Consumer Workshop I

Exemption Issues

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RECENT EXEMPTION DEVELOPMENTS

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***Clark v. Rameker*, 134 S.Ct. 2242 (June 12, 2014)**

The Supreme Court held that an inherited IRA does not constitute a "retirement fund" within the meaning of 11 U.S.C. § 522(b)(3)(C). Since that Code section is identical to § 522(d)(12), inherited IRAs would not be exempt under the latter section either. Although the Court affirmed the Seventh Circuit's decision, *In re Clark*, 714 F.3d 559 (2013), the unanimous opinion by Justice Sotomayor is broader than the Seventh Circuit's. The Circuit Court had distinguished the IRA before it, one inherited from someone other than the debtor's spouse, from spousal inheritance, leaving open the argument that an IRA inherited from a spouse would be exempt, but the Supreme Court held that an inherited IRA lacked the legal characteristics of funds set aside for retirement.

The Court recognized that if the heir is the original owner's spouse, the heir may "roll over" the IRA into his or her own IRA, while an heir of someone other a spouse does not have the "roll over" option. Notwithstanding this distinction, the Court broadly concluded that an inherited IRA simply does not operate like an ordinary IRA, stating that the inquiry into exempt status is an objective one, not a case-by-case factual examination. Looking at three legal characteristics of an inherited IRA, the heir is not able to invest additional funds in the account; the heir is required to withdraw the funds or take minimum annual distributions, rather than hold the funds for retirement; and the heir may withdraw the funds without tax penalty, rather than wait until age 59 ½, as is the case with a regular IRA.

Effect of *Clark* on state-law exemptions

Since the *Clark* opinion construed the language of §§ 522(b)(3)(C) and (d)(12), one question is the effect it may have on debtors claiming under neither of those sections but instead using an applicable state-law exemption. Of course, some debtors may claim a portion of an inherited IRA under a wildcard exemption, but more particularly, most states have some form of exemption in retirement funds, but not all use the term as used in §§ 522(b)(3)(C) and (d)(12). Even if the state law uses the same term "retirement fund," the Supreme Court was not considering the scope or use of state exemptions.

Effect of Opt Out and § 522(b)(3)(C)

If a debtor is governed by a state's opt out, or if the debtor has a choice between state exemptions and § 522(d), § 522(b)(3)(C) in itself places no limit on that debtor's use of state exemptions—the latter section appears to be an additional exemption available to such debtors. Note that § 522(b)(3)(A), which describes the opt out, provides such debtors with Federal exemptions other than those under § 522(d) and local or state exemptions, subject only to "subsections (o) and (p)." Section 522(b)(4), which describes the conditions of retirement funds only refers to "purposes of "§§ 522(b)(3)(C) and (d)(12), and not to state-law exemptions. It would theoretically be offensive to the concept of opt out for Congress to place restrictions on the terms of a particular state's exemptions.

State-law restrictions on exemptions of retirement funds

Merely as illustrations of the range of state-law provisions, some courts have, prior to *Clark,* interpreted applicable state exemptions concerning inherited IRAs. For example, in *In re Kirchen,* 344 B.R. 908 (Bankr. E.D. Wis. 2006), the Chapter 7 debtor had inherited an IRA from his mother. The applicable Wisconsin exemption was for "assets held or amounts payable under any retirement, pension, disability, death benefit, stock bonus, profit sharing plan, annuity, individual retirement account, individual retirement annuity, Keogh, 401-K or similar plan or contract *providing benefits by reason of age, illness, disability, death or length or service."* Wis. Stat. § 815.18(3)(j). Other conditions were that the plan or contract complied with provisions of the Internal Revenue Code. The court denied the exemption, finding that the inherited IRA's character had changed and that as to the debtor, payments were not related to age or retirement status.

Some states provide 100% exemption, without mentioning the effect of inheritance. For example, Alabama Code § 19-3B-508 broadly exempts: "Any benefits provided under a plan which includes a trust that constitutes a "qualified trust" may not be assigned or alienated, voluntarily or involuntarily, and shall be exempt from the operation of any bankruptcy or insolvency laws under 11 U.S.C. § 522(b), as from time to time amended. This subsection may not be waived by a participant or beneficiary of any qualified plan." The statute goes on to define "qualified trust" as including an individual retirement plan as defined by the Internal Revenue Code.

