Co. (In re Infinity Bus. Grp., Inc)*, 2022 U.S. App. LEXIS 10586 (4th Cir. Apr. 19, 2022). The debtor had practiced years of inflating accounts receivable while seeking funding. The board members and CEO had already been held liable, but the trustee sought to hold the defendant liable for work he had done over a short period years prior. The Fourth Circuit affirmed the bankruptcy court's application of *in pari delicto* under the premise that even if the defendant had some hand in the purported fraudulent accounting practices, he did not mastermind or benefit from it. The Fourth Circuit ruled in favor of the defendants, holding that "[a]t worst, [they] simply failed to stop a ship that was already sinking, and the law does not hold [them] accountable for that failure."

Pro se debtor can be sanctioned for frivolous filings. In an adversary proceeding, pro se defendant submitted defamatory and intentionally false documents, which the Court found to be for the purpose of harassment. The defendant had a history of frivolous filings in prior litigation and there was a litigious history between the two parties. As a result, the Court applied its discretionary powers under Rule 9011 to sanction defendant and require leave of court to file any more documents on his own behalf. *Bros. of the Wheel MC Exec. Council, Inc. v. Mollohan*, No. 21-20130, 2021 Bankr. LEXIS 3041 (Bankr. S.D.W. Va. Nov. 3, 2021).

IRS not in contempt for exercising tax offset when plan was silent. The debtor was paying the IRS in full through a confirmed Chapter 13 plan. Subsequently, the IRS seized the debtor's tax refund to apply it to the same delinquent tax liability that was being paid through the plan. Accordingly, the debtor moved to hold the IRS in contempt for violating the order of confirmation. The precise language of the Court's model plan and the Trustee's confirmation order, however, did not specifically address how the IRS could treat

post-confirmation tax refunds owed to the debtor. Because there was a failure to address the permissibility of the IRS's offset, the debtor failed to state a claim for contempt. *Webb v. IRS*, No. 19-969, 2021 Bankr. LEXIS 3082 (Bankr. N.D.W. Va. Nov. 8, 2021).

Attorney's failure to timely file because of waiting until deadline is not excusable error. The Court by order set a deadline for filing a claim on behalf of a pending class action and requiring the claim to be "actually received" by the clerk by the deadline. Despite having a month to file, the attorney waited until after business hours on the day of deadline to attempt to file the claim, at which point he realized he did not have proper system access to file the claim. The attorney emailed concerned parties an hour after deadline and finally filed the claim nearly ten hours later. The Court rejected the class's claim that the actions amounted to excusable neglect and denied the $53 million claim. *In re U-Haul Co.*, No. 21-20140, 2021 Bankr. LEXIS 3373 (Bankr. S.D.W. Va. Dec. 10, 2021).

A Utah court came to a similar conclusion in *State Bank of Southern Utah v. Beal*, 633 B.R. 398 (D. Utah 2021) when a bank's complaint to discharge certain debts was filed 16 minutes late because the attorney had personal difficulties using the CM/ECF system.

After prevailing on summary judgment, third-party defendants entitled to attorneys' fees from the debtor. In adjudicating a contractual fee shifting agreement in a contract, the court found that two parties (Wells Fargo and U.S. Bank) failed to file a proof of claim were therefore prohibited from asserting claims against the estate. A third party (Comm 2013), however, had filed a timely proof of claim and was entitled to recover its attorney's fees from the estate. Whether Wells Fargo or U.S. Bank could recover attorney's fees under a pooling and services agreement was not adjudicated by the court as that agreement was not before it. In reviewing whether a reduction to Comm 2013 $549,988.23 attorney fee and expense request was warranted, the court determined that the attorneys' hourly compensation rates between $375 and $775 were reasonable under the circumstances, but in reviewing paralegal rates between $200 and $440 per hour, the court capped the requested hourly compensation at $250 per hour. Among other things, the court countered "block billing" practices by reducing the requested fees by 10% for each block billing entry over 0.5 hours and determined that pro hac vice fees were personal to the attorney and not compensable from the estate. *U.S. Bank, N.A. v. Tara Retail Grp., LLC*, No. 17-57, 2021 Bankr. LEXIS 3527 (Bankr. N.D.W. Va. Dec. 27, 2021).

