CONSUMER LAW UPDATE

Selected cases reported from January 1, 2021 through December 31, 2021

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Automatic Stay

Creditor's retention of property does not violate stay. The Supreme Court considered the effect of the City of Chicago's retention of seized vehicles after the filing of bankruptcy, holding that mere retention of property of the bankruptcy estate did not violate § 362(a)(3). Retention was not an act to exercise control of that property. Section 362(a)(3) "prohibits collection efforts outside the bankruptcy proceeding that would change the status quo, while § 542(a) works within the bankruptcy process to draw far-flung estate property back into the hands of the debtor or trustee." City of Chicago, Illinois v. Fulton, 141 S.Ct. 585 (2021).

Former spouse did not violate stay by seeking continuances and attending status conferences in state court litigation. In prepetition action, the former spouse had sought state court order to require debtor's compliance with marital settlement agreement, and upon the Chapter 13 filing, the spouse continued the state court matter. Equating this type of continuance to postponement of a foreclosure sale, the Bankruptcy Appellate Panel declined to interpret § 362(a)(1)'s "continuation" of a judicial action to "include a 'continuance' or status hearing in a stayed nonbankruptcy proceeding." Such continuances in prepetition nonbankruptcy court matters are commonplace and do not constitute prosecution of the matter. In re Perryman, ___ B.R. ___, 2021 WL 4742673 (B.A.P. 9th Cir. Oct. 8, 2021). Compare In re Smith, 2021 WL 5441745 (Bankr. E.D. Tenn. Nov. 19, 2021) (Former spouse's and attorney's continuation of civil contempt action in divorce court was a willful stay violation, and the non-support debt was subject to discharge in the Chapter 13 case under § 523(a)(15).);

Failure to vacate garnishment did not violate stay. Applying *City of Chicago v. Fulton,* the Bankruptcy Appellate Panel held that the creditor maintained the status quo and did not violate the stay under § 362(a)(3) when it refused to release a prepetition garnishment. The opinion also observes that the creditor did not violate other subsections of § 362(a). The creditor had asked the state court to stay further actions in the case but otherwise maintained the status quo. In re Stuart, 632 B.R. 531 (B.A.P. 9th Cir. Nov. 10, 2021).

University's refusal to provide transcript was willful stay violation. The Third Circuit considered its precedent, *In re University Medical Center,* 973 F.2d 1065 (3d Cir. 1992), concluding that it remained good law, notwithstanding subsequent amendment to §

362(k)**,** but California Coast University did not establish a willfulness defense under *University Medical Center.* California Coast had refused to provide a complete certified transcript to the former student, and the bankruptcy court found its refusal to be willful stay violation. Section 362(k)(2)'s good-faith defense to damages was held to be separate and distinct from the willfulness defense found in *University Medical Center,* but there is no conflict in the two defenses. This defendant did not argue good faith and failed to establish the willfulness defense, and the award of damages and attorney fees for the stay violation was affirmed. In re Aleckna, 13 F.4th 337 (3d Cir. 2021).

Police and regulatory power exception to stay applied. The First Circuit affirmed determination that a probate estate's postpetition prosecution of civil contempt action did not violate the automatic stay, because § 362(b)(4)'s police and regulatory exception to the stay applied. The debtor had been found in contempt by the probate court for failing to comply with orders to turn over keys and rents from property that belonged to the probate estate. The Circuit examined the "public policy" and "pecuniary purpose" tests from *In re McMullen,* 386 F.3d 320 (1st Cir. 2004) and found that the probate court's imposition of sanctions for repeated violations of that court's orders was well within § 362(b)(4)'s "police power" exception from the automatic stay. In re Kupperstein, 994 F.3d 673 (1st Cir. 2021).

A**utomatic stay ends only as to debtor and debtor's property under § 362(c)(3)(A).** Affirming, the District Court held that when the debtor had filed a prior case that was dismissed within one year of the current case, the automatic stay terminated on the 30th day as to the debtor and debtor's property but not as to property of the estate. The opinion reviews the split of authority on the issue, including Circuit splits, with this Court adopting the majority view and finding the statutory text unambiguous. If Congress had intended to terminate the stay in all respects, it could have done so, as it did in § 362(c)(4)(A). First Financial Bank v. Clark, 627 B.R. 663 (N.D. Ind. 2021).

Reinstatement of dismissed case did not retroactively reinstate the automatic stay. Although the debtor moved for reconsideration of dismissal of Chapter 7 case within 14 days of the order, Federal Rule of Bankruptcy Procedure 9023 and Federal Rule of Civil Procedure 59 contain no provision for retroactive stay of a pre-existing order of the Court. Under § 362(c)(2)(B), the automatic stay terminates when the case is dismissed, and

subsequent reinstatement of the dismissed case did not retroactively reinstate the automatic stay to void intervening creditor action. In re Parker, 624 B.R. 222 (Bankr. W.D. Pa. 2021).]

Avoidance

Section 522(h) does not authorize debtors to avoid lien resulting from IRS's penalty claim. The prior decision *In re DeMarah,* 62 F.3d 1248 (9th Cir. 1995) held that because § 522(c)(2)(B) provides that otherwise exempt property remains subject to a properly filed tax lien; therefore, the Chapter 7 debtors could not invoke § 522(h) to avoid a properly filed tax lien, even if that lien could have been avoided by the trustee under § 724(a). Here the trustee did avoid the tax lien to extent the lien secured the penalties claim, and that avoided lien was preserved for the benefit of the estate. Section 522(c)(2) makes it clear that a debtor's exemption power cannot overcome a tax lien, regardless of whether the trustee avoided the lien. In re Hutchinson, 15 F.4th 1229 (9th Cir. 2021).

Property of estate and exemptions

Meaning of "applicable nonbankruptcy law" in § 522(b)(3)(B). the Chapter 7 debtor lived in Chicago but claimed exemption under § 522(b)(3)(B) in a Michigan condominium that was owned by debtor and spouse as tenants by entirety. The trustee objected, asserting that the debtor was resident of Illinois and could not claim exemption under Michigan law. Section 522(b)(3)(B)'s use of the term "applicable nonbankruptcy law" refers in this case to the law of Michigan, where the condominium is located, and Michigan did not limit its exemption for entireties property to homestead property. The Court concluded that "the better reading of section 522(b)(3) is that 'applicable nonbankruptcy law' has nothing to do with the debtor's domicile state;" rather, the applicable law is where the property is located. The Court found that most courts had so construed the statute. Illinois, the debtor's domicile state, had opted out of the § 522(b)(2) federal exemptions, permitting the debtor to choose § 522(b)(3) exemptions, including the § 522(b)(3)(B) tenancy by entirety exemption. The trustee's objection was overruled. In re Wheatley, 631 B.R. 326 (Bankr. N.D. Ill. 2021).

