The Year in Consumer Case Law: What You Should Know, Learn and Love (or Hate)

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Case Summaries[1]

1. *Harris v. Viegelahn*, -- U.S. --, 135 S.Ct. 1829 (2015). Undistributed plan payments made by a chapter 13 debtor from his/her wages and held by the chapter 13 trustee at the time of conversion to chapter 7 must be returned to the debtor and not distributed to creditors or delivered to the chapter 7 trustee.

2. *Bank of America, N.A. v. Caulkett*, -- U.S. --, 135 S.Ct. 1995 (2015). Chapter 7 debtor cannot utilize 11 U.S.C. § 506(d) to "strip off" a junior mortgage lien that is wholly unsupported by equity (above amount of prior lien(s)) in the mortgaged property.

3. *In re Pajian*, 785 F.3d 1161 (7th Cir. 2015). A secured creditor in a chapter 13 case must file its proof of claim by the 90-day deadline specified by Fed. R. Bankr. P. 3002(c). If creditor does not, claim cannot be paid under the plan (at least if a party objects to the claim).

4. *Cirilli v. Bronk (In re Bronk)*, 775 F.3d 871 (7th Cir. 2015). An account owner's interest in a state-qualified college savings account and an annuity purchased by a debtor a few months before the petition date that satisfies the basic definition of a "retirement benefit" are exempt under Wisconsin law. Compare and contrast Indiana and Illinois law.

5. *Bullard v. Blue Hills Bank*, -- U.S. --, 135 S.Ct. 1686 (2015). A bankruptcy court's order denying confirmation of a proposed chapter 13 plan with leave to amend is not a "final" order that the debtor can immediately appeal.

6. *Bartlett v. Fifth Third Bank*, 2015 WL 4257564 (7th Cir. 2015). Bank was not barred from collaterally attacking the bankruptcy court's lack of jurisdiction because the bank did not receive adequate notice of the proceeding.

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[1] Copies of cases are attached. The panel may also discuss the impact of *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. --, 135 S.Ct. 1932 (2015) on consumer cases.

135 S.Ct. 1829
Supreme Court of the United States

Charles E. HARRIS, III, Petitioner
v.
Mary K. VIEGELAHN, Chapter 13 Trustee.

No. 14–400. | Argued April 1, 2015. | Decided May 18, 2015.

Synopsis

Background: Following conversion of his case from Chapter 13 to Chapter 7, debtor filed motion to compel Chapter 13 trustee to turn over undistributed funds that had been collected pursuant to confirmed Chapter 13 plan. The United States Bankruptcy Court for the Western District of Texas granted the motion, and trustee appealed. The District Court, David Alan Ezra, Senior District Judge, 491 B.R. 866, affirmed. Trustee appealed. The Fifth Circuit Court of Appeals, James E. Graves, Jr., Circuit Judge, 757 F.3d 468, reversed and remanded. Certiorari was granted.

[Holding:] The Supreme Court, Justice Ginsburg, held that undistributed plan payments made by a debtor from his or her wages and held by the Chapter 13 trustee at the time of the case's conversion to Chapter 7 must be returned to the debtor, not distributed to creditors.

Reversed and remanded.

West Headnotes (33)

[1] **Bankruptcy**
⇐ Discharge

Bankruptcy Code provides diverse courses overburdened debtors may pursue to gain discharge of their financial obligations, and thereby a "fresh start."

Cases that cite this headnote

[2] **Bankruptcy**
⇐ Voluntary Cases

Chapter 7 of the Bankruptcy Code allows a debtor to make a clean break from his financial past, but at a steep price: prompt liquidation of the debtor's assets.

1 Cases that cite this headnote

[3] **Bankruptcy**
⇐ Creation of estate; time

Bankruptcy
⇐ Operation and effect

When a debtor files a Chapter 7 petition, his assets, with specified exemptions, are immediately transferred to a bankruptcy estate. 11 U.S.C.A. § 541(a)(1).

Cases that cite this headnote

[4] **Bankruptcy**
⇐ Representation of debtor, estate, or creditors

Bankruptcy
⇐ Sale or Assignment of Property

Bankruptcy
⇐ Distribution

Chapter 7 trustee is charged with selling the property in the estate and distributing the proceeds to the debtor's creditors. 11 U.S.C.A. §§ 704(a)(1), 726.

Cases that cite this headnote

[5] **Bankruptcy**
⇐ After-acquired property; proceeds; wages and earnings

Chapter 7 estate does not include the wages a debtor earns or the assets he acquires after the bankruptcy filing. 11 U.S.C.A. § 541(a)(1).

1 Cases that cite this headnote

[6] **Bankruptcy**
⇐ After-acquired property; proceeds; wages and earnings

While a Chapter 7 debtor must forfeit virtually all his prepetition property, he is able to make a "fresh start" by shielding from creditors

his postpetition earnings and acquisitions. 11 U.S.C.A. § 541(a)(1).

1 Cases that cite this headnote

[7] **Bankruptcy**
⇦ Individual Debt Adjustment

Chapter 13 is a wholly voluntary alternative to Chapter 7 which allows a debtor to retain his property if he proposes, and gains court confirmation of, a plan to repay his debts over a three- to five-year period. 11 U.S.C.A. §§ 1306(b), 1322, 1327(b).

1 Cases that cite this headnote

[8] **Bankruptcy**
⇦ Property of Estate in General

Bankruptcy
⇦ After-acquired property; proceeds; wages and earnings

Chapter 13 estate from which creditors may be paid includes both the debtor's property at the time of his bankruptcy petition, and any wages and property acquired after filing. 11 U.S.C.A. § 1306(a).

Cases that cite this headnote

[9] **Bankruptcy**
⇦ Representation of debtor, estate, or creditors

Bankruptcy
⇦ Distribution

Chapter 13 trustee is often charged with collecting a portion of a debtor's wages through payroll deduction, and with distributing the withheld wages to creditors. 11 U.S.C.A. § 1322(a)(1).

Cases that cite this headnote

[10] **Bankruptcy**
⇦ Voluntary Conversion; Request by Debtor

Recognizing the reality that many debtors fail to complete a Chapter 13 plan successfully, Congress accorded debtors a nonwaivable right to convert a Chapter 13 case to one under Chapter 7 "at any time." 11 U.S.C.A. § 1307(a).

Cases that cite this headnote

[11] **Bankruptcy**
⇦ Nature and form; adversary proceedings

Bankruptcy
⇦ Proceedings

To effectuate a conversion from Chapter 13 to Chapter 7, a debtor need only file a notice with the bankruptcy court; no motion or court order is needed to render the conversion effective. 11 U.S.C.A. § 1307(a); Fed.Rules Bankr.Proc.Rule 1017(f)(3), 11 U.S.C.A.

Cases that cite this headnote

[12] **Bankruptcy**
⇦ Effect; proceedings in converted case

Conversion from Chapter 13 to Chapter 7 does not commence a new bankruptcy case; rather, the existing case continues along another track, Chapter 7 instead of Chapter 13, without effecting a change in the date of the filing of the petition. 11 U.S.C.A. § 348(a).

1 Cases that cite this headnote

[13] **Bankruptcy**
⇦ Effect; proceedings in converted case

Conversion from Chapter 13 to Chapter 7 immediately "terminates the service" of the Chapter 13 trustee, replacing her with a Chapter 7 trustee. 11 U.S.C.A. § 348(e).

1 Cases that cite this headnote

[14] **Bankruptcy**
⇦ After-acquired property; proceeds; wages and earnings

Bankruptcy
⇦ Effect; proceedings in converted case

In a case converted from Chapter 13 to Chapter 7, a debtor's postpetition earnings and acquisitions do not become part of the new Chapter 7 estate,

absent a bad-faith conversion. 11 U.S.C.A. § 348(f)(1)(A), (f)(2).

Cases that cite this headnote

[15] **Bankruptcy**
⇦ Effect; proceedings in converted case

Absent a bad-faith conversion, the Bankruptcy Code limits a converted Chapter 7 estate to property belonging to the debtor "as of the date" the original Chapter 13 petition was filed. 11 U.S.C.A. § 348(f).

Cases that cite this headnote

[16] **Bankruptcy**
⇦ Effect; proceedings in converted case

Undistributed plan payments made by a debtor from his or her wages and held by the Chapter 13 trustee at the time the case is converted to Chapter 7 must be returned to the debtor, not distributed to creditors. 11 U.S.C.A. § 348(f).

2 Cases that cite this headnote

[17] **Bankruptcy**
⇦ After-acquired property; proceeds; wages and earnings
Bankruptcy
⇦ Effect; proceedings in converted case

By excluding postpetition wages from the converted Chapter 7 estate, the subsection of the Bankruptcy Code governing the effect of conversion of a Chapter 13 case removes those earnings from the pool of assets that may be liquidated and distributed to creditors. 11 U.S.C.A. § 348(f)(1)(A).

Cases that cite this headnote

[18] **Bankruptcy**
⇦ Effect; proceedings in converted case

If a debtor converts his Chapter 13 case in bad faith, such as by concealing assets in unfair manipulation of the bankruptcy system, the converted Chapter 7 estate consists of the property of the Chapter 13 estate as of the date of conversion. 11 U.S.C.A. § 348(f)(2).

Cases that cite this headnote

[19] **Bankruptcy**
⇦ Post-petition transactions
Bankruptcy
⇦ Effect; proceedings in converted case

Debtors who convert their Chapter 13 cases in bad faith are penalized by having their postpetition wages available for liquidation and distribution to creditors. 11 U.S.C.A. § 348(f)(2).

Cases that cite this headnote

[20] **Bankruptcy**
⇦ Effect; proceedings in converted case

When the conversion of a case from Chapter 13 to Chapter 7 is made in good faith, no penalty is exacted from the debtor. 11 U.S.C.A. § 348(f), (f)(2).

1 Cases that cite this headnote

[21] **Bankruptcy**
⇦ After-acquired property; proceeds; wages and earnings

Shielding a Chapter 7 debtor's postpetition earnings from creditors enables the "honest but unfortunate debtor" to make the "fresh start" the Bankruptcy Code aims to facilitate. 11 U.S.C.A. § 541(a)(1).

1 Cases that cite this headnote

[22] **Bankruptcy**
⇦ Representation of debtor, estate, or creditors
Bankruptcy
⇦ Mode of repayment; third-person payments

A core service provided by a Chapter 13 trustee is the disbursement of payments to creditors. 11 U.S.C.A. § 1326(c).

Cases that cite this headnote

[23] **Bankruptcy**

Effect; proceedings in converted case

The moment a case is converted from Chapter 13 to Chapter 7, the Chapter 13 trustee is stripped of authority to provide "service." 11 U.S.C.A. § 348(e).

3 Cases that cite this headnote

[24] **Bankruptcy**
Representation of debtor, estate, or creditors
Bankruptcy
Mode of repayment; third-person payments
Bankruptcy
Effect; proceedings in converted case

Returning funds to a debtor is not a Chapter 13 trustee "service," as is making payment to creditors. 11 U.S.C.A. § 1326(c).