If debtor is in compliance with confirmed plan, loan terms should be adjusted to fit the terms of the plan. On summary judgment, the Court addressed a dispute over the meaning of certain language in the debtor's confirmed Chapter 11 plan and addressed other related issues. *Comm 2013 CCRE12 Crossing Mall Rd., LLC v. Tara Retail Grp., LLC*, No. 17-57, 2022 Bankr. LEXIS 39 (Bankr. N.D.W. Va. Jan. 6, 2022).

Payments made post-petition to reduce amount of debt secured by lien are property of the bankruptcy estate. Where the debtor made post-petition payments on a vehicle with a lien which had been avoided, the Court held that the payments were now property of the estate and required turnover to the trustee. *Alderson FCI v. Burks*, No. 18-10037, 2022 Bankr. LEXIS 173 (Bankr. S.D.W. Va. Jan. 25, 2022).

Summary judgment not appropriate when willful behavior of the defendant not established by state court default judgment. The Court denied entry of summary judgment in a 11 U.S.C. § 523(a)(6) exception to discharge case that was filed after entry of a state court civil default judgment awarding damages against the debtor for sexual crimes that were committed by non-debtors who were present at the debtor's home. *A.M. v. Randlett*, No. 21-420, 2022 Bankr. LEXIS 494 (Bankr. N.D.W. Va. Feb. 25, 2022).

Pro se debtors' failure to prove change in law, injustice, or clear error prevents reconsideration of previous court order. Creditors wrote a letter to the court which was effectively treated as a motion to reconsider a previous motion to avoid a lien held by the creditors. Despite advice to seek counsel, the creditors continued to proceed *pro se* and the motion was ultimately denied because the creditors failed to satisfy the requirements of Civil Procedure Rules 59 and 60 in order for the ruling of the court to be reconsidered. *In re Vandevender*, No. 21-20207, 2022 Bankr. LEXIS 673 (Bankr. S.D.W. Va. Mar. 11, 2022).

Trustee's adversary proceeding against debtor's director not subject to arbitration because trustee didn't bring the claim based upon employment as CEO. The director argued that relevant contract for his employment as CEO required arbitration. However, the court noted that the trustee intentionally brought claims relating only to position on the board of directors, which was distinct from the position as a CEO. The distinction was one which precluded the court from enforcing arbitration on the matter. *Sheehan v. Levine*, No. 18-45, 2022 Bankr. LEXIS 710 (Bankr. N.D.W. Va. Mar. 21, 2022).

Summary judgment awarded on several counts based on plain language of leasing agreement. Former owner of corporate debtor had personally guaranteed a lease agreement which the debtor had breached. The court, in reading the plain language of the contractual agreement, awarded summary judgment on several counts for failing to comply with the terms of the contract. Further, although there were no facts present relating to the guarantor's counterclaims, the court denied summary judgment for the plaintiffs due to the failure to show entitlement to judgment. *In re Corotoman, Inc.*, No. 19-20134, 2022 Bankr. LEXIS 934 (Bankr. S.D.W. Va. Mar. 31, 2022).

Pre-bankruptcy transfers not rendered nondischargeable under § 523(a)(4) when aggrieved plaintiff was or should have been aware of the transfers and failed to object until bankruptcy. Plaintiff who had undertook a business enterprise with the debtor brought suit for transfers by the debtor in the course of their business. Debtor had initiated five transfers in the aggregate amount of $49,949.71 and plaintiff claimed these transfers were without her knowledge and/or the result of deceit. The court noted that the plaintiff had access to the relevant accounts and even if the transfers in question "were not expressly authorized, it follows that [defendant's] actions were nonetheless ratified" by the plaintiff's failure to object until years later. Accordingly, there had been no defalcation under 11 U.S.C. § 523(a)(4). Because the standard for fraud and embezzlement is higher than that for defalcation, neither fraud nor embezzlement had occurred. Because of this, the debts were not rendered nondischargeable. *The Truth Tellers, LLC v. Levine*, No. 19-1048, 2022 Bankr. LEXIS 845 (Bankr. N.D.W. Va. Mar. 31, 2022).