Denial of exemption resulted in modified plan, and confirmation rendered appeal

of denial moot. The Chapter 13 debtor appealed from denial of claimed exemption in workers' compensation award, but debtor also filed modified plan that committed payment of portion of award to creditors. The appeal from exemption denial became moot, and debtor should have objected to confirmation of modified plan and appealed denial of that objection. Filing and obtaining confirmation of modified plan, without objection was fatal to appeal; moreover, the debtor defaulted in the confirmed plan, resulting in dismissal of the case, which also mooted the appeal. In re Bullock, 986 F.3d 733 (7th Cir. 2021).

Debtor had not abandoned homestead. Affirming by adopting its Bankruptcy Appellate Panel's decision, the Ninth Circuit agreed that the Chapter 7 debtor resided in the homestead property at the petition date, and under Washington law, she was entitled to the homestead exemption. The BAP had utilized the "snapshot rule" for determination of exemption as of the petition date. The debtor did not lose the homestead exemption by moving out of the property after filing. "A debtor's right to a homestead exemption in a chapter 7 case should not be predicated on the happenstance of how long the case remains pending." In re Anderson, 988 F.3d 1210 (9th Cir. 2021).

Annuity interest not qualified as retirement funds. The debtors' first amended Schedule C to claim exemption in a Fidelity account was too vague to constitute notice to the Chapter 7 trustee, under *Schwab v. Reilly,* 560 U.S. 770 (2010): the property interest was not specifically described, no specific exemption law was provided as basis for exemption, and the value of the interest was not stated. As a result of these deficiencies, the trustee's objection to the second amended exemption was timely. The debtors then amended Schedule C a third and fourth time, claiming exemption under § 522(b)(4)(B) but not under § 522(b)(3)(C), which was the relevant exemption. Failure to claim under § 522(b)(3)(C) meant the debtors were not entitled to that exemption, but assuming the exemption had been properly claimed, under *Clark v. Rameker,* 573 U.S. 122 (2014), the annuity was not shown to be "retirement funds." In re Soori-Arachi, 623 B.R. 181 (B.A.P. 1st Cir. 2021).

Applying *Law v. Siegel* to state-law exemption. Examining the case law on application of *Law v. Siegel,* 571 U.S. 415 (2014), when state-law exemptions are claimed, the Court concluded that debtor was entitled to Ohio's exemption in a motor vehicle on which title had been transferred prepetition from one spouse to the other. Notwithstanding the allowed exemption, the Chapter 7 trustee could obtain judgment for one-half of the value

of the vehicle because the transfer was constructively fraudulent. In re Wyman, 626 B.R. 480 (Bankr. S.D. Ohio 2021).

Debtors' exemption in tax refund was superseded by setoff. Although the Chapter 7 estate included debtors' overpayment of taxes and claim to refund, debtors' claim of exemption in the refund did not overcome the government's common law and statutory right to offset the refund against other debt owed to federal government agency. In addition to common law setoff, the government had unambiguous statutory setoff right in 26 U.S.C. § 6402(d), which requires the Secretary of Treasury to pay any tax overpayment to a federal agency holding an enforceable debt. The Fourth Circuit had previously held in *Copley v. United States,* 959 F.3d 118 (4th Cir. 2020), that the government's § 553(a) setoff prevailed over a debtor's right of exemption, and here the Circuit held "that the protections typically accorded properly exempted property under 11 U.S.C. § 522(c) do not prevail over the government's 26 U.S.C. § 6402(d) right to offset mutual debts. . . .In sum, then, the Treasury's authority to exercise its right to offset the Woods' tax overpayment against their debt to HUD is anchored firmly in § 6402(d) and § 553(a). This offset right supersedes the general exemption protections of § 522(c)." Although the government should have moved for stay relief before exercising setoff, the Court noted that the government could move to annul the stay under § 362(d), and lack of stay relief did not prevent setoff prevailing. In re Wood, 993 F.3d 245 (4th Cir. 2021).

Issue preclusion applied to denial of exemption. The Ninth Circuit affirmed denial of the debtor's claim of exemption on issue preclusion grounds, when the exemptions had previously been denied in the Chapter 13 phase of the case, and the denial was not timely appealed. The case was then converted to Chapter 7 and the debtor amended exemption claims but without substantive changes or without changing the statutory basis for the exemptions. The trustee objected, and the bankruptcy court found the amended exemptions to be precluded by the prior denial. The Circuit held that *Law v. Siegel,* 571 U.S. 415 (2014), did not control this situation, and "nothing in *Law* prevented the bankruptcy court from giving preclusive effect to" the exemption ruling in the Chapter 13 phase of the case. Issue and claim preclusion remain potential grounds for denial of exemptions when the exemptions had been previously denied. In re Albert, 998 F.3d 1088 (9th Cir. 2021).

Trustee's investigation at § 341 meeting did not constitute "recovery" under §

522(g). In original schedules, on advice of counsel, the Chapter 7 debtor showed a home encumbered by mortgages, and at the § 341 meeting, the trustee questioned the debtor about junior mortgage to his sister, but the trustee did not mention that the mortgage could be avoidable. The issue on appeal was whether this investigatory questioning was sufficient to trigger the "recovery" element of § 522(g), and the Bankruptcy Appellate Panel affirmed that it did not. The opinion includes discussion of judicial decisions that "a trustee's threat or indication that she intends to invoke her avoidance powers to recover property of the estate, which results in the recovery of the property, is sufficient to constitute recovery by the trustee under § 522(g)." Here, after the § 341 meeting, the debtor obtained new counsel, who amended the petition and who started the process of the sister's reconveyance of the deed of trust. The BAP held that its prior decision, *In re Glass,* 164 B.R. 759 (B.A.P. 9th Cir. 1994), aff'd 60 F.3d 565 (9th Cir. 1995), "established a floor for determining what constitutes a recovery by the trustee: an explicit statement by the trustee to the debtor that the trustee intends to recover the property interest for the estate. In other words, the debtor must be put on notice by an affirmative act or statement of the trustee that the transfer is avoidable and/or recoverable under the Bankruptcy Code and that the trustee intends to take action to recover the property interest." Under the facts of the current case, the trustee's investigatory questions did not meet that standard. The opinion also notes that under *Law v. Siegel,* 571 U.S. 415 (2014), the trustee was not entitled to an equitable remedy. In re Perez, 628 B.R. 327 (B.A.P. 9th Cir. 2021).