Cases that cite this headnote

[25] **Bankruptcy**
Mode of repayment; third-person payments
Bankruptcy
Conclusiveness; res judicata; collateral estoppel
Bankruptcy
Effect; proceedings in converted case

Once case was converted from Chapter 13 to Chapter 7, the sections of the Bankruptcy Code instructing trustee to distribute payments in accordance with the confirmed plan and providing that the plan bound the debtor and each creditor ceased to apply. 11 U.S.C.A. §§ 1326(a)(2), 1327(a).

1 Cases that cite this headnote

[26] **Bankruptcy**
Effect; proceedings in converted case

When a debtor exercises his statutory right to convert from Chapter 13 to Chapter 7, the case is placed under Chapter 7's governance, and no Chapter 13 provision holds sway. 11 U.S.C.A. §§ 103(i), 1307(a).

2 Cases that cite this headnote

[27] **Bankruptcy**
Representation of debtor, estate, or creditors
Bankruptcy
Mode of repayment; third-person payments
Bankruptcy
Conclusiveness; res judicata; collateral estoppel
Bankruptcy
Effect; proceedings in converted case

Following conversion of case from Chapter 13 to Chapter 7, the Chapter 13 plan was no longer binding, and former Chapter 13 trustee lacked authority to distribute payments in accordance with the plan. 11 U.S.C.A. §§ 348(e), 1236(a)(2), 1327(a).

1 Cases that cite this headnote

[28] **Bankruptcy**
Property of Estate in General
Bankruptcy
Effect

Confirmed Chapter 13 plan does not give creditors a vested right to funds held by a trustee; no provision in the Bankruptcy Code classifies any property, including postpetition wages, as belonging to creditors.

Cases that cite this headnote

[29] **Bankruptcy**
Representation of debtor, estate, or creditors
Bankruptcy
Liabilities in general; accounting
Bankruptcy
Effect; proceedings in converted case

Federal Rules of Bankruptcy Procedure specify what a terminated Chapter 13 trustee must do post-conversion: (1) she must turn over records and assets to the Chapter 7 trustee, and (2) she must file a report with the United States Trustee (UST). Fed.Rules Bankr.Proc.Rule 1019(4), (5)(B)(ii), 11 U.S.C.A.

Cases that cite this headnote

[30] **Bankruptcy**
Representation of debtor, estate, or creditors
Bankruptcy
Mode of repayment; third-person payments
Bankruptcy
Effect; proceedings in converted case

Post-conversion, continuing to distribute funds to creditors pursuant to the defunct Chapter 13 plan is not an authorized "wind-up" task of a terminated Chapter 13 trustee. Fed.Rules Bankr.Proc.Rule 1019, 11 U.S.C.A.

Cases that cite this headnote

[31] **Bankruptcy**
After-acquired property; proceeds; wages and earnings
Bankruptcy
Property of estate

Where, pursuant to Chapter 13 plan providing that, upon confirmation, all property of the estate was not to vest in the debtor, but would remain as property of the estate, debtor's wages may have been "property of the estate" while his case proceeded under Chapter 13, such wages did not become property of creditors until they were distributed to creditors. 11 U.S.C.A. § 1327(b).

Cases that cite this headnote

[32] **Bankruptcy**
Effect; proceedings in converted case

Where order confirming debtor's Chapter 13 plan provided that, upon conversion to Chapter 7, "[s]uch property as may revest in the debtor shall so revest," property formerly in the Chapter 13 estate that did not become part of the Chapter 7 estate revested in the debtor.

Cases that cite this headnote

[33] **Bankruptcy**
Mode of repayment; third-person payments
Bankruptcy
Effect; proceedings in converted case

Creditors may gain protection against the risk of excess accumulations in the hands of Chapter 13 trustees upon any future conversion of the case to Chapter 7 by seeking to include in a Chapter 13 plan a schedule for regular disbursement of funds the trustee collects.

Cases that cite this headnote

1832** ***Syllabus *

Individual debtors may seek discharge of their financial obligations under either Chapter 7 or Chapter 13 of the Bankruptcy Code. In a Chapter 7 proceeding, the debtor's assets are transferred to a bankruptcy estate. 11 U.S.C. § 541(a)(1). The estate's assets are then promptly liquidated, § 704(a)(1), and distributed to creditors, § 726. A Chapter 7 estate, however, does not include the wages a debtor earns or the assets he acquires *after* the bankruptcy filing. § 541(a)(1). Chapter 13, a wholly voluntary alternative to Chapter 7, ***1833** permits the debtor to retain assets during bankruptcy subject to a court-approved plan for payment of his debts. Payments under a Chapter 13 plan are usually made from a debtor's "future income." 1322(a)(1). The Chapter 13 estate, unlike a Chapter 7 estate, therefore includes both the debtor's property at the time of his bankruptcy petition, and any assets he acquires after filing. § 1306(a). Because many debtors fail to complete a Chapter 13 plan successfully, Congress accorded debtors a nonwaivable right to convert a Chapter 13 case to one under Chapter 7 "at any time." § 1307(a). Conversion does not commence a new bankruptcy case, but it does terminate the service of the Chapter 13 trustee. § 348(e).

Petitioner Harris, indebted to multiple creditors and $3,700 behind on his home mortgage payments to Chase Manhattan, filed a Chapter 13 bankruptcy petition. His court-confirmed plan provided that he would resume making monthly mortgage payments to Chase, and that $530 per month would be withheld from his postpetition wages and remitted to the Chapter 13 trustee, respondent Viegelahn. Trustee Viegelahn would make monthly payments to Chase to pay down Harris' mortgage arrears, and distribute remaining funds to Harris' other creditors. When Harris again fell behind on his mortgage payments, Chase foreclosed on his home. Following the foreclosure, Viegelahn continued to receive $530 per month from Harris' wages, but stopped making the payments earmarked for Chase. As a result, funds formerly

reserved for Chase accumulated in Viegelahn's possession. Approximately a year after the foreclosure, Harris converted his case to Chapter 7. Ten days after this conversion, Viegelahn distributed $5,519.22 in Harris' withheld wages mainly to Harris' creditors. Asserting that Viegelahn lacked authority to disburse his postpetition wages to creditors postconversion, Harris sought an order from the Bankruptcy Court directing refund of the accumulated wages Viegelahn paid to his creditors. The Bankruptcy Court granted Harris' motion, and the District Court affirmed. The Fifth Circuit reversed, concluding that a former Chapter 13 trustee must distribute a debtor's accumulated postpetition wages to his creditors.

Held: A debtor who converts to Chapter 7 is entitled to return of any postpetition wages not yet distributed by the Chapter 13 trustee. Pp. 1836 – 1840.

(a) Absent a bad-faith conversion, § 348(f) limits a converted Chapter 7 estate to property belonging to the debtor "as of the date" the original Chapter 13 petition was filed. Because postpetition wages do not fit that bill, undistributed wages collected by a Chapter 13 trustee ordinarily do not become part of a converted Chapter 7 estate. Pp. 1836 – 1837.

(b) By excluding postpetition wages from the converted Chapter 7 estate (absent a bad-faith conversion), § 348(f) removes those earnings from the pool of assets that may be liquidated and distributed to creditors. Allowing a terminated Chapter 13 trustee to disburse the very same earnings to the very same creditors is incompatible with that statutory design. Pp. 1837 – 1838.

(c) This conclusion is reinforced by § 348(e), which "terminates the service of [the Chapter 13] trustee" upon conversion. One service provided by a Chapter 13 trustee is disbursing "payments to creditors." § 1326(c). The moment a case is converted from Chapter 13 to Chapter 7, a Chapter 13 trustee is stripped of authority to provide that "service." P. 1838.

(d) Section 1327(a), which provides that a confirmed Chapter 13 plan "bind [s] the debtor and each creditor," and ***1834** § 1326(a)(2), which instructs a trustee to distribute "payment[s] in accordance with the plan," ceased to apply once the case was converted to Chapter 7. § 103(i). Sections 1327(a) and 1326(a)(2), therefore, offer no support for Viegelahn's assertion that the Bankruptcy Code *requires* a terminated Chapter 13 trustee to distribute to creditors postpetition wages remaining in the trustee's possession. Continuing to distribute funds to creditors pursuant to a defunct Chapter 13 plan, moreover, is not one of the trustee's postconversion responsibilities specified by the Federal Rules of Bankruptcy Procedure. Pp. 1838 – 1839.

(e) Because Chapter 13 is a voluntary alternative to Chapter 7, a debtor's postconversion receipt of a fraction of the wages he earned and would have kept had he filed under Chapter 7 in the first place does not provide the debtor with a "windfall." A trustee who distributes payments regularly may have little or no accumulated wages to return, while a trustee who distributes payments infrequently may have a sizable refund to make. But creditors may gain protection against the risk of excess accumulations in the hands of trustees by seeking to have a Chapter 13 plan include a schedule for regular disbursement of collected funds. Pp. 1839 – 1840.

757 F.3d 468, reversed and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.

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Opinion

Justice GINSBURG delivered the opinion of the Court.

This case concerns the disposition of wages earned by a debtor *after* he petitions for bankruptcy. The treatment of postpetition wages generally depends on whether the debtor is proceeding under Chapter 13 of the Bankruptcy Code (in which the debtor retains assets, often his home, during

bankruptcy subject to a court-approved plan for the payment of his debts) or Chapter 7 (in which the debtor's assets are immediately liquidated and the proceeds distributed to creditors). In a Chapter 13 proceeding, postpetition wages are "[p]roperty of the estate," 11 U.S.C. § 1306(a), and may be collected by the Chapter 13 trustee for distribution to creditors, § 1322(a)(1). In a Chapter 7 proceeding, those earnings are not estate property; instead, they belong to the debtor. See § 541(a)(1). The Code permits the debtor to convert a Chapter 13 proceeding to one under Chapter 7 "at any time," § 1307(a); upon such conversion, the service of the Chapter 13 trustee terminates, § 348(e).

When a debtor initially filing under Chapter 13 exercises his right to convert to Chapter 7, who is entitled to postpetition ***1835** wages still in the hands of the Chapter 13 trustee? Not the Chapter 7 estate when the conversion is in good faith, all agree. May the trustee distribute the accumulated wage payments to creditors as the Chapter 13 plan required, or must she remit them to the debtor? That is the question this case presents. We hold that, under the governing provisions of the Bankruptcy Code, a debtor who converts to Chapter 7 is entitled to return of any postpetition wages not yet distributed by the Chapter 13 trustee.

I

A

[1] The Bankruptcy Code provides diverse courses overburdened debtors may pursue to gain discharge of their financial obligations, and thereby a "fresh start." *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367, 127 S.Ct. 1105, 166 L.Ed.2d 956 (2007) (quoting *Grogan v. Garner*, 498 U.S. 279, 286, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991)). Two roads individual debtors may take are relevant here: Chapter 7 and Chapter 13 bankruptcy proceedings.