Motion for stay pending appeal denied where all four factors weigh against appellant. Appellant of previous order sought a stay pending appeal. The court analyzed the necessary factors for a stay pending appeal and found that all four weighed against the appellant. Notably, the appellant was unlikely to succeed on appeal and was unable to show irrepparable harm. Accordingly, the court dismissed. *Comm 2013 CCRE12 Crossing Mall Rd., LLC v. Tara Retail Grp., LLC*, No. 17-57, 2022 Bankr. LEXIS 1079 (Bankr. N.D.W. Va. Apr. 20, 2022).

Summary judgment awarded in part for transfers that were definitely post-petition. Chapter 7 corporate debtor made several transfers to the defendant post-petition without court authorization. The trustee challenged the transfers and sought summary judgment. However, there were other transfers which *may* have cleared prior to the petition date. The Court granted summary judgment relating to all but two

checks which lacked sufficient evidence to find as a matter of law that the transfers were not pre-petition and set a trial date for the remaining two transfers. *Johns v. Martin*, No. 21-05000 (Bankr. S.D.W. Va. May 3, 2022).

Subchapter V

Subchapter V debtors must provide $1000 in escrow for trustee. As of December 17, 2021 debtors under Subchapter V of Chapter 11 are required to tender to their attorney $1000 to be held segregated in the attorney's trust account to create a fund through which the Subchapter V trustee may be paid for services. *Pro se* debtors must tender the funds directly to the trustee. For more details, *see* NDWV General Order 21-5 and SDWV General Order 21-11.

Majority of courts have held that a business debtor need not be actively operating in order to be eligible for Subchapter V. While the issue is still evolving and there is a circuit split, the majority of courts have held that a business which is no longer operating as intended is still eligible for Subchapter V so long as it still has assets and is taking some form of action to wind down the business.

In *In re Vertical Mac Construction, LLC*, No. 21-1520, 2021 Bankr. LEXIS 2285 (Bankr. M.D. Fla. July 23, 2021) the Debtor ceased operations seven months prior to filing bankruptcy but maintained assets worth $300,000. The Court upheld eligibility for Subchapter V for maintaining these assets.

The Court in *In re Offer Space, LLC,* 629 B.R. 299 (Bankr. Utah 2021) permitted Subchapter V election where the debtor had ceased operations but was still maintaining bank accounts and exploring possible lawsuits. Similarly, a defunct business which was still pursuing litigation and still maintaining its facility at the time of filing was considered actively engaged in business and eligible for Subchapter V in *In re Port Arthur Steam Energy LP*, 629 B.R. 233 (Bankr. S.D. Tex. 2021).

A debtor who had ceased operations of her IT consulting business in May 2019 but continued providing similar service through filing bankruptcy in 2021 was found eligible for Subchapter V. The Court noted that the majority of debtor's debts were attributable to the defunct business and although not for the company, she was still actively engaged in commercial activity which qualified her for Subchapter V. *In re Blue*, 630 B.R. 179 (Bankr. M.D.N.C. 2021).

§ 523(a) exemptions to discharge do not apply to entity debtors in Subchapter V. The Court in *Cantell-Cleary Co. v. Cleary Packaging LLC*, 630 B.R. 466 (Bankr. D. Md. 2021) was tasked with the application of § 523(a) to a packaging company in Subchapter V. Relying on the interpretation of congressional intent in *Gaske v. Satellite Restaurants Inc.*, 626 B.R. 871 (Bankr. D. Md. 2021), the Court pointed to Congress's addition of § 1192 to § 523. The Court's conclusion was that this addition had no purpose but to limit application of § 523 to individual debtors.