Property of estate on conversion from 13 to 7 included appreciation of property value. Discussing the split in judicial views, the Court concluded that under § 348(f) "post-petition appreciation is not treated as a separate asset from pre-petition property and inures to the bankruptcy estate, not the debtor." The opinion discusses the legislative history of § 348(f)(1)(A), concluding that it was "not appropriate to read into the statute an unstated provision regarding treatment of post-petition, pre-conversion changes in property value." Here, the real property value had been $500,000 at filing of the Chapter 13, with debtors claiming $125,000 homestead in the equity, but after conversion to Chapter 7 the trustee asserted the value had increased to $700,000. The increased value belonged to the Chapter 7 estate. In re Castleman, 631 B.R. 914 (Bankr. W.D. Wash. 2021).

Discharge Issues

Bankruptcy court had discretion to extend time to effect service of nondischargeability complaint. The bankruptcy court had extended time to effect service of process. Rule Civil P. 4(m) does not set a time limit, and the abuse of discretion standard requires examination of the reasons for extension. Here, the extension was tied to litigation and appeals over whether the complaint should have been dismissed on other grounds. Moreover, dismissal now for failure to serve more promptly would amount to dismissal with prejudice. In re Cutuli, 13 F.4th 1342 (11th Cir. 2021).

General default in state court action was not entitled to collateral estoppel effect. The pre-bankruptcy Florida state court judgment was based on default in a multi-count complaint, and that judgment was not given collateral estoppel effect in the subsequent § 523(a)(2)(A) proceeding. In the Florida complaint, "each of the claims that could have satisfied the requirements of § 523(a)(2)(A) contained alternate factual allegations that did not do so. . . .In our view, when a complaint alleges several alternative (and inconsistent) factual grounds for a legal claim, and each of those grounds would be independently sufficient to establish the claim, it is impossible to tell which of the grounds a general default judgment was based on. And if one of those alternate grounds is insufficient to meet the elements of fraud under the Bankruptcy Code, the issues cannot be deemed identical." In re Harris, 3 F.4th 1339 (11th Cir. 2021).

Distribution approach adopted for purposes of § 523(a)(3)(A). In the Chapter 7 case, the original schedules did not list this creditor and there was no original proof of claim deadline, but subsequently a proof of claim deadline was issued.. After the debtors' discharge, an amendment to Schedule F was filed, listing this creditor who had obtained a prepetition judgment. The creditor filed a proof of claim, well past the deadline, but also a complaint under § 523(a)(3)(A), alleging that the claim was not scheduled for a year after the deadline to file a timely proof of claim, but the debtors responded that the estate was still open, pending recovery of assets, and that the proof of claim was filed in time for a distribution, if available. The issue was whether § 523(a)(3)(A) should be read in conjunction with § 726(a)(2)(C), and the Court adopted the distribution approach, following *In re Snyder,* 544 B.R. 905, 910 (Bankr. M.D. Fla. 2016), that the "determinative factor on timeliness must be whether the creditor filed a proof of claim in time to share in the

distribution." Even though this proof of claim was tardy, it was filed in time to share in the distribution from this estate if assets were recovered. The timeliness requirement was satisfied for purposes of § 523(a)(3)(A), when read in conjunction with § 727(a)(2)(C). The debt was not excepted from discharge. In re Simmons, ___ B.R. ___, 2021 WL 3744890 (Bankr. M.D. Fla. Aug. 24, 2021).

Basis for state-court judgment was unclear and creditor/plaintiff was not collaterally estopped from asserting § 523(a)(4) complaint. The Sixth Circuit remanded, after finding that the prepetition state-court judgment was unclear in the basis for its relief. The bankruptcy and district courts had found that judgment to be based on a breach of contract claim, but the state-court complaint sufficiently alleged larceny and defalcation, with the judgment unclear as to whether it was based only on breach of contract. Under applicable Tennessee law, the judgment did not prevent the plaintiff/creditor from litigating dischargeability in the bankruptcy case. In re Piercy, ___ F.4th ___, 2021 WL 6133173 (6th Cir. Dec. 29, 2021).

Attorney fees awarded in divorce proceeding were domestic support obligations. Substantial attorney fees awarded by the divorce court to debtor's former spouse were clearly intended to be support and were nondischargeable under § 523(a)(5). The fees were also entitled to priority under § 507(a)(1)(A). The debtor's argument that the fees were dischargeable under § 523(a)(15)'s pre-2005 balancing test was irrelevant, but if the fees were not domestic support in nature they would be nondischargeable under the current "catchall section 523(a)(15) for all other debts owed to a spouse incurred in the course of a divorce." In re Kalsi, 631 B.R. 369 (Bankr. S.D. N.Y. 2021).

Judgment in state-court breach of contract action given preclusive effect on injury element of § 523(a)(6). Although the pre-bankruptcy state-court judgment was in action for breach of contract, the findings in that judgment satisfied the "injury" element of § 523(a)(6). "A breach of contract case necessarily involves the question of whether the plaintiff's legal rights were violated, and the law provides a remedy for such violation in the form of monetary damages. The principle that a breach of contract constitutes a legal injury is foundational to common law jurisprudence." The Court then examined the Circuit split following *Kawaauhau v. Geiger,* 523 U.S. 57 (1998), on "whether a breach of contract must be accompanied by some form of tortious conduct that gives rise to willful and malicious injury." *Quoting In re Jercich,* 238 F.3d 1202, 1206 (9th Cir. 2001). The Fifth

Circuit "rejected a separate tortious conduct requirement," in *In re Williams,* 337 F.3d 504, 510-11 (5th Cir. 2003). The Eight Circuit held that it would "clarify our jurisprudence about exceptions to discharge under § 523(a)(6) and conclude that a judgment for an intentional tort is not necessary to find judgment debt for breach of contract nondischargeable. The willfulness requirement is met when the bankruptcy court finds facts showing that the debtor's conduct accompanying the breach of contract amounted to an intentional tort against the creditor." In re Luebbert, 987 F.3d 771 (8th Cir. 2021).