[2] [3] [4] [5] [6] Chapter 7 allows a debtor to make a clean break from his financial past, but at a steep price: prompt liquidation of the debtor's assets. When a debtor files a Chapter 7 petition, his assets, with specified exemptions, are immediately transferred to a bankruptcy estate. § 541(a)(1). A Chapter 7 trustee is then charged with selling the property in the estate, § 704(a)(1), and distributing the proceeds to the debtor's creditors, § 726. Crucially, however, a Chapter 7 estate does not include the wages a debtor earns or the assets he acquires *after* the bankruptcy filing. § 541(a)(1). Thus, while a Chapter 7 debtor must forfeit virtually all his prepetition property, he is able to make a "fresh start" by shielding from creditors his postpetition earnings and acquisitions.

[7] [8] [9] Chapter 13 works differently. A wholly voluntary alternative to Chapter 7, Chapter 13 allows a debtor to retain his property if he proposes, and gains court confirmation of, a plan to repay his debts over a three- to five-year period. § 1306(b), § 1322, § 1327(b). Payments under a Chapter 13 plan are usually made from a debtor's "future earnings or other future income." § 1322(a)(1); see 8 Collier on Bankruptcy ¶ 1322.02 [1] (A. Resnick & H. Sommer eds., 16th ed. 2014). Accordingly, the Chapter 13 estate from which creditors may be paid includes both the debtor's property at the time of his bankruptcy petition, and any wages and property acquired after filing. § 1306(a). A Chapter 13 trustee is often charged with collecting a portion of a debtor's wages through payroll deduction, and with distributing the withheld wages to creditors.

Proceedings under Chapter 13 can benefit debtors and creditors alike. Debtors are allowed to retain their assets, commonly their home or car. And creditors, entitled to a Chapter 13 debtor's "disposable" postpetition income, § 1325(b)(1), usually collect more under a Chapter 13 plan than they would have received under a Chapter 7 liquidation.

[10] [11] Many debtors, however, fail to complete a Chapter 13 plan successfully. See Porter, The Pretend Solution: An Empirical Study of Bankruptcy Outcomes, 90 Texas L.Rev. 103, 107–111 (2011) (only one in three cases filed under Chapter 13 ends in discharge). Recognizing that reality, Congress accorded debtors a nonwaivable right to convert a Chapter 13 case to one under Chapter 7 "at any time." § 1307(a). To effectuate a conversion, a debtor need only file a notice with the bankruptcy court. Fed. Rule Bkrtcy. Proc. 1017(f)(3). No motion or court order ***1836** is needed to render the conversion effective. See *ibid.*

[12] [13] Conversion from Chapter 13 to Chapter 7 does not commence a new bankruptcy case. The existing case continues along another track, Chapter 7 instead of Chapter 13, without "effect[ing] a change in the date of the filing of the petition." § 348(a). Conversion, however, immediately "terminates the service" of the Chapter 13 trustee, replacing her with a Chapter 7 trustee. § 348(e).

B

In February 2010, petitioner Charles Harris III filed a Chapter 13 bankruptcy petition. At the time of filing, Harris was indebted to multiple creditors, and had fallen $3,700 behind on payments to Chase Manhattan, his home mortgage lender.

Harris' court-confirmed Chapter 13 plan provided that he would immediately resume making monthly mortgage payments to Chase. The plan further provided that $530 per month would be withheld from Harris' postpetition wages and remitted to the Chapter 13 trustee, respondent Mary Viegelahn. Viegelahn, in turn, would distribute $352 per month to Chase to pay down Harris' outstanding mortgage debt. She would also distribute $75.34 per month to Harris' only other secured lender, a consumer-electronics store. Once those secured creditors were paid in full, Viegelahn was to begin distributing funds to Harris' unsecured creditors.

Implementation of the plan was short lived. Harris again fell behind on his mortgage payments, and in November 2010, Chase received permission from the Bankruptcy Court to foreclose on Harris' home. Following the foreclosure, Viegelahn continued to receive $530 per month from Harris' wages, but stopped making the payments earmarked for Chase. As a result, funds formerly reserved for Chase accumulated in Viegelahn's possession.

On November 22, 2011, Harris exercised his statutory right to convert his Chapter 13 case to one under Chapter 7. By that time, Harris' postpetition wages accumulated by Viegelahn amounted to $5,519.22. On December 1, 2011—ten days after Harris' conversion—Viegelahn disposed of those funds by giving $1,200 to Harris' counsel, paying herself a $267.79 fee, and distributing the remaining money to the consumer-electronics store and six of Harris' unsecured creditors.

Asserting that Viegelahn lacked authority to disburse funds to creditors once the case was converted to Chapter 7, Harris moved the Bankruptcy Court for an order directing refund of the accumulated wages Viegelahn had given to his creditors. The Bankruptcy Court granted Harris' motion, and the District Court affirmed.

The Fifth Circuit reversed. *In re Harris*, 757 F.3d 468 (2014). Finding "little guidance in the Bankruptcy Code," *id.*, at 478, the Fifth Circuit concluded that "considerations of equity and policy" rendered "the creditors' claim to the undistributed funds ... superior to that of the debtor," *id.*, at 478, 481. Notwithstanding a Chapter 13 debtor's conversion to Chapter 7, the Fifth Circuit held, a former Chapter 13 trustee must distribute a debtor's accumulated postpetition wages to his creditors.

The Fifth Circuit acknowledged that its decision conflicted with the Third Circuit's decision in *In re Michael*, 699 F.3d 305 (2012), which held that a debtor's undistributed postpetition wages "are to be returned to the debtor at the time of conversion [from Chapter 13 to Chapter 7]." *Id.*, at 307. We granted certiorari to resolve this conflict, 574 U.S. ——, 135 S.Ct. 782, 190 L.Ed.2d 649 (2014), and now reverse the Fifth Circuit's judgment.

*1837 II

A

Prior to the Bankruptcy Reform Act of 1994, courts divided three ways on the disposition of a debtor's undistributed postpetition wages following conversion of a proceeding from Chapter 13 to Chapter 7. Some courts concluded that undistributed postpetition wages reverted to the debtor. *E.g.*, *In re Boggs*, 137 B.R. 408, 411 (Bkrtcy.Ct.W.D.Wash.1992). Others ordered a debtor's undistributed postpetition earnings disbursed to creditors pursuant to the terms of the confirmed (albeit terminated) Chapter 13 plan. *E.g.*, *In re Waugh*, 82 B.R. 394, 400 (Bkrtcy.Ct.W.D.Pa.1988). Still other courts, including several Courts of Appeals, held that, upon conversion, all postpetition earnings and acquisitions became part of the new Chapter 7 estate, thus augmenting the property available for liquidation and distribution to creditors. *E.g.*, *In re Calder*, 973 F.2d 862, 865–866 (C.A.10 1992); *In re Lybrook*, 951 F.2d 136, 137 (C.A.7 1991).

[14] Congress addressed the matter in 1994 by adding § 348(f) to the Bankruptcy Code. Rejecting the rulings of several Courts of Appeals, § 348(f)(1)(A) provides that in a case converted from Chapter 13, a debtor's postpetition earnings and acquisitions do not become part of the new Chapter 7 estate:

> "[P]roperty of the [Chapter 7] estate in the converted case shall consist of property of the estate, as of the date of filing of the [initial Chapter 13] petition, that remains in the possession

> of or is under the control of the debtor on the date of conversion."

In § 348(f)(2), Congress added an exception for debtors who convert in bad faith:

> "If the debtor converts a case [initially filed] under chapter 13 ... in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of the conversion."

[15] Section 348(f), all agree, makes one thing clear: A debtor's postpetition wages, including undisbursed funds in the hands of a trustee, ordinarily do not become part of the Chapter 7 estate created by conversion. Absent a bad-faith conversion, § 348(f) limits a converted Chapter 7 estate to property belonging to the debtor "as of the date" the original Chapter 13 petition was filed. Postpetition wages, by definition, do not fit that bill.

B

[16] With this background, we turn to the question presented: What happens to postpetition wages held by a Chapter 13 trustee at the time the case is converted to Chapter 7? Does the Code require return of the funds to the debtor, or does it require their distribution to creditors? We conclude that postpetition wages must be returned to the debtor.

[17] By excluding postpetition wages from the converted Chapter 7 estate, § 348(f)(1)(A) removes those earnings from the pool of assets that may be liquidated and distributed to creditors. Allowing a terminated Chapter 13 trustee to disburse the very same earnings to the very same creditors is incompatible with that statutory design. We resist attributing to Congress, after explicitly exempting from Chapter 7's liquidation-and-distribution process a debtor's postpetition wages, a plan to place those wages in creditors' hands another way.

[18] **[19]** **[20]** **[21]** Section 348(f)(2)'s exception for bad-faith conversions is instructive in this regard. If a debtor converts in bad faith—for example, by concealing assets in "unfair manipulation of the bankruptcy system," ***1838** *In re Siegfried*, 219 B.R. 581, 586 (Bkrtcy.Ct.Colo.1998)—the converted Chapter 7 estate "consist[s] of the property of the [Chapter 13] estate *as of the date of conversion*." § 348(f)(2) (emphasis added). Section 348(f)(2) thus penalizes bad-faith debtors by making their postpetition wages available for liquidation and distribution to creditors. Conversely, when the conversion to Chapter 7 is made in *good* faith, no penalty is exacted. Shielding a Chapter 7 debtor's postpetition earnings from creditors enables the "honest but unfortunate debtor" to make the "fresh start" the Bankruptcy Code aims to facilitate. *Marrama*, 549 U.S., at 367, 127 S.Ct. 1105 (internal quotation marks omitted). Bad-faith conversions apart, we find nothing in the Code denying debtors funds that would have been theirs had the case proceeded under Chapter 7 from the start. In sum, § 348(f) does not say, expressly: On conversion, accumulated wages go to the debtor. But that is the most sensible reading of what Congress did provide.

[22] **[23]** Section 348(e) also informs our ruling that undistributed postpetition wages must be returned to the debtor. That section provides: "Conversion [from Chapter 13 to Chapter 7] terminates the service of [the Chapter 13] trustee." A core service provided by a Chapter 13 trustee is the disbursement of "payments *to creditors*." § 1326(c) (emphasis added). The moment a case is converted from Chapter 13 to Chapter 7, however, the Chapter 13 trustee is stripped of authority to provide that "service." § 348(e).

[24] Section 348(e), of course, does not require a terminated trustee to hold accumulated funds in perpetuity; she must (as we hold today) return undistributed postpetition wages to the debtor. Returning funds to a debtor, however, is not a Chapter 13 trustee service as is making "paymen[t] to creditors." § 1326(c). In this case, illustratively, Chapter 13 trustee Viegelahn continued to act in that capacity after her tenure ended. Eight days after the case was converted to Chapter 7, she filed with the Bankruptcy Court a document titled "Trustee's Recommendations Concerning Claims," recommending distribution of the funds originally earmarked for Chase to the remaining secured creditor and six of the 13 unsecured creditors. No. 10–50655 (Bkrtcy. Ct. WD Tex., Nov. 30, 2011), Doc. 34. She then acted on that recommendation. She thus provided a Chapter 13 trustee "service," although barred from doing so by § 348(e). Returning undistributed wages to the debtor, in contrast, renders no Chapter 13–authorized "service."