Publicly traded company holding twenty percent of debtor's voting shares renders the debtor ineligible for Subchapter V. The debtor filed bankruptcy and elected to proceed under Subchapter V, but a creditor contested eligibility. Because a publicly traded company owned approximately twenty-seven percent of voting shares, it qualified the debtor as an affiliate, making it ineligible to proceed in Subchapter V. *Hall L.A. WTS, LLC v. Serendipity Labs, Inc.*, 620 B.R. 679 (Bankr. N.D. Ga. 2020).

Automatic Stay

Landlord cannot terminate residential lease post-petition by notice in the bankruptcy case. Tenant of a residential lease was current on payments in a month-to-month lease and proposed to assume the lease in the Chapter 13 plan. The landlord objected to the plan and filed a motion to dismiss, arguing this expressed affirmative intent to cancel the tenancy upon the conclusion of the current month. The Court held that preconfirmation efforts to terminate the lease by notice without first securing relief from the automatic stay was ineffective and denied the motion to dismiss and subsequent proposed consent order. *In re Myers*, 633 B.R. 286 (Bankr. D.S.C. 2021).

A university's refusal to provide a debtor with their transcript until financial hold was lifted violated the automatic stay. Debtor was a student at California Coast University until 2009. At the time of her 2012 bankruptcy, CCU had put a financial hold on her account, claiming that $6,300 was still owed. A month after filing, the debtor requested a copy of her transcript from CCU and although a transcript was mailed, it reflected that the debtor had never officially graduated because of the outstanding debt. The debtor alleged a violation of the automatic stay and CCU argued any violation was not "willful" as defined in *University Medical Center*, 973 F.2d 1065 (3d Cir. 1992). Because the university provided no authority which it relied upon to claim the withholding of the full transcript was reasonable, the 3rd Circuit upheld a finding that CCU had violated the automatic stay. *Cal. Coast Univ. v. Aleckna*, 13 F.4th 337 (3rd Cir. 2021).

Continuation of divorce proceedings during bankruptcy does not violate automatic stay. *Perryman v. Poggetto*, 631 B.R. 899 (B.A.P. 9th Cir. 2021). Debtor filed for divorce in 2017 and filed for Chapter 13 in 2019, while property settlement litigation was still ongoing. Once the bankruptcy case was filed, the debtor's ex-spouse continued the divorce proceedings five times over thirteen months, citing the bankruptcy case. The debtor filed a motion for contempt against his ex-spouse based on these continuances, arguing them to be a violation of the automatic stay. The Court, comparing these continuances to a postponement of a foreclosure sale, said the continuances did not constitute an attempt to collect. Rather, the "continuation of a judicial action" commenced prior to bankruptcy is routine and, in these circumstances, does not constitute a violation of the automatic stay.

Municipality's maintenance of the status quo does not violate automatic stay. In light of the recent *Fulton* decision, the 9th Circuit B.A.P. was tasked with determining whether the city of Scottsdale, Arizona violated the automatic stay when it did not unfreeze debtor's bank accounts. Prior to bankruptcy, the debtor had lost a lawsuit against the city, and it subsequently served a writ on the debtor's account at Bank of America, which froze his account. The following month, the debtor filed Chapter 13 and immediately contacted the bank and the city to unfreeze his account. When they refused to do so, the debtor filed a motion for sanctions against the city. Citing *Fulton*, the B.A.P. acknowledged that on the date of petition, the city had already exercised control over the property and there was no further act to obtain possession which would have violated the automatic stay. Rather, the city merely "preserved the status quo" which did not amount to a violation. *Stuart v. City of Scottsdale*, 632 B.R. 531 (B.A.P. 9th Cir. 2021).

In *Fulton*, the Supreme court held that a creditor in possession of a debtor's property does not violate the automatic stay in § 362(a)(3) of the Bankruptcy Code by retaining the property after the filing of a bankruptcy petition. *City of Chicago v. Fulton*, 141 S. Ct. 585 (2021).