The Florida legislature amended its 100% exemption in qualified retirement plans, as defined by the Internal Revenue Code, to clarify that inheritance did not disturb the exemption. Fla. Stat. Ann. § 222.21(c) provides: "Any money or other assets or any interest in any fund or account that is exempt from claims of creditors of the owner, beneficiary, or participant under paragraph (a) does not cease to be exempt after the owner's death by reason of a direct transfer or eligible rollover that is excluded from gross income under the Internal Revenue Code of 1986, including, but not limited to, a direct transfer or eligible rollover to an inherited individual retirement account as defined in § 408(d)(3) of the Internal Revenue Code of 1986, as amended. *This* p*aragraph is intended to clarify existing law, is remedial in nature, and shall have retroactive application to all inherited individual retirement accounts without regard to the date an account was created*."

Typically, state-law exemptions in IRAs and retirement accounts refer to the Internal Revenue Code for qualifications, but some states limit the amount to the extent necessary for the support of the debtor when the debtor retires and for the support of the debtor's spouse and dependents. *See* Cal. Code Civ. Proc. § 704.115(a)(3), (b), (e). Some case law related to the California exemption has interpreted that an IRA must be used principally for retirement purposes. *See, e.g., In re Dudley*, 249 F.3d 1170 (9th Cir. 2001).

Colorado's exemption refers to the Internal Revenue Code, placing no limit on amount, but the statute's term "retirement plan," as used in the statute permitting debtors to exempt their interests in such retirement plans and in certain specifically identified ERISA-qualified or tax-

qualified retirement accounts, had to be interpreted in accordance with other terms surrounding it. The term was not a broad exemption for any and all retirement plans. *In re Lundwig*, 345 B.R. 310 (Bankr. D. Colo. 2006).

Other states limit the exemption in an IRA, as defined in 26 U.S.C. § 408(a) or 408A, to those contributions made within a specific time. For example, Montana Code Ann. § 25-13-608(1)(e) restricts the exemption to the extent qualified contributions were made before a creditor's suit was filed.

Arizona's Rev. Stat. Ann. § 33-1126(B) permits 100% exemption in qualified retirement plan, as defined by the Internal Revenue Code, but the exemption does not apply to any amounts contributed within 120 days of filing bankruptcy.

Encouragement of exemption planning

The point of these illustrative references to state laws is that *Clark v. Rameker* will not end the bankruptcy courts' inquiry into exemption of inherited IRAs or other retirement funds. Since many debtors are utilizing state exemptions under laws other than the state in which they filed bankruptcy, because of § 522(b)(3)(A)'s look-back period, examination of the applicable state law exemption will be required, and one effect of *Clark* will be to force debtors to consider using state exemptions rather than § 522(b)(3)(C).

Also, debtors may be encouraged by *Clark* to consider pre-bankruptcy conversion of an inherited IRA into another exempt asset, requiring the bankruptcy court to examine whether that conversion crossed the line from permissible to fraudulent.

Those persons holding IRAs, who intend to pass those on to children or others at death, may be encouraged by *Clark* to use other methods, such as spendthrift trusts or other asset protection devices that may be excluded from the debtor's bankruptcy estate or may otherwise be exempt, again requiring the bankruptcy court to examine the validity of such devices.

Transfers to spouses under divorce decree or QDRO

Arizona's Rev. Stat. Ann. § 33-1126(B)(1) states that its unlimited exemption does not impair the rights of an alternative payee under a qualified domestic relations order, as defined in the Internal Revenue Code, but the effect of *Clark* on exemption of IRAs that are passed from one spouse to another presents questions. Does Clark's reasoning reach to such transfers? Does it depend on whether the recipient spouse is claiming exemption under §§ 522(b)(3)(C) or (d)(12), or under an applicable state exemption, such as Arizona's?