Second Circuit reaffirms *Brunner.* Affirming, the Second Circuit held that the *Brunner* test continues to control determinations of undue hardship for § 523(a)(8). The record established that the debtor had sufficient income to allow some student loan payments while maintaining a minimal standard of living, and the debtor failed to undertake steps to improve her financial condition and reduce discretionary expenses. As to the good faith prong of the test, the debtor "failed to avail herself of repayment options available for the ECMC loans and put no discernible good faith effort into either negotiating or repaying the DOE loans." Tingling v. Educational Credit Management Corp., 990 F.3d 304 (2d Cir. 2021).

Private educational loan was not covered by § 523(a)(8)(A)(ii). The Second Circuit held that the "direct-to-consumer Tuition Answer Loans" at issue were not excepted from the Chapter 7 discharge because they were not "an obligation to repay funds received as an educational benefit, scholarship, or stipend" under § 523(a)(8)(A)(ii). The other subsections of § 523(a)(8) were not at issue. Agreeing with the Tenth and Fifth Circuits, the Court construed the subsection's language to include "educational benefits. . .such as conditional grants," but not to include typical "loans." "'Educational benefit' is therefore best read to refer to conditional grant payments similar to scholarships and stipends," such as payments of tuition in exchange for the student's "promise to serve in the military after graduation or to practice medicine in an underserved region." In considering what Congress meant when it created § 523(a)(8)(A)(ii) in 2005, the opinion notes that "Congress used the word 'loan' several times in § 523(a)(8) but left it out of § 523(a)(8)(A)(ii), signaling that the omission was intentional." Homaidan v. Sallie Mae, Inc., et al., 3 F.4th 595 (2d Cir. 2021).

Partial discharge of student loan debt. Finding that it would be unreasonable for the 68-year old debtor "to further eliminate expenses or commit to working excessive overtime

hours," the debtor had established it would be an undue hardship to pay the entire $190,000 student loan debt under the *Brunner* test. However, the debtor had ability to pay $12,000 of that debt over a ten-year period, accruing interest at the federal judgment rate. The Court agreed with those courts concluding that partial discharge was permissible, including *In re Alderete,* 412 F.3d 1200 (10th Cir. 2005), and *In re Clavell,* 611 B.R. 504 (Bankr. S.D. N.Y. 2020), and others cited at footnote 23. In re Randall, 628 B.R. 772 (Bankr. D. Maryland 2021). See also Educational Credit Management Corp. v. Goodvin, 2021 WL 1026801 (D. Kan. 2021) (Affirming, the District Court held that the debtor satisfied the *Brunner* test by showing that he could not pay accruing interest on the student loan and still maintain minimal standard of living. Under Tenth Circuit authority, participation in repayment programs may be considered in good faith analysis but is not applied mechanically so as to be dispositive. Here, the debtor's failure to participate in an IDR plan was reasonable and was not given controlling weight. If he had participated in such a plan, it would not pay accruing interest. The District Court gave deference to the Bankruptcy Court's findings on the debtor's monthly expenses and modest lifestyle. Under Tenth Circuit authority, the Bankruptcy Court could use its § 105(a) equity powers to grant partial discharge, provided that the undue hardship standard was satisfied.).

Attorney fees under § 523(a)(15). After the debtor and former spouse were divorced, the state court continued to hear matters concerning child custody and visitation, resulting in an award of attorney fees to the former spouse. The issue in the Chapter 7 case was whether those fees were excepted from discharge under § 523(a)(15), and the Court analyzed the statutory requirements, concluding that the attorney fees awarded in a "civil action parallel to and intertwined with ongoing dissolution proceedings" were within the statute's definition. The statute is written in the disjunctive, encompassing two types of debt—"those incurred (1) *in the course of* a divorce or separation; or (2) *in connection with* a separation agreement, divorce decree, or other order of a court of record." Although the two phrases are not defined in the statute, under natural definitions, "the words course and connection are unambiguous. The one acts as a limitation on time and the other as a limitation on relationship. Each limitation, however, is broad and may include a wide array of divorce-related debts. Consequently, the court must interpret and apply each statutory phrase broadly. To that point, so long as the debt owed is linked either through time or relation, it is nondischargeable under § 523(a)(15)." In re Bohrer, ___ B.R. ___, 2021 WL

1915991 (Bankr. S.D. Cal. Apr. 27, 2021).

Discharge Injunction

Jurisdiction in putative class action to consider violations of other courts' discharge orders. Denying Discover Bank's motion to dismiss class action allegations based on the Court's lack of jurisdiction to consider alleged violations of the discharge orders entered by other bankruptcy courts, the Court did not rule on certification of a class, but rejected the argument that it would lack jurisdiction to consider the effects of discharge orders from other bankruptcy courts. The opinion reviews other relevant decisions, noting that the discharge injunction is statutory under § 524(a), with the discharge order generally accomplished by an Official Form. The Court recognized that the Fifth Circuit, in *In re Crocker*, 941 F.3d 206 (5th Cir. 2019), had held that "only the bankruptcy court issuing the discharge has authority to enforce the discharge injunction by contempt," but this Court concluded that it had jurisdiction because the claims at issue "arise under" the Bankruptcy Code. In re Golden, 630 B.R. 896 (Bankr. E.D. N.Y. 2021).

Collection attorneys violated discharge injunction by failing to stop garnishment. The Sixth Circuit Bankruptcy Appellate Panel affirmed violation of discharge injunction by law firm and attorney in firm, when they failed to stop post-discharge garnishment and return garnished funds. Under *Taggart*'s standard, there was no objectively reasonable basis for the attorneys to believe their actions were lawful, when they were experienced collection attorneys and had notice of the discharge. Both the firm and individual attorney were liable for damages, including return of the garnishment proceeds. One judge dissented in part, finding a lack of evidence that the individual attorney received any of the garnishment proceeds, but agreed that the law firm must disgorge the garnishment proceeds it received. In re Ragone, 2021 WL 1923658 (B.A.P. 6th Cir. May 13, 2021).

Nationwide class action for discharge injunction violations. Denying the defendant bank's motion to dismiss a putative class action for violations of the discharge injunction, the opinion reviews authorities on whether the bankruptcy court has jurisdiction to hear a class action alleging that the bank violated the discharge injunction order from this and other courts. While *Taggart* "surely has a role to play in determining a creditor's liability, it simply does not address whether this question may be considered by a court solely in an

individual debtor's case, or in a district-wide class, or, as here, in a putative nationwide class." The bank's motion to strike class allegations was denied. In re Ajasa, 627 B.R. 6 (Bankr. E.D. N.Y. 2021).