Reinstatement of a dismissed case does not retroactively instate the automatic stay. In *Laurel Valley Dev., LLC v. Parker*, 624 B.R. 222 (Bankr. W.D. Pa. 2021), a Chapter 13 case was dismissed due to failure to timely file a plan. Less than a week after the dismissal, a Pennsylvania county court conducted a judicial sale of the debtor's property. After the sale, the debtor filed a motion to reconsider dismissal, which was not served upon the purchaser at the foreclosure sale. Because there were no objections, the case was reinstated, and debtor sought retroactive application of the automatic stay. The Court held that where the purchaser was not subject to the automatic stay at the time of foreclosure sale, it was able to annul its later imposition to eject the debtor from the property. The Court cited precedent from across the country in which courts held that vacatur of a dismissal order does not retroactively reinstate the automatic stay.

Assets

Debtor cannot apply state homestead exemptions when federal exemptions have already been claimed. A debtor sold her residence less than a week before filing Chapter 7 and deposited the proceeds in her attorney's trust account. She used the federal exemptions but attempted to use a Kentucky state homestead exemption for the proceeds. The Court prevented her from applying the Kentucky interpretation of the homestead exemptions, saying that once the debtor had used the federal exemptions, "the state exemptions are rendered inapplicable." *In re Richards*, No. 21-40438, 2022 Bankr. LEXIS 52 (Bankr. W.D. Ky. Jan 10, 2022).

Anticipated 401(k) contributions cannot be excluded from projected disposable income calculation. For 14 years, a debtor voluntarily contributed to his workplace 401(k) plan. After losing his job in 2018, he filed for Chapter 13 and sought to deduct nearly $1400 per month from disposable income calculation to account for resuming these contributions with a new job. Because § 101(10A) requires looking at average monthly income over the previous six months and debtor had not been making contributions since losing his job, the deduction was not permitted in the calculation despite 14 years of voluntary contributions. *Penfound v. Ruskin*, 7 F.4th 527 (6th Cir. 2021).

Valuation of fire-damaged residence for lien avoidance purposes does not include insurance proceeds. A third party had successfully sued the debtors and obtained a judicial lien against their residence. During the litigation, the debtors' residence nearly destroyed in a fire, rendering it worth only $6,000. The debtors received $132,392.99 from their insurance provider as a result of the fire, and later filed Chapter 7 bankruptcy, taking the allowable homestead exemption. The debtors sought to avoid the lien against their property, arguing that its only value at the time was $6,000. The Court in *David G. Waltrip, LLC v. Sawyers*, 2 F.4th 1133 (8th Cir. 2021) held that where property is properly exempted under § 522, a debtor is the sole owner of insurance proceeds covering the property. Thus, the only value for the purpose of lien avoidance was the fair market value of the property in its current state, and the lien was entirely avoidable.

Trustee cannot abandon property which is not listed on schedules. Debtors were pursuing a state lawsuit at the time of filing Chapter 7. Despite discussing it with the trustee and disclosing it on the statement of financial affairs, it was not listed on their schedules. When the opponent settled with the trustee, the Court held that the trustee could not abandon the cause of action because the debtors failed to comply with § 554(c). Interpreting the term "scheduled," the Court held that the term requires property actually be included in the schedules, not merely disclosed in other documents. *Stevens v. Whitmore*, 15 F.4th 1214 (9th Cir. 2021).

522(b)(3) applies the applicable non-bankruptcy law of the state where property is located. Debtor was an Illinois resident who filed bankruptcy in the Northern District of Illinois. In addition to his home in Chicago, he scheduled a condominium in Michigan which him and his wife held as tenants by the entirety. He claimed exemptions on both properties and the trustee objected to the exemption of the Michigan property. The Court interpreted 522(b)(3)'s reference to "applicable nonbankruptcy law" as that where the property is located, rather than the law of the debtor's domicile. Accordingly, the Michigan property could be exempted under a Michigan provision which permits exemption of property owned by tenants in the entirety, even though Illinois did not. *In re Wheatley*, 631 B.R. 326 (Bankr. N.D. Ill. 2021).