C

[25] Viegelahn cites two Chapter 13 provisions in support of her argument that the Bankruptcy Code *requires* a terminated Chapter 13 trustee "to distribute undisbursed funds to creditors." Brief for Respondent 21. The first, § 1327(a), provides that a confirmed Chapter 13 plan "bind[s] the debtor and each creditor." The second, § 1326(a)(2), instructs a trustee to distribute "payment[s] in accordance with the plan," and that, Viegelahn observes, is just what she did. But the cited provisions had no force here, for they ceased to apply once the case was converted to Chapter 7.

[26] [27] When a debtor exercises his statutory right to convert, the case is placed under Chapter 7's governance, and no Chapter 13 provision holds sway. § 103(i) ("Chapter 13 ... applies only in a case under [that] chapter."). Harris having converted the case, the Chapter 13 plan was no longer "bind[ing]." § 1327(a). And Viegelahn, by then the *former* Chapter 13 trustee, lacked authority to distribute "payment[s] in accordance with the plan." § 1326(a)(2); see § 348(e).

*1839 [28] Nor can we credit the suggestion that a confirmed Chapter 13 plan gives creditors a vested right to funds held by a trustee. "[N]o provision in the Bankruptcy Code classifies any property, including post-petition wages, as belonging to creditors." *Michael*, 699 F.3d, at 312–313.

[29] [30] Viegelahn alternatively urges that a terminated Chapter 13 trustee's "duty" to distribute funds to creditors is a facet of the trustee's obligation to "wind up" the affairs of the Chapter 13 estate following conversion. Brief for Respondent 25 (internal quotation marks omitted). The Federal Rules of Bankruptcy Procedure, however, specify what a terminated Chapter 13 trustee must do postconversion: (1) she must turn over records and assets to the Chapter 7 trustee, Rule 1019(4); and (2) she must file a report with the United States bankruptcy trustee, Rule 1019(5)(B)(ii). Continuing to distribute funds to creditors pursuant to the defunct Chapter 13 plan is not an authorized "wind-up" task.

[31] [32] Finally, Viegelahn homes in on a particular feature of this case. Section 1327(b) states that "[e]xcept as otherwise provided in the [Chapter 13] plan ... the confirmation of a plan vests all of the property of the estate in the debtor." Harris' plan "otherwise provided": It stated that "[u]pon confirmation of the plan, all property of the estate shall not vest in the Debto[r], but shall remain as property *of the estate*." App. 31 (emphasis added). That plan language does not change the outcome here. Harris' wages may have been "property of the estate" while his case proceeded under Chapter 13, but estate property does not become property of creditors until it is distributed to them. See *Michael*, 699 F.3d, at 313. Moreover, the order confirming Harris' plan provided that upon conversion to Chapter 7, "[s]uch property as may revest in the debtor shall so revest." App. 48. Pursuant to that provision, property formerly in the Chapter 13 estate that did not become part of the Chapter 7 estate revested in Harris; here, Harris' postpetition wages so revested.

D

The Fifth Circuit expressed concern that debtors would receive a "windfall" if they could reclaim accumulated wages from a terminated Chapter 13 trustee. 757 F.3d, at 478–481. As explained, however, see *supra* at 1835 – 1836, Chapter 13 is a voluntary proceeding in which debtors endeavor to discharge their obligations using postpetition earnings that are off-limits to creditors in a Chapter 7 proceeding. We do not regard as a "windfall" a debtor's receipt of a fraction of the wages he earned and would have kept had he filed under Chapter 7 in the first place.

[33] We acknowledge the "fortuit[y]," as the Fifth Circuit called it, that a "debtor's chance of having funds returned" is "dependent on the trustee's speed in distributing the payments" to creditors. 757 F.3d, at 479, and n. 10. A trustee who distributes payments regularly may have little or no accumulated wages to return. When a trustee distributes payments infrequently, on the other hand, a debtor who converts to Chapter 7 may be entitled to a sizable refund. These outcomes, however, follow directly from Congress' decisions to shield postpetition wages from creditors in a converted Chapter 7 case, § 348(f)(1)(A), and to give Chapter 13 debtors a right to convert to Chapter 7 "at any time," § 1307(a). Moreover, creditors may gain protection against the risk of excess accumulations in the hands of Chapter 13 trustees by seeking to include in a Chapter 13 *1840 plan a schedule for regular disbursement of funds the trustee collects.

* * *

For the reasons stated, the judgment of the United States Court of Appeals for the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Op. Serv. 4830, 2015 Daily Journal D.A.R. 5323, 25 Fla. L. Weekly Fed. S 251

All Citations

135 S.Ct. 1829, 191 L.Ed.2d 783, 83 USLW 4293, 61 Bankr.Ct.Dec. 11, Bankr. L. Rep. P 82,799, 15 Cal. Daily

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

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135 S.Ct. 1995
Supreme Court of the United States

BANK OF AMERICA, N.A., Petitioner
v.
David B. CAULKETT.
Bank of America, N.A., Petitioner
v.
Edelmiro Toledo–Cardona.

Nos. 13–1421, 14–163. | Argued March 24, 2015. | Decided June 1, 2015.

Synopsis

Background: Order was entered by the United States Bankruptcy Court for the Middle District of Florida, Jennemann, J., allowing Chapter 7 debtor to "strip off" junior mortgagee's wholly underwater lien. Junior mortgagee appealed. The District Court, Gregory A. Presnell, J., affirmed, and mortgagee again appealed. The United States Court of Appeals for the Eleventh Circuit, 566 Fed.Appx. 879, affirmed. In separate case, order was again entered voiding a junior mortgage lien wholly unsupported by any equity in property, and the United States Court of Appeals for the Eleventh Circuit, 556 Fed.Appx. 911, again affirmed. Certiorari was granted.

[Holding:] The Supreme Court, Justice Thomas, held that debtors could not utilize bankruptcy statute providing that lien is void "[t]o the extent that [it] secures a claim against the debtor that is not an allowed secured claim" in order to "strip off" junior mortgage liens that were wholly unsupported by any equity in mortgaged property.

Reversed.

Justices Kennedy, Breyer, and Sotomayor joined in opinion in part.

West Headnotes (3)

[1] **Bankruptcy**
⇐ Liens securing claims not allowed

Chapter 7 debtors could not utilize bankruptcy statute providing that lien is void "[t]o the extent that [it] secures a claim against the debtor that is not an allowed secured claim" in order to "strip off" junior mortgage liens that were wholly unsupported by any equity in mortgaged property over and above amount of senior mortgage debts; because junior mortgagees held allowed claims that were each supported by security interests in mortgaged property, they qualified as "allowed secured claims," as that term was used in statute, irrespective of whether there was any value in mortgaged property to support these security interests. 11 U.S.C.A. § 506(d).

4 Cases that cite this headnote

[2] **Bankruptcy**
⇐ Claims allowable; what constitutes "claim."

Bankruptcy
⇐ Summary allowance; necessity for objection

Claim filed by creditor qualifies as "allowed claim," as that term is used in the Bankruptcy Code, if no interested party objects to it, or if, in case of objection, the bankruptcy court determines that claim should be allowed. 11 U.S.C.A. § 502.

Cases that cite this headnote

[3] **Statutes**
⇐ Similarity or difference

Court is generally reluctant to give the same words a different meaning when construing statutes.

Cases that cite this headnote

*1996 *Syllabus* *

Respondent debtors each filed for Chapter 7 bankruptcy, and each owned a house encumbered with a senior mortgage lien and a junior mortgage lien, the latter held by petitioner

bank. Because the amount owed on each senior mortgage is greater than each house's current market value, the bank would receive nothing if the properties were sold today. The junior mortgage liens were thus wholly underwater. The debtors sought to void their junior mortgage liens under § 506 of the Bankruptcy Code, which provides, "To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void." 11 U.S.C. § 506(d). In each case, the Bankruptcy Court granted the motion, and both the District Court and the Eleventh Circuit affirmed.

Held : A debtor in a Chapter 7 bankruptcy proceeding may not void a junior mortgage lien under § 506(d) when the debt owed on a senior mortgage lien exceeds the current value of the collateral if the creditor's claim is both secured by a ***1997** lien and allowed under § 502 of the Bankruptcy Code. Pp. 1998 – 2001.

(a) The debtors here prevail only if the bank's claims are "not ... allowed secured claim[s]." The parties do not dispute that the bank's claims are "allowed" under the Code. Instead, the debtors argue that the bank's claims are not "secured" because § 506(a)(1) provides that "[a]n allowed claim ... is a secured claim to the extent of the value of such creditor's interest in ... such property" and "an unsecured claim to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim." Because the value of the bank's interest here is zero, a straightforward reading of the statute would seem to favor the debtors. This Court's construction of § 506(d)'s term "secured claim" in *Dewsnup v. Timm*, 502 U.S. 410, 112 S.Ct. 773, 116 L.Ed.2d 903, however, forecloses that reading and resolves the question presented here. In declining to permit a Chapter 7 debtor to "strip down" a partially underwater lien under § 506(d) to the value of the collateral, the Court in *Dewsnup* concluded that an allowed claim "secured by a lien with recourse to the underlying collateral ... does not come within the scope of § 506(d)." *Id.*, at 415, 112 S.Ct. 773. Thus, under *Dewsnup*, a "secured claim" is a claim supported by a security interest in property, regardless of whether the value of that property would be sufficient to cover the claim. Pp. 1998 – 1999.

(b) This Court declines to limit *Dewsnup* to partially underwater liens. *Dewsnup* 's definition did not depend on such a distinction. Nor is this distinction supported by *Nobelman v. American Savings Bank*, 508 U.S. 324, 113 S.Ct. 2106, 124 L.Ed.2d 228, which addressed the interaction between the meaning of the term "secured claim" in § 506(a)—a definition that *Dewsnup* declined to use for purposes of § 506(d)—and an entirely separate provision, § 1322(b)(2). See 508 U.S., at 327–332, 113 S.Ct. 2106. Finally, the debtors' suggestion that the historical and policy concerns that motivated the Court in *Dewsnup* do not apply in the context of wholly underwater liens is an insufficient justification for giving the term "secured claim" a different definition depending on the value of the collateral. Ultimately, the debtors' proposed distinction would do nothing to vindicate § 506(d)'s original meaning and would leave an odd statutory framework in its place. Pp. 1999 – 2001.

No. 13–1421, 566 Fed.Appx. 879, and No. 14–163, 556 Fed.Appx. 911, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C.J., and SCALIA, GINSBURG, ALITO, and KAGAN, JJ., joined, and in which KENNEDY, BREYER, and SOTOMAYOR, JJ., joined except as to the footnote.

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Opinion

Justice THOMAS delivered the opinion of the Court. *

Section 506(d) of the Bankruptcy Code allows a debtor to void a lien on his property "[t]o the extent that [the] lien secures a claim against the debtor that is not an allowed secured claim." 11 U.S.C. § 506(d). These consolidated cases present the question whether a debtor in a Chapter 7 bankruptcy proceeding may void a junior mortgage under § 506(d) when the debt owed on a senior mortgage exceeds the present value of the property. We hold that a debtor may

not, and we therefore reverse the judgments of the Court of Appeals.