Chapter 7 Issues

Abandonment

Abandonment requires asset to be included in schedules, and disclosure in statement of financial affairs was insufficient. Affirming its BAP, the Ninth Circuit held that the Chapter 7 debtors' cause of action had not been abandoned by the trustee, even though the pending lawsuit was discussed by the debtors with the trustee and the cause of action was disclosed in the statement of financial affairs. To satisfy § 554(c), abandonment requires that property be "scheduled under section 521(a)(1)," and the Circuit as a matter of first impression held that this requires that "property must be scheduled on a schedule, not just listed on the SOFA." In re Stevens, 15 F.4th 1214 (9th Cir. 2021).

Attorney Fees

Bifurcated fee reduced. The Chapter 7 debtors' attorney offered two options for payment of attorney fees: 1) $1,165 if paid in advance, plus filing fee, or 2) $1,665 if paid postpetition, plus filing fee, with the fee to be paid in twelve monthly installments. Both debtors elected the second, postpetition installment option, which would result in payment of an additional $500 fee. The U.S. Trustee objected to reasonableness of the additional fee, and the bankruptcy court allowed only the $1,165 fee in both cases, with any amount over that to be unreasonable. The Eighth Circuit Bankruptcy Panel affirmed, noting that the issue before it was reasonableness of fees charged by consumer bankruptcy attorneys for Chapter 7 work using a bifurcated fee arrangement. The opinion is limited and does not address "the validity of bifurcation agreements generally or any problems associated with the 'unbundling' of legal services." n. 4 of opinion. The bankruptcy court had found that the attorney provided the same services to both debtors that would have been provided under either the prepetition or postpetition fee structure. The attorney argued that the lodestar approach must be used to evaluate his fees, but the BAP

disagreed, finding that courts are not required to always use lodestar. Moreover, the attorney did not produce time records to support lodestar, and he testified that his fees charged in typical Chapter 7 cases were the same. There was no error in the bankruptcy court's reduction of the fees. In re Allen, 628 B.R. 641 (B.A.P. 8th Cir. 2021).

Reaffirmation

Reaffirmation and ride-through. Discussing reaffirmation when the debtor's attorney had signed the certification under threat from the creditor that it would repossess the mobile home if the attorney did not certify, the Court considered the effects of failure of certification on a debtor's potential "ride-through" option. This debtor, unlike the debtor in *In re Dumont,* 581 F.3d 1104 (9th Cir. 2009), had complied with §§ 521(a)(2), (6) and 362(h), by stating her intent to reaffirm and entering into a reaffirmation agreement. Under the majority view, adopted by this Court, "ride-though is not affected whether the agreement is certified," and "nothing in the plain, but very specific language of §§ 521(a)(6) and 362(h), requires a reaffirmation agreement be certified or otherwise enforceable to preserve the ride-through option. Those statutes also do not require that a reaffirmation agreement be enforceable in order to protect the debtor from an *ipso facto* clause." In this case, although debtor's counsel withdrew certification at the hearing, resulting in the reaffirmation being unenforceable, the debtor "was nonetheless protected from the loss of ride-through because she otherwise complied with the statutory requirements." In addition, the creditor's failure to file a proof of claim preserved the debtor's ride-through, because the creditor did not have an "allowed" claim for purposes of 521(a)(6)'s remedies. The Court also discussed the difficulty of reaffirmation choices when the collateral is a mobile home, because issues arise whether the collateral is attached to real property, and §§ 521(a)(6), 521(d) and 362(h) only pertain to personal property collateral. In summary, this debtor's "timely compliances with §§ 521(a)(2), 521(a)(6) and 362(h) provided her the benefit of ride-through and protection from the *ipso facto* clause under § 521(d)." In re Rhodes, ___ B.R. ___, 2021 WL 5863383 (Bankr. S.D. Cal. Dec. 9, 2021 J. Mann).

Setting aside discharge would not cure failure to timely file reaffirmation. The Chapter 7 debtor moved to set aside discharge so that a reaffirmation could be filed, but the Court denied the motion, holding that enforceable reaffirmation must be made under §

524(a)(1) before the granting of discharge. If the reaffirmation was signed by both the debtor and creditor before grant of discharge, no relief is needed, but if not signed before that date, setting aside the discharge would not change the historical fact of discharge grant or make the reaffirmation enforceable. In re Hounshell, 627 B.R. 884 (Bankr. E.D. Mich.2021)

Chapter 13 Issues

Trustee Fees

Trustee is entitled to statutory fee upon receipt of each plan payment. In an unpublished opinion that takes the minority position, the Ninth Circuit Bankruptcy Appellate Panel, with a dissent, held that the plain language of 28 U.S.C. § 586(e)(2) provided that "a standing trustee is entitled to collect the statutory fee upon receipt of each payment under the plan and is not required to disgorge the fee if the case is dismissed prior to confirmation." The opinion acknowledges that the majority of bankruptcy courts confronting the issue have held that § 586(e) in conjunction with § 1326(a)(2) require the trustee to hold the percentage fee until confirmation and to return it to the debtor if the case is dismissed prior to confirmation. "The plain language interpretation is confirmed by the context of § 586(e)(2), related fee collection statutes, and the larger statutory scheme of the Bankruptcy Code. And logic dictates that once the trustee collects her fee 'from' each payment she receives, the fee is no longer part of the plan payments which must be retained by the trustee under § 1326(a)(2) and disbursed to creditors pursuant to the plan." The dissenting opinion agreed that the majority opinion was the "better" policy outcome, but disagreed with the interpretative approach taken by the majority. In re Harmon, 2021 WL 3087744 (B.A.P. 9th Cir. July 20, 2021), unpublished.

Trustee could not retain fee on amounts collected in unconfirmed case. Disagreeing with the bankruptcy court, the district court held that § 1326(a)(2) controlled over 28 U.S.C. § 586(e). Moreover, § 1326(a)(2) does not provide specifically for the trustee to retain a fee in unconfirmed cases, in contrast to § 1226(a)(2). In re Doll, 2021 WL 5768991 (D. Colo. Dec. 6, 2021).