Discharge and Dismissal

Chapter 13 debtors have an absolute right to dismiss. A debtor had three times filed for bankruptcy to stay a pending foreclosure sale of his home then dismissed shortly after. The bankruptcy court reinstated the case under its discretionary powers and the 6th Circuit on appeal held this to be an abuse of discretion. *Smith v. U.S. Bank N.A.*, 999 F.3d 452 (6th Cir. 2021). The 9th Circuit held similarly, finding that a debtor has an absolute right to dismiss regardless of abuse of the bankruptcy process. *In re Nichols*, 10 F.4th 956 (9th Cir. 2021). The Court there noted the sole exception to the absolute right to dismiss within § 1307(b) and noted "ample" alternatives to properly address debtor misconduct. In the Fourth Circuit, *compare In re Campbell*, No. 7-457, 2007 LEXIS 4159 (Bankr. N.D.W. Va. Dec. 18, 2007) ("a debtor's right to dismiss a Chapter 13 case under § 1307(b) is absolute and is not conditioned by § 1307(c)") *with In re Kotche*, 457 B.R. 434 (Bankr. D. Md. 2011) (finding no absolute right to dismiss when case was brought in bad faith and motion to dismiss was only to escape the repercussions of the misconduct).

Court has the power to set a bar date for and plan may discharge claims arising after confirmation. A corporate debtor confirmed a Chapter 11 plan which sought to discharge all claims arising before the effective date. After confirmation, a former employee sued for age discrimination and despite awareness of the bar date, the aggrieved employee did not file a claim. Referencing *Reading Co. v. Brown*, 391 U.S. 471 (1968), which treated a tort claim arising after petition was filed as an administrative expense, the 3rd Circuit confirmed that § 503 authorizes the bankruptcy court to set a bar date and discharge the unfiled claim. *Ellis v. Westinghouse Elec. Co., LLC*, 11 F.4th 221 (3rd Cir. 2021).

Discharge cannot be granted if debtor attempts to cure after life of the five-year plan. The 10th Circuit recently held that Congress intended to strictly limit plan terms to five years and accordingly does not permit cure of missed payments after the plan term. When a debtor attempted to do so, the bankruptcy court dismissed the case because, under its interpretation of § 1328(a), payments under the plan must strictly be made within five years. *Kinney v. HSBC Bank USA, N.A.*, 5 F. 4th 1136 (10th Cir. 2021).

Voluntary dismissal can be with prejudice. Despite Chapter 13 debtor's right to dismissal, § 349(a) still controls and the 9th Circuit B.A.P. held this means that a debtor's voluntary dismissal can still be subject to an analysis of cause. The B.A.P. upheld the ruling and broadly established that every dismissal, whether voluntary or not, triggers an analysis as to whether the dismissal should be with prejudice. Because the court established that the debtor's files contained misrepresentations amounting to bad faith, the dismissal was granted with prejudice. *In re Duran v. Rojas*, 630 B.R. 797 (B.A.P. 9th Cir. 2021).

Court may dismiss when sole purpose is litigation because debtor and single creditor. A Maryland bankruptcy court dismissed a Chapter 7 case filed in 2014 for abuse of the bankruptcy process. Litigation

in the case had solely revolved around the debtor and one creditor, who claimed 99 percent of unsecured amounts in the case. The two parties had a separate civil action which was entering its 10th year of litigation. The Court, dismissing the bankruptcy case *sua sponte*, felt the parties were using the bankruptcy process to their advantage and the case as it sat served no legitimate bankruptcy purpose when other courts were better suited for the litigation. *In re Goden*, No. 14-22934, 2021 Bankr. LEXIS 3124 (Bankr. D. Md. Nov. 12, 2021).

Miscellaneous Bankruptcy

Affordable Care Act's "shared responsibility payments" entitled to priority under § 507. A debtor objected to the IRS's claim that it was entitled to priority for the shared responsibility payments as a result of the debtors' failure to maintain health insurance. The Court held the IRS's claim was entitled to priority under § 507(a)(8)(A) because the amount of the payment depended on the income of the debtor. *In re Miller*, 634 B.R. 641 (Bankr. M.D. Ga. 2021). This interpretation was much broader than the Court's in *In re Juntoff*, 2021 Bankr. LEXIS 995 (Bankr. N.D. Ohio Apr. 15, 2021), which interprets § 507(a)(8)(A) to grant priority *only* to "taxes that are traditionally understood as income taxes."