A few courts have looked at the issue of such exemptions. For example, *In re Farmer,* 295 B.R. 322 (Bankr. W.D. Wis. 2003), overruled the Chapter 7 trustee's objection to the debtor's exemption of retirement funds received from the former husband under a QDRO. The husband had established the ERISA-qualified plan, and under *In re Nelson,* 322 F.3d 541 (8th Cir. 2003), the beneficiary of the QDRO had the same protections ERISA afforded to the spouse, including the plan's anti-alienation provisions. The retirement account was excluded from the estate; moreover, the court held that the proceeds would be exempt under Wisconsin Stat. §815.13(3)(j),

concluding that the statute placed no restrictions on the source of the funds or the transfer to the debtor from her spouse.

In *In re West,* 507 B.R. 252 (Bankr. N.D. Ill. 2014), the Chapter 7 debtor received $80,000 interest in former husband's tax-qualified employee retirement plan in a marital dissolution decree, and the funds were found to be entitled to exemption under the Illinois statute, despite fact that the transfer meant that proceeds were no longer in hands of employee who had funded the plan. Under Illinois law, the retirement plan was marital property before the entry of marital dissolution, and the debtor's interest became quantified as her separate property on entry of the decree. Although that interest became property of the Chapter 7 estate, it was exempt, distinguishing *In re Clark,* 714 F.3d 559 (7th Cir. 2013). "The critical factor in *Clark* was that the IRA's retirement attributes had been lost upon inheritance by a non-spouse. In contrast, a retirement plan transferred pursuant to a QDRO is done expressly for the purpose of preserving the retirement nature of the plan." The trustee's objection to exemption was overruled.

In contrast, construing Minnesota's exemption statute, the Bankruptcy Appellate Panel in *Anderson v. Seaver (In re Anderson),* 269 B.R. 27 (BAP 8th Cir. 2001), held that the Chapter 7 debtor's interest in an IRA transferred by the former spouse pursuant to a divorce decree was not exempt. Minn. Stat. § 550.37, subd. 24(a), placed a monetary limit (then $54,000), and the debtor's interest was not obtained from his own employment. The statute had been interpreted by *Deretich v. City of St. Francis,* 128 F.3d 1209 (8th Cir. 1997), to allow exemption only for assets derived directly from the debtor's employment.

Surcharge of exemption violated § 522(k). The Supreme Court held, in the unanimous opinion of Justice Scalia, that the bankruptcy court had exceeded its authority when it surcharged the Chapter 7 debtor's homestead exemption for the payment of a portion of the trustee's administrative expense. The debtor's only significant asset was his California home, which he valued at $363,348, and the debtor claimed the California homestead of $75,000. The debtor had a first mortgage, apparently valid, for approximately $147,000, but he asserted that there was a second mortgage held by an individual. After litigation, the bankruptcy court determined that the second mortgage did not exist; the asserted second mortgage, which would have consumed all equity in the home, was intended to prevent the trustee's sale of the home. In the course of prolonged litigation, including avoidance of the fraudulent deed of trust, the trustee incurred $500,000 in attorney fees. Under these facts, the bankruptcy court, affirmed by the Ninth Circuit, approved a surcharge of the $75,000 exemption, permitting the trustee to capture that in partial reimbursement of incurred fees. There was appellate authority in that Circuit approving surcharge as an equitable remedy in appropriate cases. *Latman v. Burdette*, 366 F.3d 774 (9th Cir. 2004). The crux of the opinion is that specific Code provisions prevail over equitable remedies: "Section 105(a) confers authority to 'carry out' the provisions of the Code, but it is quite impossible to do that by taking action that the Code prohibits." The *Law* Court observed that the claimed homestead exemption had been allowed, becoming final before the surcharge was imposed, since no one objected to it, applying *Taylor v. Freeland & Kronz,* 503 U.S. 638 (1992). The Court then stated that the surcharge contravened § 522(k), which prevented the allowed exemption from being liable for the trustee's attorney fees, which were administrative expenses. *Law v. Siegel,* 134 S.Ct. 1188 (Mar. 4, 2014).