I

The facts in these consolidated cases are largely the same. The debtors, respondents David Caulkett and Edelmiro Toledo-Cardona, each have two mortgage liens on their respective houses. Petitioner Bank of America (Bank) holds the junior mortgage lien—*i.e.*, the mortgage lien subordinate to the other mortgage lien—on each home. The amount owed on each debtor's senior mortgage lien is greater than each home's current market value. The Bank's junior mortgage liens are thus wholly underwater: because each home is worth less than the amount the debtor owes on the senior mortgage, the Bank would receive nothing if the properties were sold today.

In 2013, the debtors each filed for Chapter 7 bankruptcy. In their respective bankruptcy proceedings, they moved to "strip off"—or void—the junior mortgage liens under § 506(d) of the Bankruptcy Code. In each case, the Bankruptcy Court granted the motion, and both the District Court and the Court of Appeals for the Eleventh Circuit affirmed. *In re Caulkett,* 566 Fed.Appx. 879 (2014) (*per curiam*); *In re Toledo-Cardona,* 556 Fed.Appx. 911 (2014) (*per curiam*). The Eleventh Circuit explained that it was bound by Circuit precedent holding that § 506(d) allows debtors to void a wholly underwater mortgage lien.

We granted certiorari, 574 U.S. ——, 135 S.Ct. 677, 190 L.Ed.2d 388 (2014), and now reverse the judgments of the Eleventh Circuit.

II

[1] **[2]** Section 506(d) provides, "To the extent that a lien secures a claim against the debtor that is not an *allowed secured claim,* such lien is void." (Emphasis added.) Accordingly, § 506(d) permits the debtors here to strip off the Bank's junior mortgages only if the Bank's "claim"—generally, its right to repayment from the debtors, § 101(5)—is "not an allowed secured claim." Subject to some exceptions not relevant here, a claim filed by a creditor is deemed "allowed" under § 502 if no interested party objects or if, in the case of an objection, the Bankruptcy Court determines that the claim should be allowed under the Code. §§ 502(a)-(b). The parties agree that the Bank's claims meet this requirement. They disagree, however, over whether the Bank's claims are "secured" within the meaning of § 506(d).

The Code suggests that the Bank's claims are not secured. Section 506(a)(1) provides that "[a]n allowed claim of a creditor secured by a lien on property ... is a *secured claim* to the extent of the value of such creditor's interest in ... such property," ***1999** and "an *unsecured claim* to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim." (Emphasis added.) In other words, if the value of a creditor's interest in the property is zero—as is the case here—his claim cannot be a "secured claim" within the meaning of § 506(a). And given that these identical words are later used in the same section of the same Act—§ 506(d)—one would think this "presents a classic case for application of the normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning." *Desert Palace, Inc. v. Costa,* 539 U.S. 90, 101, 123 S.Ct. 2148, 156 L.Ed.2d 84 (2003) (internal quotation marks omitted). Under that straightforward reading of the statute, the debtors would be able to void the Bank's claims.

Unfortunately for the debtors, this Court has already adopted a construction of the term "secured claim" in § 506(d) that forecloses this textual analysis. See *Dewsnup v. Timm,* 502 U.S. 410, 112 S.Ct. 773, 116 L.Ed.2d 903 (1992). In *Dewsnup,* the Court confronted a situation in which a Chapter 7 debtor wanted to " 'strip down' "—or reduce—a partially underwater lien under § 506(d) to the value of the collateral. *Id.,* at 412–413, 112 S.Ct. 773. Specifically, she sought, under § 506(d), to reduce her debt of approximately $120,000 to the value of the collateral securing her debt at that time ($39,000). *Id.,* at 413, 112 S.Ct. 773. Relying on the statutory definition of " 'allowed secured claim' " in § 506(a), she contended that her creditors' claim was "secured only to the extent of the judicially determined value of the real property on which the lien [wa]s fixed." *Id.,* at 414, 112 S.Ct. 773.

The Court rejected her argument. Rather than apply the statutory definition of "secured claim" in § 506(a), the Court reasoned that the term "secured" in § 506(d) contained an ambiguity because the self-interested parties before it disagreed over the term's meaning. *Id.,* at 416, 420, 112 S.Ct. 773. Relying on policy considerations and its understanding of pre-Code practice, the Court concluded that if a claim "has been 'allowed' pursuant to § 502 of the Code and is secured by a lien with recourse to the underlying collateral, it does not come within the scope of § 506(d)." *Id.,* at 415, 112 S.Ct.

773; see *id.*, at 417–420, 112 S.Ct. 773. It therefore held that the debtor could not strip down the creditors' lien to the value of the property under § 506(d) "because [the creditors'] claim [wa]s secured by a lien and ha[d] been fully allowed pursuant to § 502." *Id.*, at 417, 112 S.Ct. 773. In other words, *Dewsnup* defined the term "secured claim" in § 506(d) to mean a claim supported by a security interest in property, regardless of whether the value of that property would be sufficient to cover the claim. Under this definition, § 506(d)'s function is reduced to "voiding a lien whenever a claim secured by the lien itself has not been allowed." *Id.*, at 416, 112 S.Ct. 773.

Dewsnup 's construction of "secured claim" resolves the question presented here. *Dewsnup* construed the term "secured claim" in § 506(d) to include any claim "secured by a lien and ... fully allowed pursuant to § 502." *Id.*, at 417, 112 S.Ct. 773. Because the Bank's claims here are both secured by liens and allowed under § 502, they cannot be voided under the definition given to the term "allowed secured claim" by *Dewsnup*.

III

The debtors do not ask us to overrule ***2000** *Dewsnup*, † but instead request that we limit that decision to partially—as opposed to wholly—underwater liens. We decline to adopt this distinction. The debtors offer several reasons why we should cabin *Dewsnup* in this manner, but none of them is compelling.

To start, the debtors rely on language in *Dewsnup* stating that the Court was not addressing "all possible fact situations," but was instead "allow[ing] other facts to await their legal resolution on another day." *Id.*, at 416–417, 112 S.Ct. 773. But this disclaimer provides an insufficient foundation for the debtors' proposed distinction. *Dewsnup* considered several possible definitions of the term "secured claim" in § 506(d). See *id.*, at 414–416, 112 S.Ct. 773. The definition it settled on—that a claim is "secured" if it is "secured by a lien" and "has been fully allowed pursuant to § 502," *id.*, at 417, 112 S.Ct. 773—does not depend on whether a lien is partially or wholly underwater. Whatever the Court's hedging language meant, it does not provide a reason to limit *Dewsnup* in the manner the debtors propose.

The debtors next contend that the term "secured claim" in § 506(d) could be redefined as any claim that is backed by collateral with *some* value. Embracing this reading of § 506(d), however, would give the term "allowed secured claim" in § 506(d) a different meaning than its statutory definition in § 506(a). We refuse to adopt this artificial definition.

Nor do we think *Nobelman v. American Savings Bank*, 508 U.S. 324, 113 S.Ct. 2106, 124 L.Ed.2d 228 (1993), supports the debtors' proposed distinction. *Nobelman* said nothing about the meaning of the term "secured claim" in § 506(d). Instead, it addressed the interaction between the meaning of the term "secured claim" in § 506(a) and an entirely separate provision, § 1322(b)(2). See 508 U.S., at 327–332, 113 S.Ct. 2106. *Nobelman* offers no guidance on the question presented in these cases because the Court in *Dewsnup* already declined to apply the definition in § 506(a) to the phrase "secured claim" in § 506(d).

[3] The debtors alternatively urge us to limit *Dewsnup* 's definition to the facts of that case because the historical and policy concerns that motivated the Court do not apply in the context of wholly underwater liens. Whether or not that proposition is true, it is an insufficient justification for giving the term "secured claim" in § 506(d) a different definition depending on the value of the collateral. We are generally reluctant to give the "same words a different meaning" when construing statutes, *Pasquantino v. United* ***2001** *States*, 544 U.S. 349, 358, 125 S.Ct. 1766, 161 L.Ed.2d 619 (2005) (internal quotation marks omitted), and we decline to do so here based on policy arguments.

Ultimately, embracing the debtors' distinction would not vindicate § 506(d)'s original meaning, and it would leave an odd statutory framework in its place. Under the debtors' approach, if a court valued the collateral at one dollar more than the amount of a senior lien, the debtor could not strip down a junior lien under *Dewsnup*, but if it valued the property at one dollar less, the debtor could strip off the entire junior lien. Given the constantly shifting value of real property, this reading could lead to arbitrary results. To be sure, the Code engages in line-drawing elsewhere, and sometimes a dollar's difference will have a significant impact on bankruptcy proceedings. See, *e.g.*, § 707(b)(2)(A)(i) (presumption of abuse of provisions of Chapter 7 triggered if debtor's projected disposable income over the next five years is $12,475). But these lines were set by Congress, not this Court. There is scant support for the view that § 506(d) applies differently depending on whether a lien was partially or wholly underwater. Even if *Dewsnup* were deemed not to

reflect the correct meaning of § 506(d), the debtors' solution would not either.

* * *

The reasoning of *Dewsnup* dictates that a debtor in a Chapter 7 bankruptcy proceeding may not void a junior mortgage lien under § 506(d) when the debt owed on a senior mortgage lien exceeds the current value of the collateral. The debtors here have not asked us to overrule *Dewsnup*, and we decline to adopt the artificial distinction they propose instead. We therefore reverse the judgments of the Court of Appeals and remand the cases for further proceedings consistent with this opinion.

It is so ordered.

All Citations

135 S.Ct. 1995, 192 L.Ed.2d 52, 83 USLW 4379, 61 Bankr.Ct.Dec. 31, Bankr. L. Rep. P 82,807, 15 Cal. Daily Op. Serv. 5437, 2015 Daily Journal D.A.R. 5907, 25 Fla. L. Weekly Fed. S 298

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

* Justice KENNEDY, Justice BREYER, and Justice SOTOMAYOR join this opinion, except as to the footnote.

† From its inception, *Dewsnup v. Timm*, 502 U.S. 410, 112 S.Ct. 773, 116 L.Ed.2d 903 (1992), has been the target of criticism. See, *e.g.*, *id.*, at 420–436, 112 S.Ct. 773 (SCALIA, J., dissenting); *In re Woolsey*, 696 F.3d 1266, 1273–1274, 1278 (C.A.10 2012); *In re Dever*, 164 B.R. 132, 138, 145 (Bkrtcy.Ct.C.D.Cal.1994); Carlson, Bifurcation of Undersecured Claims in Bankruptcy, 70 Am. Bankr. L. J. 1, 12–20 (1996); Ponoroff & Knippenberg, The Immovable Object Versus the Irresistible Force: Rethinking the Relationship Between Secured Credit and Bankruptcy Policy, 95 Mich. L. Rev. 2234, 2305–2307 (1997); see also *Bank of America Nat. Trust and Sav. Assn. v. 203 North LaSalle Street Partnership*, 526 U.S. 434, 463, and n. 3, 119 S.Ct. 1411, 143 L.Ed.2d 607 (1999) (THOMAS, J., concurring in judgment) (collecting cases and observing that "[t]he methodological confusion created by *Dewsnup* has enshrouded both the Courts of Appeals and ... Bankruptcy Courts"). Despite this criticism, the debtors have repeatedly insisted that they are not asking us to overrule *Dewsnup*.