Student loans used for non-educational purposes are not any more likely to be discharged. A debtor who had taken out twenty federal student loans sought to have them partially discharged in bankruptcy on two grounds which prevented application of § 523(a)(8). First, he argued, many were in excess of his educational cost and were used for non-educational expenses. Second, he claimed that some were used to attend for-profit universities. The Court in *In re Latson*, 632 B.R. 632 (Bankr. N.D. Ohio 2021) rejected both arguments. Noting the Sixth Circuit's "purpose driven test," the only analysis necessary is "whether the lender's agreement with the borrower was predicated on the borrower being a student who needed financial support." The original purpose, rather than the actual use, determines whether § 523(a)(8) applies. Further, the Court held that loans purposed towards for-profit tuition are no different from the those purposed for public university tuition. *See Conti v. Arrowood Indem. Co.*, 982 F.3d 445 (6th Cir. 2020).

Debtor cannot contractually waive right to bankruptcy. Debtors had previously entered into title pawn contracts, and upon rolling the outstanding debt into the next month signed new contracts purporting to prevent them from filing bankruptcy. When one debtor filed for Chapter 13 five hours after signing the agreement, the pawn shop objected to the filing and sought dismissal for bad faith, based on the contract provision. The Court held the provision unenforceable as contrary to public policy and said the pawn shop was "attempting to manufacture a fraudulent inducement … in order to prevent [the debtors] from availing themselves of the full protections of the Bankruptcy Code." *In re Arnett*, 634 B.R. 1078 (Bankr. M.D. Ala. 2021).

Chapter 13 debtor not required to allocate all disposable income when unsecured creditors receive full payment. In *In re Moore*, 635 B.R. 451 (Bankr. D.S.C. 2021), the Court held that a Chapter 13 debtor was not required to pay interest to unsecured creditors despite having excess disposable income. The Court acknowledged that there is a national split on the matter but cited four cases which favored the debtor's position. Specifically, the Court agreed with *In re Gillen*, 568 B.R. 74 (Bankr. C.D. Ill. 2017), which held that if Congress intended to require interest, it would have included the same "present value language" included elsewhere in § 1325. Because it did not, a finding of good faith in that unsecured creditors were being paid in full over the life of the plan was sufficient for confirmation.

Claim objection from prior bankruptcy is limited by res judicata. Debtor filed bankruptcy in 2015 and confirmed a Chapter 13 plan, which included payments to a creditor to be paid over the lifetime of the plan. No objection was made to the amount of the creditor's claim at that time and the plan was confirmed without issue. The debtor made thirty-eight payments, but then ceased payments and refiled bankruptcy. In the second bankruptcy, the debtor now contested the amount of the creditor's claim. Because the basis of the claim in the second bankruptcy was identical to the basis in the first bankruptcy and the debtor had failed to object to it previously, the debtor was barred from relitigation of the amount by *res judicata*. *BVS Constr. v. Prosperity Bank*, 18 F.4th 169 (5th Cir. 2021).

Tax penalty obligation not avoidable under applicable law that requires value in exchange. The Chapter 13 sued the United States on behalf of non-profit debtor to void tax penalty obligations and recover prior payments made for such obligations. The Court noted that in order for a transfer or obligation to be avoided, it must be "voidable under applicable law by a creditor holding an unsecured claim" and accordingly that § 544(b)(1) does not provide a substantive cause of action on its own. Accordingly, the Court had to look to the state voidability statute. Interpreting language in the statute requiring a "reasonably equivalent value in exchange," it found that a tax penalty obligation did not qualify under the statute. The obligation was a required one under the tax code rather than a consensual agreement and accordingly the "applicable law" did not allow it to be avoided, so the debtor's motion was dismissed. Because the tax obligations were not voidable, neither were the previous payments on that obligation. *Cook v. U.S. (In re Yahweh Ctr.)*, No. 20-1685, 2022 U.S. App. LEXIS 6014 (4th Cir. Mar. 8, 2022).