OTHER RECENT EXEMPTION AND ESTATE DECISIONS

Former debtor had standing to pursue lender claims despite no disclosure in prior Chapter 13, based on effect of case dismissal. The plaintiff in suit against residential mortgage lenders had filed Chapter 13 in 2006 and she did not schedule the cause of action, but the Second Circuit held that she nevertheless had standing to pursue the claims because her 2006 bankruptcy case was dismissed. Under § 349, dismissal has the effect of revesting property of estate in debtor unless the court orders otherwise. The district court had viewed § 349 as overridden by § 554, but the Circuit Court disagreed--§ 349 makes no distinction between assets that were listed in the schedules and those that were not, with revesting of all prepetition debtor's property that became property of the estate. Since there is no property of the estate remaining after dismissal of the case, § 554 has no applicability, with the court pointing out the distinction in § 554 for unscheduled assets after an administered case is closed. Moreover, judicial estoppel did not apply to the former debtor's failure to schedule, since there was no judicial ruling related to that representation—the bankruptcy court did not confirm a plan or mention assets, it simply dismissed the case. *Crawford v. Franklin Credit Management Corp.,* 758 F.3d 473 (2d Cir. 2014).

Chapter 7 trustee could not sell home with no equity. The Chapter 7 trustee filed complaint to avoid an assignee's unrecorded first mortgage and to preserve that lien for estate. The debtor objected, and the debtor was current on both mortgages, which would prevent either mortgagee from foreclosing. The debtor also had claimed homestead exemption in all equity. So long as the mortgages remained with the lenders, the trustee would have no claim to sell the property. Assuming the trustee avoided the unperfected mortgage, he could not sell the home in the position of the mortgagee, since the debtor was current and no right of foreclosure existed. And, avoiding the mortgage would not create equity, since the debtor's $500,000 unchallenged homestead would consume the equity created if the mortgage were eliminated. Avoidance of the unperfected mortgage only preserves that mortgage for the benefit of the estate, but does not give the estate ownership of the property. The trustee could sell the avoided mortgage, but if the underlying property had been fully exempted, it no long was part of the estate for purposes of selling the property. Distinguishing *Schwab v. Reilly,* the issue here was whether the trustee's power of sale under § 363 justified sale when there was no equity remaining for the estate after the secured claims and the debtor's exemption. The avoided mortgage would not carry with it the power to foreclose in the absence of default. "The preservation of a lien entitles a bankruptcy estate to the full value of the preserved lien—no more and no less." *Degiacomo v. Traverse (In re Traverse),* 753 F.3d 19 (1st Cir. 2014).

Debtor's transfer to husband's corporation was constructively fraudulent. Seven months before bankruptcy, the Chapter 7 debtor had transferred her interest in property jointly owned with her husband to her husband's corporation, and the transfer was constructively fraudulent, but the district court, which had reversed the bankruptcy court, incorrectly found a resulting trust based on the corporation's having owned the property. The bankruptcy court made findings that no resulting trust was proven, and the Fourth Circuit could not find this to be clear error. Since the district court's finding of a resulting trust was reversed, remand was required to

address other issues not reached by the district court. *Anderson v. Architectural Glass Const., Inc. (In re Pfister),* 749 F.3d 294 (4th Cir. 2014).

Debtor's homestead limited to dollar amount claimed and nondebtor spouse's interest protected in forced sale. Affirming, the bankruptcy court had authority to order a sale of the home that was subject to the nondebtor spouse's homestead rights, without deciding the monetary amount of those rights. This property was acquired before enactment of BAPCPA, and was titled only in the name of the subsequent debtor. Less than 1215 days after the property was acquired by the debtor, a creditor filed an involuntary Chapter 7 case, which was subsequently converted by the individual debtor to Chapter 11. Although the debtor claimed unlimited homestead, § 522(p) limited the homestead to that statute's dollar cap, at the time of filing $136,875. Section 363 authorizes a forced sale, even though a third party holds an interest in the property, and a decision from the Texas Supreme Court supports the right of sale under federal law that is enforceable against a non-debtor spouse, even though that non-debtor has homestead rights. As to whether the spouse's homestead was capped by § 522(p), it was stipulated that the residence was the separate property of the debtor, or the property of the debtor's sole management community, or was the joint management community of both spouses. Although the non-debtor spouse had homestead rights, the question was the value of those rights, and the parties had not sufficiently briefed the calculation of value. "Neither argues that the determination by Congress to permit an exemption of $136,875 [the then cap under § 522(p)] for a debtor such as Mr. Kim would not be just compensation for Mrs. Kim's homestead interest since $136,875 in proceeds would be impressed with her homestead rights. The Kims have not adequately briefed their claim that a taking would occur unless Mrs. Kim is compensated more than the $136,875 exemption." The Kims also did not address the applicability of § 363(j), and the Court did not express an opinion as to whether she was entitled to compensation under that section. *Kim v. Dome Entertainment Center, Inc. (In re Kim),* 748 F.3d 647 (5th Cir. 2014).