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785 F.3d 1161
United States Court of Appeals,
Seventh Circuit.

In re Edward J. PAJIAN, Debtor–Appellant.

No. 14–2052. | Argued Oct. 27, 2014. | Decided May 11, 2015.

Synopsis

Background: Chapter 13 debtor objected to untimely proofs of secured and unsecured claims filed by mortgage lender. The United States Bankruptcy Court for the Northern District of Illinois, Donald R. Cassling, J., 508 B.R. 708, overruled objection as to secured portion of claim. Objector appealed.

Holdings: The Court of Appeals, Wood, Chief Judge, held that:

[1] as a matter of first impression, 90–day deadline specified in Bankruptcy Rule for filing proofs of claim applied to secured and unsecured creditors, and

[2] mortgage lender's claim for secured debt was barred from inclusion in confirmed Chapter 13 plan.

Reversed and remanded.

West Headnotes (4)

[1] **Bankruptcy**
⇐ Necessity of Filing; Effect of Failure
Bankruptcy
⇐ Secured claims
Bankruptcy
⇐ Effect as to Securities and Liens

While all creditors, secured and unsecured, must file a proof of claim in order to receive distributions in Chapter 13 bankruptcy proceedings, a secured creditor who fails to do so can still enforce its lien through a foreclosure action, even after the debtor receives a discharge. 11 U.S.C.A. § 502(a); Fed.Rules Bankr.Proc.Rule 3021, 11 U.S.C.A.

Cases that cite this headnote

[2] **Bankruptcy**
⇐ Administrative claims; request for payment
Bankruptcy
⇐ Effect as to Securities and Liens

A secured creditor's lien is largely unaffected by a bankruptcy discharge in a Chapter 13 proceeding, regardless of whether the creditor filed a proof of claim in the bankruptcy proceedings. 11 U.S.C.A. § 502(a); Fed.Rules Bankr.Proc.Rule 3021, 11 U.S.C.A.

Cases that cite this headnote

[3] **Bankruptcy**
⇐ Time for Filing

Ninety-day deadline specified in Bankruptcy Rule for filing proofs of claim applied to secured and unsecured creditors wishing to receive distributions in bankruptcy proceedings; rule applied to any proofs of claim, did not distinguish between claims of secured or unsecured creditors, mentioned both claims and unsecured claims, and Bankruptcy Code defined claim as including both secured and unsecured claims, which was adopted by Bankruptcy Rules. 11 U.S.C.A. § 101(5)(A); Fed.Rules Bankr.Proc.Rules 3002(c), 9001, 11 U.S.C.A.

Cases that cite this headnote

[4] **Bankruptcy**
⇐ Secured claims
Bankruptcy
⇐ Mortgages in general

Mortgage lender's claim for secured debt was barred from inclusion in confirmed Chapter 13 plan, where lender filed its claim after the 90-day deadline specified in Bankruptcy Rule. Fed.Rules Bankr.Proc.Rule 3002(c), 11 U.S.C.A.

Cases that cite this headnote

Attorneys and Law Firms

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Before WOOD, Chief Judge, and EASTERBROOK and WILLIAMS, Circuit Judges.

Opinion

WOOD, Chief Judge.

After Edward Pajian filed for bankruptcy, Lisle Savings Bank, one of Pajian's creditors, filed a proof of claim in the bankruptcy court. This is standard procedure, but there was a hiccup: the Bank missed the bankruptcy court's deadline for filing such proofs by several months. The court had set the deadline in accordance with ***1162** Federal Rule of Bankruptcy Procedure 3002(c), which requires creditors to file proofs of claim within 90 days of the date set for the meeting of the debtor's creditors. The Bank excused its tardiness with the argument that Rule 3002(c) applies only to unsecured creditors; as a secured creditor, it asserted, it was entitled to file a proof of claim at any time, at least until plan confirmation. The bankruptcy court agreed with the Bank and overruled Pajian's objection to the Bank's claim. We now reverse that decision and hold that a secured creditor must file its proof of claim by the 90–day deadline specified by Rule 3002(c).

I

Edward Pajian filed a voluntary Chapter 13 bankruptcy petition on June 25, 2013. The bankruptcy court clerk mailed a "Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines" to Pajian's creditors, including Lisle Savings Bank. The notice instructed non-governmental creditors to file all proofs of claim by October 15, 2013, 90 days after the date set for the meeting of Pajian's creditors. See FED. R. BANKR. P. 3002(c). Missing the deadline by more than three months, the Bank filed a proof of claim for $330,472.19 on January 21, 2014. Its claim covered two debts. One was a secured debt for the first mortgage on a commercial property located in Lisle, Illinois; Pajian owned a one-half interest in the property. The second was an unsecured debt for a deficiency judgment resulting from a state foreclosure proceeding on a residential property in Naperville, Illinois.

The bankruptcy court docketed the Bank's claim as Claim No. 5. Pajian filed an objection to the claim, arguing that it was barred from inclusion in his Chapter 13 plan because the Bank had missed the deadline imposed by Rule 3002(c). The Bank countered with three arguments: 1) that a secured creditor does not need to file a proof of claim in order to secure distributions under a Chapter 13 plan, 2) that a pleading it had submitted to the court before the deadline amounted to an "informal" proof of claim, and 3) that the Rule 3002(c) deadline is inapplicable to secured claims. The bankruptcy court rejected the first and second arguments but accepted the third, concluding that a secured creditor seeking distribution under a debtor's plan need only file a proof of claim before the plan's confirmation. The court thus sustained Pajian's objection with respect to the unsecured portion of the claim, but overruled his objection as to the secured portion and deemed that latter portion allowed (in the amount of $233,229.68). Pajian took a direct appeal to this court to contest the bankruptcy court's decision to allow the secured portion of the claim.

The bankruptcy court had jurisdiction over this matter pursuant to 28 U.S.C. § 157, which permits bankruptcy courts to hear and determine "core proceedings," such as an objection to a proof of claim. See 28 U.S.C. § 157(b)(1), (b)(2)(B). We have jurisdiction to hear this direct appeal from the bankruptcy court by virtue of 28 U.S.C. § 158(d)(2)(A), which allows courts of appeals to hear appeals of bankruptcy court orders when, among other things, the order involves "a question of law as to which there is no controlling decision," "a question of law requiring resolution of conflicting decisions," or "a matter of public importance." 28 U.S.C. § 158(d)(2)(A)(i)-(ii). The bankruptcy court certified that Pajian's appeal met these requirements; we agreed with that assessment and granted Pajian's request to take a direct appeal. The appeal raises a legal question that requires this court to break new ground and resolve conflicting decisions among bankruptcy courts. It also involves a matter ***1163** of public importance because this issue has been a thorn in the side of many Chapter 13 cases involving secured creditors. As this appeal involves only an issue of law, we review the bankruptcy court's decision *de novo*. *Adams v. Adams*, 738 F.3d 861, 864–65 (7th Cir.2013).

II

Chapter 13 of the Bankruptcy Code allows debtors to retain some assets and pay off their debts with future income. See

11 U.S.C. § 1322. The debtor makes regular payments to a trustee pursuant to a plan that the debtor must file. See *id.* §§ 1321–1322. After the bankruptcy court confirms the plan, the trustee begins to distribute payments to creditors, as specified in the debtor's plan. See FED. R. BANKR.P. 3021. Once the debtor makes all of the payments required by the plan, the bankruptcy court discharges most of the debtor's remaining debts. See 11 U.S.C. § 1328(a).

[1] [2] A creditor must file a proof of claim in order to participate in Chapter 13 plan distributions. See FED. R. BANKR.P. 3021 (permitting distribution to creditors "whose claims have been allowed"); 11 U.S.C. § 502(a) (providing that a claim is "deemed allowed" when a proof of claim is filed under section 501); see also *In re Brisco,* 486 B.R. 422, 430 (Bankr.N.D.Ill.2013); *In re Strong,* 203 B.R. 105, 112 (Bankr.N.D.Ill.1996). But while all creditors —secured and unsecured—must file a proof of claim in order to receive distributions, a secured creditor who fails to do so can still enforce its lien through a foreclosure action, even after the debtor receives a discharge. See *In re Penrod,* 50 F.3d 459, 461–62 (7th Cir.1995). In other words, a secured creditor's lien is largely unaffected by the bankruptcy discharge, regardless of whether the creditor filed a proof of claim. (As we noted in *Penrod,* there can be practical effects on the secured creditor that might induce it to participate in the bankruptcy, but they do not affect the issue before us.)

A debtor may object—and a court must disallow the claim —if the creditor's proof of claim is not timely filed. See 11 U.S.C. § 502(a), (b)(9). Federal Rule of Bankruptcy Procedure 3002(c) notes that "a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors." This subsection mentions six exceptions to the 90–day deadline, but none is relevant here.

The issue before us is whether Rule 3002(c)'s deadline applies to *all* creditors or merely *unsecured* ones. The Bank argues, and the bankruptcy court held, that the Rule applies only to unsecured creditors. While the language of Rule 3002(c) at first appears to contradict this holding, reading Rule 3002 as a whole muddies the water a bit. Rule 3002's first subsection, which requires the filing of a proof of claim or interest, applies specifically to unsecured creditors and does not mention secured creditors. See FED. R. BANKR.P. 3002(a) ("An unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed."). In fact, Rule 3002 never expressly refers to "secured creditors." This omission has led some to conclude that Rule 3002 in its entirety concerns only unsecured creditors. Bankruptcy courts have come to conflicting conclusions on the issue. Compare *In re Dumain,* 492 B.R. 140, 148–49 (Bankr.S.D.N.Y.2013) (Rule 3002(c) deadline applies to all creditors), and *In re Dennis,* 230 B.R. 244, 246–54 (Bankr.D.N.J.1999) (same), with *In re Mehl,* No. 04–85570, 2005 WL 2806676, at *2–3 (Bankr.C.D.Ill. Oct. 25, 2005) (secured creditors need not comply with the deadline, although there may be some point after which they cannot file a proof ***1164** of claim), and *Strong,* 203 B.R. at 112–13 (Rule 3002(c) deadline does not apply to secured creditors).

[3] We think the better interpretation is that all creditors —unsecured and secured alike—are bound by the Rule 3002(c) deadline. Subsection (c) on its face applies to any "proof of claim"; it does not distinguish between the claims of secured and unsecured creditors. The Bankruptcy Code defines "claim" as including both secured and unsecured claims, see 11 U.S.C. § 101(5)(A) ("claim" includes "right to payment, whether or not such right is ... secured, or unsecured"), and the Bankruptcy Rules have adopted this definition. See FED. R. BANKR.P. 9001 (incorporating § 101's definitions). Further, Rule 3002(c) mentions both "claim[s]" and "unsecured claim[s]." Compare FED. R. BANKR.P. 3002(c)(3) (excepting from the 90–day deadline "[a]n unsecured claim which arises in favor of an entity ..."), with FED. R. BANKR.P. 3002(c)(4) (excepting from the deadline "[a] claim arising from the rejection of an executory contract ..."). See also FED. R. BANKR.P. 3012 (using the term "secured claim"). The use of both terms in Rule 3002 suggests that the drafters knew how to distinguish between *all* claims and *unsecured* claims. That they did not specifically mention *unsecured* claims when setting forth the 90–day deadline in subsection (c) thus strongly implies that the deadline encompasses *all* claims (unless one of the six enumerated exceptions applies).