Fourth Circuit holds that the IRS does not have sovereign immunity for claims arising under 544(b)(1). In a simplified analysis of the issue based on 106(a), the Fourth Circuit in *In re Yahweh Center* recently sided with the Ninth Circuit in a circuit split on whether the IRS has sovereign immunity in relation to various bankruptcy provisions. Further, the court reasoned that the IRS waived sovereign immunity under 106(b) as soon as it filed a proof of claim in the case. The trustee could accordingly seek recovery of previous tax payments. *Cook v. United States (In re Yahweh Ctr., Inc.)*, 2022 U.S. LEXIS 6014 (4th Cir. Mar. 8, 2022). The Ninth Circuit came to the same conclusion in *In re DBSI, Inc.*, 869 F.3d 1004 (9th Cir. 2017), holding that the abrogation of sovereign immunity in 106(a)(1) applied to 544(b)(1). The Seventh Circuit is the only circuit to hold the opposite, reasoning that if the source of substantive state law on which the claimant relies does not abrogate sovereign immunity, then immunity is not abrogated in a related bankruptcy proceeding. *In re Equipment Acquisition Resources, Inc.*, 742 F.3d 743 (7th Cir. 2014).

Second Circuit adopts "control test" for determining whether fraudulent intent of officers can be imputed to corporate directors for avoidance litigation. Corporate debtor executed a leveraged buyout to go private and filed for Chapter 11 a year later. The trustee brought a fraudulent conveyance action against shareholders who sold stock in the leveraged buyout. The court dismissed the action, applying the "control test" which requires proof of the actual intent of the individuals "in a position to control the disposition of [the transferor's] property." Because the trustee failed to establish the actual intent of fraud of those in control of the debtor, the trustee failed to state a claim upon which relief could be granted. The Supreme Court denied *certiorari* for the case in February. *In re Trib. Co. Fraudulent Conv. Litig.*, 10 F.4th 147 (2d Cir. 2021).

Supreme Court to take up trustee fee increase circuit split. Several court rulings in 2020-21 addressed the constitutionality of 2017 legislation that significantly increased fees levied in Chapter 11 cases by the U.S. Trustee Program. North Carolina and Alabama did not apply the increase until nine months later and

only to cases filed after that date. The five circuits to address the question of constitutionality are split, with three finding the increase constitutional and two holding the opposite. The Supreme Court granted *certiorari* in January 2022, heard oral arguments on April 18, and a decision on the matter will be reached later this summer. The case the Supreme Court will address arises out of the Fourth Circuit. *Siegel v. Fitzgerald (In re Circuit City Stores, Inc.)*, 996 F.3d 156 (4th Cir. 2021). *Siegel* involves the bankruptcy of Circuit City, which was filed in the Eastern District of Virginia in 2008. The plan was confirmed in 2010, but the case was still pending when the fee increase went into effect in 2018. When the increase was held unconstitutional elsewhere, the increase was challenged in *Siegel* as well. The Fourth Circuit held the increase to be constitutional and demanded payment of the increased fees.

***Taggart* civil contempt standard applies for violation of Chapter 11 plan.** Debtors had several properties with outstanding mortgages which they intended to pay through their confirmed plan. The plan also included language that in the event of default, the debtors were entitled to written notice before the creditor could "exercise its state court remedies with respect to the collateral." When the defendant took over as loan servicer on the account, it noted the arrearage and initiated foreclosure proceedings despite the debtors' continued payments since confirmation of the plan. The fourth circuit held that the standard established in *Taggert v. Lorenzen*, 139 S. Ct. 1795 (2019) was not restricted to Chapter 7 and governed this case, finding that there was a fair ground of doubt as to the wrongfulness of the defendant's conduct and remanded to the bankruptcy court to analyze the actions of the defendant under the proper civil contempt standard. *Beckhart v. Newrez*, No. 21-1838, 2022 U.S. App. LEXIS 1087 (4th Cir. Apr. 15, 2022).