Objection to tenancy by entirety exemption in vehicles sustained. Affirming, the Chapter 7 trustee objected to the debtor's § 522(b)(3)(B) claimed tenancy by entirety ownership of three vehicles, when the certificates of title contained only the debtor's name. Under Delaware law, the certificates of title provided presumptive evidence of ownership, and the debtor had the burden of rebutting that presumption. There was no evidence that the funds for purchase of the vehicles came from jointly-held marital funds, and the debtor failed to carry the rebuttal burden. *In re Scioli,* ___Fed.Appx.___, 2014 WL 2119187 (3d Cir. May 22, 2014).

Sale of Texas homestead. Texas law requires that proceeds from the sale of homesteads must be reinvested in another homestead within six months, and when debtor did not reinvest within that time, the proceeds became nonexempt property of estate. The Fifth Circuit had previously held that the six-month limit was an "integral feature" of Texas homestead exemption, and that "this essential element of the exemption must continue in effect even during the pendency of a bankruptcy case." *In re Zibman,* 268 F.3d 298, 301 (5th Cir. 2001). Even though in this case the debtor sold his homestead postpetition, absent reinvestment within six months, the sale "voided the proceeds exemption, regardless of whether the sale occurred pre- or post-petition." Moreover, the holding did not violate § 522(c). *Viegelahn v. Frost (In re Frost),* 744 F.3d 384 (5th Cir. 2014).

Exception from normal judicial estoppel. The debtor was not barred from pursuing cause of action when failure to schedule was attorney's mistake, and debtor's exemption offset any motive to conceal. *Javery v. Lucent Technologies, Inc.,* 741 F.3d 686 (6th Cir. 2014)

Turnover to trustee not restricted to property of estate at time motion filed. The Chapter 7 debtor had a checking account at commencement of case, with an account balance, and the Ninth Circuit held that the plain language of § 542(a) permitted turnover against an entity at any time during the pendency of the case, even if that entity no longer had possession, custody or control over the property at the time the motion is filed. When the debtor has or had possession of the property at some point during the case, turnover is not restricted to possession at the time the trustee filed the motion. Moreover, § 542(a) permits recovery of the "value of the property," indicating that if the entity no longer has possession of the property, the trustee still has a remedy. The Court examined pre-Code turnover practice, as well as current § 542(a) in context with other Code provisions. The Court disagreed with conflicting authority from the Eighth Circuit, *In re Pyatt,* 486 F.3d 423 (8th Cir. 2007). *Shapiro v. Henson,* 739 F.3d 1198 (9th Cir. 2014).

Assets acquired for fledgling outdoor guide business were exempt. Affirming, the bankruptcy court did not err in finding that firearms, boats, camper, all-terrain vehicle, trailers and fishing equipment that the Chapter 7 debtor had acquired for use in a fledgling business of outdoor guiding were exempt as tools of trade under Colorado's statute. That statute permitted $20,000 exemption in tools of trade used "for the purpose of carrying out any gainful employment." Although the business had not yet operated at a profit, and "gainful employment" was not defined in the statute, "whether or not gainful is synonymous with profitable has not been addressed within a bankruptcy context in any meaningful way," which is attributable in part to the unique use of that term in Colorado's statute. See opinion at n. 37. While "complete disregard for profitability with respect to the term 'gainful employment' . . .would be difficult to justify," the debtor was actively engaged in promoting the new business, had developed an expertise in the field and losses of the business were attributable to the start-up costs. The party objecting to the exemption must prove by a preponderance of the evidence that the debtor's occupation is unlikely to contribute to the support of the debtor and his family in any significant way within a reasonable period of time." Under specific facts of the case, the trustee failed in that burden. *Larson v. Sharp (In re Sharp),* 508 B.R. 457 (BAP 10th Cir. 2014).