Lien Avoidance and Treatment

Judicial lien avoidance could not be denied on equitable grounds. Agreeing with the Bankruptcy Court that recording of judgment for loan to pay off prior mortgage was a judicial lien rather than consensual lien, it was subject to avoidance as impairing the Chapter 13 debtor's exemption. The bankruptcy court could not refuse to avoid the lien on equitable grounds asserted by the creditor, with such denial foreclosed by *Law v. Siegel,* 571 U.S. 415 (2014). In re Rivera, 627 B.R. 765 (B.A.P. 1st Cir. 2021).

Disposable Income

Contributions to 401(k). Distinguishing the facts in its prior decision, *In re Davis,* 960 F.3d 346 (6th Cir. 2020), in which the debtor had historically and regularly made prepetition contributions to a 401(k), the Sixth Circuit considered the situation in which a Chapter 13 debtor had historically contributed to a 401(k) plan but had been unable to do so in the six months leading up to the bankruptcy filing. The Court of Appeals ruled that these debtors could not exclude postpetition voluntary contributions to their 401(k) plan from calculation of their projected disposable income. The opinion reviews the history of decisions on the issue, including the prior decision *In re Seafort,* 669 F.3d 662 (6th Cir. 2012). In re Penfound, 7 F.4th 527 (6th Cir. 2021)

Confirmation

Debtor could not choose different treatment for cross-collateralized collateral. Affirming, the Fifth Circuit held that under § 1325(a)(5) the debtor could not treat two motor vehicles with different options of surrender or cram down when the vehicles were cross collateralized under the loan documents. The debtor's plan proposed to surrender one vehicle but to retain the other, cramming down treatment of the loan as to the retained vehicle. Section 1325(a)(5) uses "or" between the options, and when the collateral is cross collateralized in the loans, the debtor must use the same option for all collateral. In re Barragan-Flores, 984 F.3d 471 (5th Cir. 2021).

Best interest test. For purposes of the best-interest-of-creditors confirmation test, § 1325(4)'s phrase "the effective date of the plan" refers to the date of confirmation, as the Supreme Court treated that phase in *Hamilton v. Lanning,* 560 U.S. 505 (2010). This debtor had $10,000 of non-exempt assets that would be liquidated in the hypothetical

Chapter 7 case, but the expected Chapter 7 commission on those assets must be deducted to determine what unsecured creditors would receive. If the Chapter 13 debtor's attorney fees would be an allowed administrative expense at confirmation, those fees would be deducted from what unsecured creditors would receive in the hypothetical Chapter 7 liquidation. The stream of payments that would be paid to unsecured creditors in a Chapter 7 liquidation must then be discounted to present value under § 1325(4)'s "effective date of the plan." In re Buettner, 624 B.R. 78 (Bankr. E.D. Wisc. 2021).

No interest required on plan paying creditors 100%. Although the plan proposed to pay unsecured claims 100%, it did not commit all disposable income and did not propose payment of interest on those claims. A judgment creditor objected to confirmation, arguing that § 1325(b)(1) required payment of interest when the debtor was not committing all disposable income. The Court concluded that section's subparts are written in disjunctive, requiring compliance with only one subpart, and part (A) provides that confirmation may be based on the payment of the full amount of the claim. The Court found the majority of court decisions holding that an above-median debtor is not required to devote all disposable income if the plan pays allowed unsecured creditors in full within 60 months. The Court also found that courts have disagreed whether subsection (A) requires payment of interest, concluding that § 1325(b)(1)'s phrase "as of the effective date of the plan" refers to *when* the court determines what is being paid to unsecured creditors and does not require payment of interest. In other Code sections that phrase follows the word "value," and in those instances the phrase modifies that word, requiring payment of interest as part of value determination. The opinion agreed with the *Collier* interpretation and disagreed with the interpretations found in *Norton* and *Lundin on Chapter 13.* In re Moore, ___ B.R. ____, 2021 WL 5711785 (Bankr. D. S.C. Nov. 23, 2021).

Effect of confirmation on property of estate and appreciated value. Holding that confirmation vested property in the debtor, the estate may be replenished after confirmation by new property but appreciated value of property vested in the debtor does not become property of the estate. The case was filed under Chapter 7 but then converted to 13, and the confirmed plan provided for unsecured creditors to be paid pro rata, with a total of $36,015 to be paid into the plan. Three years later the debtor moved to sell the residence, and the sale price indicated an increase in value ($129,000) since

commencement of the case. The debtor proposed to pay off the balance of the plan from sale proceeds, but the trustee objected, asking that unsecured creditors be paid in full from the appreciated value and arguing that the appreciation was property of the estate. The opinion reviews the theories of vesting at confirmation, concluding that the "estate replenishment approach best harmonizes sections 1306(a) and 1327(b). . . .To allow the trustee to reach the asset that has vested in the debtor renders section 1327(c) moot." The Court then held that vesting of this property in the debtor caused that property to cease being property of the estate; therefore, proceeds of sale of that property did not become property of the estate. Its appreciated value did not accrue from property of the estate, and was vested in the debtor. If the debtor wishes to pay off the plan early, rather than continue confirmed monthly plan payments, the debtor must move to modify the plan. In re Larzelere, ___ B.R. ___, 2021 WL 3745428 (Bankr. D. N.J. Aug. 24, 2021).

Plan Modification

Modified plan could include postpetition mortgage arrearages. Reviewing split of authority on whether a modified plan could include curing of postpetition mortgage arrearages, the Court agreed with Fifth and Eleventh Circuit decisions that such curing was permissible under §§ 1322, 1325 and 1329. The analysis included that a plain reading of § 1322(b)(5) expressly authorizes a timely cure of default whether it is pre- or postpetition. The debtor had defaulted on postpetition mortgage payments because of her spouse's unemployment and COVID-19 impacts; as a result, the confirmed plan could be extended to 73 months to permit the cure, with the extension permitted under § 1329(d)(2). In re Smith, 631 B.R. 374 (Bankr. D. N.J. 2021).