We recognize that subsection (a) is limited to unsecured creditors, but that fact does not undermine our conclusion. Subsection (a) deals with a different topic from the one addressed in subsection (c): the requirement to file a proof of claim so that the claim will be allowed. And it makes sense for subsection (a) to cover only unsecured claims. If an unsecured creditor does not file a proof of claim, it will not share in the recovery authorized under the plan and its claim will be discharged in bankruptcy. The same does not apply to secured creditors; secured debts are non-dischargeable, and secured creditors can enforce their liens even if they do not participate

in the debtor's Chapter 13 plan. Subsection (a) is thus about who *must* file in order to collect on debts. There is no reason why its limitation to unsecured creditors should carry over to subsection (c).

Principles of sound judicial administration support this result. Requiring all creditors to file claims by the same date allows the debtor to craft and finalize a Chapter 13 plan without the concern that other creditors might swoop in at the last minute and upend a carefully constructed repayment schedule. If we held otherwise, secured creditors could wreak havoc on the ability of the debtor and the bankruptcy court to assemble and approve an effective plan. Each tardy filing from a secured creditor would likely require the debtor to file a modified plan, which would have to be served on all interested parties and considered by the court. All this would often lead to disruptive delays in plan confirmation hearings and would ultimately hinder the bankruptcy court's ability to manage its docket. The bankruptcy court in the present case was concerned that a contrary conclusion might be inconsistent with this court's decisions in *Ernst & Young LLP v. Baker O'Neal Holdings, Inc.*, 304 F.3d 753 (7th Cir.2002), and *Adair v. Sherman*, 230 F.3d 890 (7th Cir.2000). But those cases presented a different problem: whether a secured creditor is entitled to unravel a *confirmed* plan by an offer of proof after confirmation, when the bankruptcy court has retained jurisdiction to adjudicate remaining controversies. Here, we are grappling with the application ***1165** of Rule 3002, where a secured party files its offer of proof *after* the Rule 3002 deadline but *before* plan confirmation.

Finally, the recent proposal of the U.S. Judicial Conference's Advisory Committee on Bankruptcy Rules to amend Rule 3002(a) supports our conclusion here. The Committee has recommended a clarification of this subsection so that it is evident that secured creditors, along with unsecured creditors, must file a proof of claim in order for their claims to be allowed. See COMMITTEE ON RULES OF PRACTICE AND PROCEDURE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, PRELIMINARY DRAFT OF PROPOSED AMENDMENTS TO THE FEDERAL RULES OF APPELLATE, BANKRUPTCY, CIVIL, AND CRIMINAL PROCEDURE 108 (Aug. 2014). The proposal also makes explicit that a secured creditor's failure to file a proof of claim does not void the creditor's lien. This amendment would remove all doubt that Rule 3002, including subsection (c)'s deadline, applies to secured creditors. In so doing, it would resolve the conflict among the bankruptcy courts in the manner we have found is most consistent with the Rules taken as a whole.

III

[4] The deadline for filing a proof of claim in Federal Rule of Bankruptcy Procedure 3002(c) applies to *all* claims, including those of secured creditors. Because Lisle Savings Bank filed its proof of claim after the Rule 3002(c) deadline, the bankruptcy court should have disallowed the secured portion of the Bank's claim. We therefore REVERSE the order of the bankruptcy court overruling Pajian's objection to the secured portion of the claim and REMAND for further proceedings consistent with this decision.

All Citations

785 F.3d 1161

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775 F.3d 871
United States Court of Appeals,
Seventh Circuit.

In re Leonard D. BRONK, Debtor.
John M. Cirilli, Trustee, Plaintiff–Appellee/Cross–Appellant,
v.
Leonard D. Bronk, Defendant–Appellant/Cross–Appellee.

Nos. 13–1516, 13–1123. | Argued Sept. 19, 2013. | Decided Jan. 5, 2015.

Synopsis

Background: Trustee objected to debtor's pre-bankruptcy conversion of nonexempt assets to exempt assets. The bankruptcy court denied claimed exemption for debtor's college savings accounts, but found that annuity was fully exempt as retirement benefit. The United States District Court for the Western District of Wisconsin, William M. Conley, Chief Judge, affirmed in part and remanded for additional fact-finding with regard to annuity. On remand, the bankruptcy judge again held that annuity was fully exempt as retirement benefit, and entered new judgment. Debtor appealed. The district court issued summary order denying the appeal. Parties appealed.

Holdings: The Court of Appeals, Sykes, Circuit Judge, held that:

[1] on question of first impression, a general exemption applies to an account owner's interest in a qualified college savings account under Wisconsin law, and

[2] trustee waived argument that debtor's annuity with death benefit did not comply with Internal Revenue Code as required by Wisconsin's exemption statute that protected certain retirement benefits.

Affirmed in part and reversed in part.

West Headnotes (6)

[1] **Bankruptcy**
Scope of review in general

As a general rule, an appeal from a final judgment allows the appellant to challenge any interlocutory actions by the district court along the way toward that final judgment.

Cases that cite this headnote

[2] **Exemptions**
Specific exemptions in general

Wisconsin statutory exemption for state-qualified college savings accounts was not ambiguous, and thus resort to legislative history and search for guidance from other states was not necessary; although enabling statute contained beneficiary-specific exemption, general exemption for college savings accounts could not be limited to beneficiary's interest in account because it was separately protected. W.S.A. 16.641, 815.18(3)(p).

Cases that cite this headnote

[3] **Statutes**
What constitutes ambiguity; how determined

The test for statutory ambiguity in Wisconsin looks to whether the statutory language reasonably gives rise to different meanings.

Cases that cite this headnote

[4] **Statutes**
Superfluousness

Under Wisconsin law, statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage.

Cases that cite this headnote

[5] **Exemptions**

Specific exemptions in general

Under Wisconsin law, a general exemption applies to an account owner's interest in a qualified college savings account. W.S.A. 16.641, 815.18(3)(p).

Cases that cite this headnote

[6] **Bankruptcy**

Presentation of grounds for review

Trustee waived argument that debtor could not claim full exemption because its annuity with death benefit did not comply with Internal Revenue Code as required by Wisconsin's exemption statute that protected certain retirement benefits, since trustee raised issue for the first time in the district court, and even then simply asserted that annuity was not tax qualified without developing an argument. W.S.A. 815.18(3)(j).

1 Cases that cite this headnote

Attorneys and Law Firms

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John M. Cirilli, Rhinelander, WI, pro se.

Claire Ann Resop, Attorney, Steinhilber Swanson & Resop, Madison, WI, for Plaintiff–Appellee/Cross–Appellant.

Before MANION, KANNE, and SYKES, Circuit Judges.

Opinion

SYKES, Circuit Judge.

This bankruptcy appeal raises two questions of first impression under a Wisconsin statute that permits resident debtors to shield certain property from execution by creditors. *See generally* 11 U.S.C. § 522(b); WIS. STAT. § 815.18. The first question concerns the scope of the statutory exemption for state-qualified college savings accounts. *See* WIS. STAT. § 815.18(3)(p) (exempting "[a]n interest in a college savings account under s. 16.641"). The bankruptcy judge read the statute narrowly to cover only the interest of account *beneficiaries*, not account *owners*, and refused to allow the debtor to exempt from his bankruptcy estate five college savings accounts he had established for the benefit of his grandchildren. The district court affirmed this ruling, and the debtor appeals this aspect of the judgment.

Wisconsin's exemption statute also protects certain retirement benefits, *see id.* § 815.18(3)(j), as well as life-insurance and annuity contracts, *see id.* § 815.18(3)(f). But the exemption for life insurance and annuities is limited to $4,000 if the contract in question was issued less than 24 months before the exemption is claimed. *Id.* § 815.18(3)(f)3. The debtor purchased an annuity just a few months before filing his bankruptcy petition and claimed a full exemption for it under section 815.18(3)(j). The Chapter 7 trustee argued that the annuity didn't qualify as a "retirement benefit" under section 815.18(3)(j) and the debtor could claim only the $4,000 exemption allowed under section 815.18(3)(f)3. The bankruptcy judge rejected the trustee's argument, classified the annuity as a retirement benefit, and allowed the exemption in full. The district court affirmed, and the trustee cross-appeals this aspect of the judgment.

We reverse in part and affirm in part. The college savings accounts are exempt from execution under section 815.18(3)(p). Account owners, not just account beneficiaries, may claim this exemption, and the lower courts erred in disallowing it here. As for the annuity, the contract in question satisfies the basic definition of an exempt "retirement benefit" under section 815.18(3)(j) 1, which broadly includes "[a]ssets held or amounts payable under any ... annuity ... or similar plan or contract providing benefits by reason of age, illness, disability, death, or length of service." The debtor's annuity provides a death benefit, so the lower courts properly allowed him to exempt it in full under section 815.18(3)(j).

We note, however, that to qualify as a fully exempt retirement benefit under section 815.18(3)(j), the plan or contract in question must be either employer sponsored or comply with the Internal Revenue Code. See § 815.18(3)(j)2. The annuity clearly is not employer sponsored; whether it complies with the Internal Revenue Code has not been established, but the trustee raised this issue far too late in the proceedings and so it is waived.

***873 I. Background**

Leonard Bronk is a retiree living in Stevens Point, Wisconsin. He incurred significant debts providing for his wife's medical care before her death in 2007, and he himself suffered a stroke in early 2009. With his medical debts mounting—they exceeded $345,000 by the time he filed for bankruptcy—Bronk sought the advice of an attorney about pre-bankruptcy exemption planning. His assets included his home, which he owned free and clear, and a certificate of deposit in the amount of $42,000. On the advice of counsel, Bronk sought to protect these nonexempt assets by converting them to exempt assets.

In May 2009, a few months before filing his Chapter 7 petition, Bronk borrowed $95,000 from Citizens Bank and mortgaged his previously unencumbered home. He used these funds to establish five college savings accounts for the benefit of his grandchildren under section 529 of the Internal Revenue Code. That section enables states to create "qualified tuition program[s]" in the form of prepaid tuition plans and college savings accounts that enjoy favorable federal tax treatment. I.R.C. § 529(b). Wisconsin has enacted legislation creating both. *See* WIS. STAT. § 16.641 (college savings accounts); *id.* § 16.64 (prepaid tuition plans). [1]

Account owners control the funds in these accounts (known as "Edvest" accounts) and may designate and change account beneficiaries. § 16.641(1), (3); *see also* EDVEST, PLAN DISCLOSURE BOOKLET AND PARTICIPATION AGREEMENT 1–2 (Oct. 29, 2012), *available at* https://www.edvest.com/documents/wi_disclosure.pdf ("[The account owner] may cancel th[e] [Edvest Participation] Agreement at any time by requesting a 100% distribution from [his or her] Account."). Beneficiaries do not control account assets. *See* WIS. ADMIN. CODE ADMIN. § 81.11(3) ("A designated beneficiary may not authorize distribution or withdrawal of account funds."); *see also* Susan T. Bart, *The Best of Both Worlds: Using a Trust to Make Your 529 Savings Accounts Rock*, 34 ACTEC J. 106, 111 n. 31 (2008) ("[U]nless the beneficiary is the account owner, the beneficiary has only a mere expectancy, and does not have any property interest to transfer.").