Judicial lien avoidance motion was properly served. Reviewing the "coherent scheme of procedural due process safeguards" found in Rules 4003(d), 9014 and 7004, the debtors' motion to avoid a judicial lien was properly served, reversing denial of the motion. Rule 7004(h) requires a motion involving an insured depository institution to be served by certified mail addressed to an officer of the institution, unless one of the exceptions found in the Rule applies. These debtors' motion was served in compliance with that Rule, when certified mail was addressed to attention of an officer of the corporate lienholder at the address indicated on the lienholder's proof of claim. Since the debtors complied with the Federal Rule, it was not necessary to comply with a California Rule requiring service on the attorney for the creditor, as listed on the abstract of judgment. An attorney had not appeared for the lienholder in the bankruptcy case to trigger application of Rule

7004(h)(1). The motion also sufficiently notified the lienholder of the property subject to the lien. *Frates v. Wells Fargo Bank, N.A. (In re Frates),* 507 B.R. 298 (BAP 9th Cir. 2014).

Inheritance received more than 180 days postpetition included in property of estate. Section 1306(a)(1) broadens § 541(a)'s definition of property of the estate, to include all property acquired after commencement of the case, not limited by § 541(a)(5)'s 180-day postpetition limit, agreeing with *Carroll v. Logan,* 735 F.3d 147 (4th Cir. 2013). The inheritance must be turned over, unless the debtors modified their plan to increase distribution to unsecured creditors. *Dale v. Maney (In re Dale),* 505 B.R. 8 (BAP 9th Cir. 2014).

Property inherited beyond 180-days postpetition was property of estate. Adopting the majority view that § 1306(a) creates an exception to § 541(a)(5)'s 180-day period for Chapter 13 cases, any inheritance received by a Chapter 13 debtor after the commencement of the case, and before closing, dismissal or conversion, is property of the estate. However, the proceeds from sale of the debtor's inherited interest in real property is not "income" for disposable income purposes, but is an asset that is factored into the best interests of creditors' test to be applied at time of a proposed plan modification. *In re Roberts,* ___ B.R. ___, 2014 WL 3937456 (Bankr. E.D. N.Y. Aug. 12, 2104).

Life insurance proceeds received by debtor on wife's postpetition death not included in property of estate. Discussing the split of authority, the court held that § 1306(a)(1) does not include property that § 541(a)(5) does not include—"the specific date restriction set forth in § 541(a)(5) controls and § 1306(a)(1) does not eliminate that restriction." The debtor/husband received $250,000 from life insurance on his debtor/wife, who died two years after the Chapter 13 was filed. The husband disclosed this in an amendment to schedules and claimed it as exempt. The debtor then proposed modification of the confirmed plan to pay $15,000 from the proceeds to unsecured creditors, and the trustee objected, asserting that the insurance proceeds would pay all claims in full. The effect of § 348, in the event of conversion to Chapter 7, would be that the postpetition insurance proceeds would not be property of the estate; therefore, in the absence of bad faith conversion, the proceeds would not be included in a hypothetical Chapter 7 liquidation, and the best interests of creditors test does not come into play. The court agreed with others who have held that the disposable income test does not apply to postconfirmation modification, since after BAPCPA, "a debtor's receipt of a postconfirmation asset cannot possibly be 'disposable income' under its statutory definition because the debtor did not receive it during the six months preceding the filing of the petition." The proposed modification did not run afoul of the projected disposable income test; however, the "ability to pay" test still applies to post-BAPCPA modifications, requiring consideration of a debtor's postconfirmation property that materially changes ability to pay debts. Nevertheless, under Eleventh Circuit authority, in the absence of a sustained objection to a claim of exemption, exempt property could not be disposable income. Under the facts of this case, the ability to pay test led to finding that the debtor could not use all insurance proceeds to pay creditors in full without impairing his future needs and fresh start. The debtor's modification was approved. *In re McAllister,* 510 B.R. 409 (Bankr. N.D. Ga. 2014).