Best interest of creditors test in modification. The Bankruptcy Judges in Kansas agreed on a holding that a postpetition personal injury settlement acquired by the debtor was not included in the calculation of the best interest of creditors test. The trustee had moved for inclusion of the settlement proceeds for payment of unsecured claims. The Court held that the proceeds were property of the estate under §§ 541 and 1306, and the opinion reviews the split of authority on whether postpetition property is included in the § 1325(a)(4) hypothetical liquidation analysis. The Court interpreted that Code section's "effective date of the plan" to refer to the original plan rather than the modified plan, following the leading case, *In re Barbosa,* 235 F.3d 31 (1st Cir. 2000), on that point, but §

348(f) controlled what property would be included in the hypothetical Chapter 7 liquidation. Assuming good faith, § 348(f) provides that property upon conversion is that property of the estate as of the filing of the petition if that property remains in the possession or control of the debtor, excluding § 1306 postpetition property. "The hypothetical liquidation calculated under the best interest test should be conducted assuming the same estate. That liquidation is determined by reference to what a Chapter 7 trustee would produce for unsecured creditors if the estate were liquidated at the time of the postconfirmation modification." The opinion observes that the majority view appears to be that postpetition windfall property is included in the best interest calculation, but the Court disagreed with that view. In re Taylor, 631 B.R. 346 (Bankr. D. Kan. 2021).

Discharge

Discharge could not be granted in case that exceeded 5 years. The debtor failed to make some mortgage payments during the life of her 5-year plan, but she attempted to cure the default after the plan terminated and sought discharge. The Tenth Circuit affirmed the denial of request for discharge and dismissal of the case. The Circuit opinion viewed the attempted cure as an impermissible attempt to modify the plan, holding that plans were limited to five years and that modification could not be permitted after that term's expiration. The bankruptcy court had no discretion to grant a discharge when the debtor had not completed required payments during the plan term. The opinion concluded that § 1328(a)'s language "completion . . .of all payments under the plan" was ambiguous but nevertheless most naturally meant that a discharge is required only if payments "had been made during the existence of the plan." Congress "intended to strictly limit the time for payments under Chapter 13 plans." In re Kinney, 5 F.4th 1138 (10th Cir. 2021).

Debtor with unpaid but "abated" plan payments not eligible for discharge. After confirmation the debtor missed several plan payments, resulting in debtor's response to trustee motions to dismiss with her motions to "abate" or suspend those missed payments. The debtor now moved for discharge under § 1328(a), contending that as a below-median debtor she had paid disposable income when it was available, while in some months no disposable income was available. The "abatement" of several scheduled plan payments did not eliminate that payments were required over a 36-month period.

"While abatement allows a debtor to cure missed plan payments, it is not—at least as practiced in this Court—a formal modification of the plan pursuant to § 1329. Rather, abatement is the provision of a grace period in which a debtor may cure missed payments. Technically, when this Court grants a debtor's motion to abate missed payments, it is declining to dismiss the debtor's case for material default under § 1306(c)(6) so long as the debtor cures the missed payments within a reasonable period. The debtor's obligations under the plan, however, remain intact." The confirmed plan obligated this debtor to pay at least $300 monthly for at least three years, and the debtor must cure the missed payments before being eligible for plan-completion discharge. In re Nicksion, 631 B.R. 475 (Bankr. D. Kan. 2021).

Section 1328(i) applied. Under the amendment to § 1328(i) made by the Consolidated Appropriations Act, the Court considered whether its COVID-19 discharge differed substantially from a typical hardship discharge, finding that the term "may" in both sections 1328(b) and (i) permits the Court to use discretion in granting either type of discharge. The debtors argued that they satisfied the conditions for the § 1328(i) discharge because their confirmed plan provided for curing of defaults and maintenance of mortgage payments and they had entered into a mortgage forbearance agreement. But the Court concluded that Congress could not have intended "to eviscerate the other requirements of § 1328, as applied to § 1328(i). Had Congress so intended, it "could have made that intent clear by instructing that the Court 'shall' enter discharge." The Court may consider not only that the debtors met the statutory requirements of § 1328(i) but also the extent of their financial hardship caused by COVID-19, their good faith, and whether plan modification is more appropriate than discharge. In re Ritter, B.R. , 2021 WL 864092 (Bankr. C.D. Cal. 2021).

Dismissal

Section 1307(b) dismissal is mandatory. The Sixth Circuit held that § 1307(b) is clear in its mandatory "shall dismiss" language. Upon a Chapter 13 debtor's motion to dismiss the case, the bankruptcy court is required to dismiss. The Court noted that this right to dismiss is consistent with Chapter 13 providing only voluntary relief, and Congress had provided in section 1307(c) for circumstances in which the bankruptcy court "may" dismiss or convert a case. The opinion observed that the Fifth and Ninth Circuits had ruled that

dismissal was not mandatory under section 1307(b), but those decisions predated *Law v. Siegel,* 571 U.S. 415 (2014), in which the Supreme Court rejected equitable authority as overruling clear statutory language. In re Smith*,* 999 F.3d 452 (6th Cir. 2021),

Ninth Circuit agrees that § 1307(b) provides absolute right to dismiss. Noting that its prior decision, *In re Rosson,* 545 F.3d 764 (9th Cir. 2008), "has been effectively overruled by *Law* and is no longer binding precedent in the Circuit," the Court now held that § 1307(b) is unambiguous and that the Chapter 13 debtors had an absolute right to dismiss, subject only to the single exception of a prior conversion. The Bankruptcy Code provides "alternative tools for bankruptcy courts to address debtor misconduct." In re Nichols, 10 F.4th 956 (9th Cir. 2021).

Debtor's voluntary dismissal did not shield against dismissal with prejudice. The Ninth Circuit Bankruptcy Appellate Panel held that although the debtor had a right to dismiss under § 1307(b), dismissal did not provide "a get-out-of chapter-13-free card." The opinion concluded that § 349(a) controlled all "roads to dismissal," holding: "(1) every dismissal, including a § 1307(b) motion to dismiss, triggers the § 349(a) issue whether 'cause' exists to order that dismissal be with prejudice; (2) no particular procedure prescribes how or when to initiate a contest regarding § 349(a) 'cause' so long as there is due process notice appropriate for denial of discharge and a hearing; and (3) the proponent of a § 349(a) prejudice determination has the burden of persuasion." Relying on the totality-of-circumstances factors in *In re Leavitt,* 171 F.3d 1219 (9th Cir. 1999), for application of § 349(a), the opinion provides a roadmap of the procedures, standards and burdens involved in dismissals with prejudice, and it identifies subsets of such dismissals, ranging from "weak form" to "strong form," with the latter tantamount to denial of discharge under § 727. In re Duran, 630 B.R. 797 (B.A.P. 9th Cir. 2021).