Chapter 7 debtor entitled to state homestead increased one week before filing. The Bankruptcy Code and Ohio exemption statute pointed to the petition date as the time for

determining entitlement to specific exemptions and the exemption amount. Although uncodified language of the Ohio General Assembly purported to limit application of the increased homestead amount to creditors' "claims accruing" on or after the amendment's effective date, this language was silent as to application in bankruptcy and the codified language of the Ohio homestead exemption made it clear that the debtor's interest was determined as of the bankruptcy petition date. The bankruptcy was filed after the effective date of the increase in the homestead from $21,625 to $125,000, and allowing exemption in the increased amount did not retroactively divest creditors of substantive or vested rights. Moreover, under § 522(c) and majority authority, the Bankruptcy Code preempts application of the uncodified language—to apply that language in this case would cause creditors whose claims "accrued" before the amendment to be excepted from the increased homestead exemption, while creditors whose claims "accrued" after the increase would be subject to the increased exemption. *In re Kyle,* 510 B.R. 804 (Bankr. S.D. Ohio 2014).

New York's increased homestead exemption applied to debtor after amendment's effective date. New York increased its homestead exemption from $10,000 to $50,000, and the increase was intended by the legislature to apply to debtors who filed bankruptcy after the amendment's effective date. The increased amount could be used by the debtor for judgment lien avoidance purposes under § 522(f). Even assuming that the judgment lien creditor recorded its judgment prior to the exemption increase, the debtor had some nonexempt equity in the property to support the lien under the prior $10,000 homestead, and the increased homestead did not amount to an unconstitutional taking, as the Takings Clause is applied to states under the Fourteenth Amendment. The Second Circuit concluded that the increased New York homestead applied to all creditors and obligations, regardless of whether a judgment lien had been obtained prior to the increase. "Inherent in [the] judgment lien was the implied limitation of a homestead exemption that predictably and necessarily must be adjusted from time to time to account for the changing values of the homes it protects." *Bulan v. Calloway,* 761 F.3d 252 (2d Cir. 2014). *See also* for lien avoidance and discussion of whether judgment lien predated debtor's acquisition of interest in property, *In re Dickey,* ___ B.R. ___, 2014 WL 4296003 (Bankr. D. Mass. Aug. 28, 2014)

Valuation sixteen days after petition date was not relevant for lien avoidance. The district court vacated lien avoidance, holding that the debtor's expert appraiser valued residential property as of sixteen days after the petition date, and § 522(a)(2) requires that fair market value be determined as of the petition date. There was nothing in the record to support an inference that value related back to the petition date. Reviewing the formula for avoidance of judicial liens under § 522(f)(2)(A), the avoidance of two liens in their entirety was error, since there was $735.31 of equity after two mortgages to partially satisfy the liens; therefore, on remand the bankruptcy court may consider partial avoidance. *Prangley v. Cokinos,* 509 B.R. 822 (D. Maryland 2014).

Foreclosure judgment lien was not avoidable under § 522(f). The debtor sought to avoid the lien of a foreclosing creditor, asserting that the consensual deed of trust lien merged into the judgment for foreclosure. Even assuming that merger occurred, the foreclosure judgment stated that the deed of trust lien would continue perfected, and § 522(f)(2)(c) states that this section's avoidance does not apply to judgment arising out of mortgage foreclosure. *In re McCracken,* 509 B.R. 329 (Bankr. D. Ore. 2014).

Judgment lien avoidable against debtor's interest in entireties property. Considering the issue of whether a single-filing debtor may avoid a judgment lien against tenancy by entireties property, the court concluded that Maryland's homestead exemption created an exception to the general rule seen in *In re Alvarez,* 733 F.3d 130 (4th Cir. 2013). Maryland had opted out of the § 522(d) exemptions, and its homestead exemption provided that the debtor "may exempt the debtor's aggregate interest in. . .owner-occupied residential real property." *Alvarez* was a lien-stripping case under § 506(a), in which the Fourth Circuit held that the bankruptcy court lacked jurisdiction over a non-filing spouse's interest in entireties property. The Maryland homestead exemption was distinguished from *Alvarez,* concluding that the Chapter 7 debtor could avoid the judicial lien only as to his interest in the residence, but not as to his non-filing spouse's interest. *Raskin v. Susquehanna Bank (In re Raskin),* 505 B.R. 684 (Bankr. D. Md. 2014).

"Separate filing rule" applied to tax refund. Reversing, the district court held that when the Chapter 7 trustee and debtors disagreed about how much of a tax refund belonged to the estate, the IRS's "separate filing rule" should be applied, rather than a "50/50 rule." The debtor claimed that all of a refund from a joint tax return was attributable solely to the nondebtor wife's overpayment, and the trustee insisted on receiving one half of the refund. "Specifically, the formula is based on IRS Revenue Ruling 74-611 which states that when a husband and wife file a joint return, each spouse has a separate interest in the jointly reported income and a separate interest in overpayment." The formula must take into account the respective spouse's withholdings, income and contributions as a whole, as well as tax credits attributable to each spouse. *Lee v. Walro (In re Lee),* 508 B.R. 399 (S.D. Ind. 2014).

Debtor's exemption under resulting trust theory denied. The debtor-wife claimed exemption in a vehicle that was titled in debtor-husband's name, asserting that she owned the vehicle under a resulting trust; however, under Massachusetts law requirements for a resulting trust, there was not clear evidence that the parties intended a trust relationship when the car was purchased and titled only in the husband. The wife's exemption claim was denied. *In re Frankel,* 508 B.R. 527 (Bankr. D. Mass. 2014).

Social Security Act protects benefits. Rejecting the Chapter 7 trustee's argument that Social Security benefits could be reached on equitable grounds when the debtor did not have present need for the benefits that had been paid and were held in bank account, the court applied *Law v. Siegel* to hold that it lacked such equitable authority. Moreover, "§ 407(a) [of the Social Security Act] implements a three-pronged protective regime for social security benefits, both paid and payable," including protecting those benefits from the operation of bankruptcy laws. *In re Franklin,* 506 B.R. 765 (Bankr. C.D. Ill. 2014).

New objection period only for those amended exemptions. Under Bankruptcy Rule 4003(b) and the majority of opinions applying it, the filing of an amended list of exemptions does not restart the objection period for original exemptions, with a new 30-day objection period applying only for those exemptions that were amended. *In re Walker,* 505 B.R. 217 (Bankr. E.D. Tenn. 2014).

Debtor-husband not entitled to wildcard exemption in inheritance of debtor-wife. The Chapter 7 debtor-husband had no separate property interest in an inheritance received by his debtor-wife, rejecting the argument that the husband had an exemptible property interest based on equitable distribution rights that could be asserted in an unfiled divorce proceeding or probate. Under the majority view, "a spouse has no present property interest in the separate property of the other spouse unless and until the contingency occurs." Moreover, § 541(a)(5) defines property of the estate to include property acquired by "bequest, devise, or inheritance" within 180 days after the petition filing. *In re Hampshire,* 505 B.R. 668 (Bankr. E.D. Pa. 2014).

Time of sale of residence for purposes of exemption of proceeds. Under applicable Minnesota law, a sale of the debtor's residential real property occurred at execution of the contract for deed, triggering the state's one-year limit on exemption of sale proceeds. The debtor had moved from Minnesota to Wisconsin a year before filing Chapter 7, making Minnesota's homestead applicable. The debtor had entered into a land contract, or contract for deed, with the buyer acquiring equitable title, when the contract was executed and the seller received $10,000 down payment. The vendor retained a lien for payment of the purchase price, but the sale occurred, with the debtor/seller limited by Minnesota statute to exemption of the sale proceeds for one year after the sale. *In re Anderson,* ___ B.R. ___, 2014 WL 3867566 (Bankr. W.D. Wis. Aug. 5, 2014).

Debtor had concurrent standing with trustee to bring employment discrimination action. Although the debtor's postpetition employment discrimination cause of action was property of the bankruptcy estate, the debtor did disclose it to the bankruptcy court and the debtor retained possession of property of the estate, having concurrent standing with the trustee to pursue claims on behalf of the estate. The court examined judicial estoppel, declining to apply it in this case, rejecting the defendant's argument that the debtor's recovery should be capped at the amount of claims to creditors—that argument was best reserved for the bankruptcy court to determine after any monies were recovered from the claim. *Thomas v. Indiana Oxygen Co., Inc.,* ___ F.Supp.2d ___, 2014 WL 3509693 (S.D. Ind. July 15, 2014).