Claims

Rule 3002.1, Punitive Damages and Contempt

Punitive damages not allowed under Rule 3002.1 The Second Circuit Court of Appeals vacated a bankruptcy court's contempt and sanctions ruling, concluding that, even if PHH Mortgage Corp. improperly disclosed mortgage-related fees, such a violation of Rule 3002.1 could not "form the basis for contempt," in light of *Taggart v. Lorenzen*, 139 S. Ct.

1795 (2019), because "there is fair ground of doubt" as to whether its conduct was expressly barred. The opinion did not make a distinction between *Taggart*'s discharge injunction context and this case's context of violation of the bankruptcy court's order that the mortgage was current. The majority panel went on to rule, in a matter of first impression among the circuits, that Rule 3002.1 does not authorize an award of punitive sanctions. There is a strong dissent, but motion for en banc review was denied. PHH Mortgage Corp. v. Sensenich (In re Gravel), 6 F.4th 503 (2d Cir. 2021).

See also Newrez, LLC v. Beckhart, 2021 WL 3361707 (E.D.N.C. July 6, 2021), appeal filed, Beckhart v. Newrez, LLC (4th Cir. Aug. 2, 2021). The District Court rejected imposition of civil contempt sanctions for creditor's commencement of foreclosure in violation of a confirmation order. Sanctions had included monetary sanctions, lost wages, attorneys' fees and "loss of fresh start." A bankruptcy court has the power to hold someone in civil contempt and to impose sanctions; however, in light of evidence supporting "finding that appellants acted in good faith," the District Court reversed contempt finding.

Remedies for violation of Rule 3002.1(c)(2). The reverse mortgage holder did not file a proof of claim, and the debtor's attorney filed one on behalf of the creditor, but the creditor did not comply with Rule 3002.1's requirement of disclosing post-petition advances and expenses for taxes and insurance. The Court determined that appropriate remedies under Rule 3002.1(i) included prohibiting the creditor from asserting the undisclosed advances during the bankruptcy case as a basis for plan objection, stay relief or in any other contested matter or adversary proceeding. Non-payment of the undisclosed advance could not be used as an act of default under the reverse mortgage. The creditor's non-compliance with the Rule also justified an award of attorney fees to the debtor. In re Legare-Doctor, ___ B.R. ___, 2021 WL 5712149 (Bankr. D. S.C. Dec. 1, 2021 J. Waites).

Chapter 13 proof of claim deadline cannot be extended for excusable neglect. Affirming, the First Circuit Bankruptcy Appellate Panel held that Rule 3002(c)'s deadline for timely filed proofs of claim could not be extended under Rule 9006(b) for excusable neglect, and even if such an extension were permissible, the illness of creditor's attorney was not a basis for finding excusable neglect under the facts in this case. In re Lopez, 629 B.R. 322 (B.A.P. 1st Cir. 2021).

Plan provision for State's claim under § 507(a)(1)(B) did not prevent subsequent claim objection. Although the Chapter 13 plan provided for the treatment of the claim of the State Department of Children and Families to be priority under § 507(a)(1)(B), the debtors subsequently objected to the claim. The plan provided for 60 months of payments and further provided that the State's claim would be paid less than the full amount under § 1322(a)(4). Subsequent to confirmation, the Seventh Circuit's *In re Dennis,* 927 F.3d 1015 (7th Cir. 2019), held that a claim for overpayment of public assistance benefits was not entitled to priority under § 507(a)(1)(B). Finding no statutory or rule deadline for claim objections, the plan provision for the claim was not preclusive. Rule 3012(a)(2) permits the court to determine the amount of a claim entitled to priority, and Rule 3012(b) authorizes this objection. The *Dennis* decision "militates against applying law of the case" from the confirmation order. In re Terrell, ___ B.R. ___, 2021 WL 4304839 (Bankr. E.D. Wisc. Sept. 21, 2021 J. Halfenger). In subsequent decision, 2021 WL 5179214 (Bankr. E.D. Wisc. Nov. 3, 2021), over the State Department's objection, the debtors were allowed to modify the plan to shorten the term from 5 to 3 years. The State has filed appeal on November 4, 2021, to the Seventh Circuit.

Fees benefitting Chapter 13 debtor allowed as administrative expense. Attorney fees for representing the debtor in an adversary proceeding were objected to by the trustee, on the basis that the fees benefitted only the debtor and not the estate, but the Court held that Chapter 13 debtor's attorney is entitled to allowance of fees under § 330(a)(4)(B) for work that is beneficial and necessary to the debtor and that proof of benefit or necessity to the estate or creditors is not required, assuming that the requested fees meet the reasonableness test. The requested fees were reasonable and allowed as administrative expense under § 503. In re Steen, 631 B.R. 704 (Bankr. N.D. Tex. 2021).

Priority claim for post-divorce attorney fees. Affirming that attorney fees awarded against the Chapter 13 debtor in post-divorce litigation over amount of child support and custody were domestic support in nature, the fees was payable in the case as priority debt. The opinion cites that "a majority of courts agree that attorney fee awards related to enforce or defend issues involving child support, visitation or custody that affect the welfare of the children do qualify as domestic support obligations." In re Amos, 624 B.R. 657 (B.A.P. 8th Cir. 2021).

Guardian ad litem claim denied priority under § 507(a). Discussing the split of judicial

authority on whether fees awarded to a guardian ad litem are within the definition of domestic support obligation and entitled to priority treatment, the Court construed §§ 101(14A)'s and 507(a)(1)'s designations of payees as plain, concluding that although the fee was in the nature of support, the Code did not include guardian ad litem as a payee. The Code sections enumerated "spouse, former spouse, child of the debtor, child's parent, legal guardian or responsible relative" as those to whom a priority domestic support obligation must be owed or recoverable, and "legal guardian" or "guardian" are not the same as a "guardian ad litem." The Court acknowledged that it was in the minority, with most courts reading the Code more broadly, but concluded that a claimant for a priority domestic support obligation must meet all Code requirements. In re Corson, 629 B.R. 1 (Bankr. D. N.H. 2021).

Mortgagee's failure to file Rule 3002.1 notice in prior Chapter 13 did not prevent its filing claim for fees in current case. Because the debtor's prior Chapter 13 case had been dismissed, the mortgagee's failure to file a Rule 3002.1 notice of postpetition fees in that case had no effect on whether the creditor could file a proof of claim in the current case for its accrued attorney fees. In re McCants, 626 B.R. 80 (Bankr.M.D. Ga. 2021).