In addition to creating the college savings accounts using the equity in his home, Bronk converted the $42,000 certificate of deposit into an annuity with CM Life Insurance Company. The annuity contract was issued on May 4, 2009, and does not begin making payments until January 3, 2035, but it also includes a death benefit.

On August 5, 2009, Bronk filed for bankruptcy under Chapter 7. The trustee objected to the college-fund and annuity transactions, arguing that Bronk had transferred his property with the intent to hinder, delay, or defraud his creditors and thus should be denied a discharge. *See* 11 U.S.C. § 727(a)(2)(A). The trustee also lodged individual objections to the exemptions Bronk claimed for these converted assets. *See* WIS. STAT. § 815.18(10). To be more specific, Bronk sought an exemption for the college savings accounts under section 815.18(3)(p), which allows debtors to shield from creditors "[a]n interest in a college savings account." He also sought an exemption for the annuity under section 815.18(j), which shields certain qualifying retirement benefits from creditors. The parties submitted the case on stipulated facts.

***874** The bankruptcy judge first addressed the trustee's argument for denial of discharge and rejected it, finding that there was no evidence that Bronk had acted with intent to hinder, delay, or defraud creditors. *See In re Bronk*, 444 B.R. 902, 908–17 (Bankr.W.D.Wis.2011). Turning to the claimed exemptions, the bankruptcy judge interpreted section 815.18(3)(p)—the exemption for college savings accounts—as applying only to the *beneficiary's* interest, not the account *owner's* interest, and on that understanding disallowed the claimed exemption for the Edvest accounts Bronk had established for his grandchildren. *Id.* at 918–24. But the judge accepted Bronk's argument about the annuity, holding that it was fully exempt as a retirement benefit under section 815.18(3)(j) rather than only partially exempt under section 815.18(3)(f) 3, as the trustee had argued. *See id.* at 925–26.

Both sides appealed to the district court. The district judge vacated the bankruptcy court's decision while agreeing with most of its reasoning. First, the district judge agreed that Bronk was entitled to a discharge because the trustee had not proven that the asset transfers were made with intent to hinder, delay, or defraud creditors. That decision is not challenged on appeal, so we say no more about it here. Second, the district judge agreed with the bankruptcy judge's interpretation of section 815.18(3)(p) and upheld the decision to deny the claimed exemption for Bronk's Edvest accounts. Finally, the judge narrowed the bankruptcy court's interpretation of "retirement benefit" under section 815.18(3)(j) and remanded the case for additional fact-finding on whether the annuity qualified under the narrower understanding of the statute.

[1] On remand the bankruptcy judge again held that the annuity was fully exempt as a retirement benefit under section

815.18(3)(j). A new judgment was entered, and Bronk again appealed to the district court to preserve issues previously decided for further review in this court. The parties appeared in the district court and advised the judge that no further proceedings were necessary. The district court then issued a summary order denying the appeal while "preserving to the full extent possible the parties' previous challenges before the bankruptcy court and this court."[2]

Bronk appealed, challenging the disallowance of the exemption for his college savings accounts under section 815.18(3)(p). The trustee filed a cross-appeal challenging the court's ruling on the annuity.

II. Discussion

The Bankruptcy Code allows debtors to exempt certain property from the bankruptcy estate under either federal law or the law of their state of residence. *See* 11 U.S.C. § 522(b); *In re Geise*, 992 F.2d 651, 653 n. 4, 655–56 (7th Cir.1993). As a ***875** Wisconsin resident, Bronk sought two exemptions available under state law, one for the college savings accounts under section 815.18(3)(p) and another for the annuity under section 815.18(3)(j).

We begin with the text of Wisconsin's exemption statute, which provides in relevant part:

> **(3)** EXEMPT PROPERTY. The debtor's interest in or right to receive the following property is exempt ...:
>
> ...
>
> (f) *Life insurance and annuities.* ...
>
> 2. Except as provided in subd. 3. and par. (j), any unmatured life insurance or annuity contract owned by the debtor and insuring the debtor ... and the debtor's aggregate interest, not to exceed $150,000 in value....
>
> 3. a. If the life insurance or annuity contract was issued less than 24 months before the applicable date, the exemption under this paragraph may not exceed $4,000.
>
> ...
>
> (j) *Retirement benefits.* 1. 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 of service and payments made to the debtor therefrom.
>
> 2. The plan or contract must meet one of the following requirements:
>
> a. The plan or contract complies with the provisions of the internal revenue code.
>
> b. The employer created the plan or contract for the exclusive benefit ... of some or all of the employees, or their dependants or beneficiaries....
>
> ...
>
> (p) *College savings accounts.* An interest in a college savings account under s. 16.641.

§ 815.18(3).

The statute contains its own rule of construction: "This section shall be construed to secure its full benefit to debtors and to advance the humane purpose of preserving to debtors and their dependents the means of obtaining a livelihood, the enjoyment of property necessary to sustain life and the opportunity to avoid becoming public charges." WIS. STAT. § 815.18(1). Because this case presents questions of statutory interpretation, our review is de novo. *Pickett v. Sheridan Health Care Ctr.*, 610 F.3d 434, 440 (7th Cir.2010).

A. The College Savings Accounts

[2] Wisconsin's exemption statute allows debtors to exempt "[a]n interest in a college savings account under s. 16.641" from execution by creditors. § 815.18(3)(p). The term "interest" is not specifically defined in the statute or by regulation,[3] but an "interest" is generally defined as "[a] legal share in something; all or part of a legal or equitable claim to or a right in property." BLACK'S LAW DICTIONARY 934 (10th ed.2014). Bronk clearly has a legal interest in each of the Edvest college savings accounts. He owned the accounts and could at any time select and change beneficiaries, transfer funds between accounts, receive distributions from the accounts, and (subject to certain limitations) remove funds from the accounts. *See* § 16.641(3)(a)-(b). Indeed, if Bronk lacked a legal or equitable interest in the accounts, ***876** they would not have been part of the bankruptcy estate in the first place. *See* 11 U.S.C. § 541(a)(1) (including in the property of the estate "all legal or equitable interests of the debtor in property").

The trustee insists nonetheless that the statute is ambiguous and must be understood as simply incorporating by reference the exemption contained in section 16.641, the enabling statute for Wisconsin's Edvest program. Section 16.641 contains an exemption to protect the beneficiary's interests in a college savings account: "A beneficiary's right to qualified withdrawals under this section is not subject to garnishment, attachment, execution, or other process of law." § 16.641(7).

Both lower courts agreed with the trustee that section 815.18(3)(p) is ambiguous and thus embarked on an elaborate examination of legislative history and similar legislation in other states to determine the relationship between the two exemptions. This foray into matters extrinsic to the statute led both judges to conclude that the general exemption in section 815.18(3)(p) covers only the *beneficiary's* interest in a college savings account, not the account *owner's* interest.

Venturing into legislative history was unnecessary, as was the search for guidance from other states. The presence of a beneficiary-specific exemption in section 16.641—the enabling statute for Wisconsin's college-savings program—does not mean that the general exemption in section 815.18(3)(p) is ambiguous. The general exemption statute is succinct and straightforward: A debtor may exempt "an interest in a college savings account under s. 16.641" from execution by creditors. The lower courts read this text as if it said that a debtor may exempt "[a]n interest in a college savings account *that is exempt* under s. 16.641." That reading adds language that is not there, making section 815.18(3)(p) superfluous—a mere duplication of the beneficiary-specific exemption in section 16.641(7).

[3] [4] The test for statutory ambiguity in Wisconsin looks to "whether the statutory ... language *reasonably* gives rise to different meanings." *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 271 Wis.2d 633, 681 N.W.2d 110, 124 (2004) (internal quotation marks omitted). And "[s]tatutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage." *Id.* The trustee finds ambiguity in section 815.18(3)(p) only by adding language and turning it into mere surplusage. That's not a reasonable interpretation of the statute.

The general exemption for college savings accounts in section 815.18(3)(p) would have no work to do if it is limited to the *beneficiary's* interest in the account, which is separately protected by section 16.641(7). Indeed, the trustee's interpretation of section 815.18(3)(p) actually undermines the interests of college-fund beneficiaries, making section 16.641(7) ineffective. If account owners may not invoke the general exemption in section 815.18(3)(p), as the trustee suggests and the lower courts held, then a college savings plan can be reached by an account owner's creditors, impairing the beneficiary's right to qualified withdrawals.

[5] The plain-meaning interpretation of section 815.18(3)(p) is the only reasonable one. It's the only reading of the statute that gives reasonable effect to both exemptions. The general exemption in section 815.18(3)(p) complements the more specific exemption in section 16.641(7), completing the protection for college savings accounts. Accordingly, we hold that section 815.18(3)(p) applies to an account owner's interest in a section 16.641 college savings account. Bronk was entitled under that ***877** section to exempt his interest in the Edvest accounts from the bankruptcy estate.

B. The Annuity

[6] The extent to which Bronk's annuity is exempt depends on how it is classified. The exemption statute defines "annuity" generally as "a series of payments payable during the life of the annuitant or during a specific period." WIS. STAT. § 815.18(2)(am). Two subsections in section 815.18 apply to annuities, though one is more limited than the other.

An annuity may be fully exempt as a "retirement benefit" under section 815.18(3)(j), which covers the following assets:

> 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 of service and payments made to the debtor therefrom.

§ 815.18(3)(j)1. To qualify for full exemption under this subsection, the retirement plan or contract must meet one of two additional requirements: (1) it must be employer sponsored; or (2) it must comply with the Internal Revenue Code. § 815.18(3)(j)2.

A more general exemption applies to "life insurance and annuities," but only up to $150,000 in value.[4] § 815.18(3)(f)2. And if the annuity contract was issued less than 24 months prior to the date the exemption is claimed, the exemption is limited to $4,000. *See* § 815.18(3)(f)3.a.

Two criteria differentiate annuities covered under subsection (3)(j) from those under subsection (3)(f). The first is how benefits are paid. Subsection (3)(f) applies to "any unmatured ... annuity," but the exemption for retirement benefits only covers annuities "providing benefits by reason of age, illness, disability, death or length of service," § 815.18(3)(j)1. So to qualify for full exemption as a retirement benefit under subsection (3)(j), an annuity must distribute benefits *because of* or *conditioned on* age, illness, disability, death, or length of service.

The term "by reason of" is synonymous with "because of" or "on account of." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 194 (1961) (defining "because of" as "by reason of: on account of"). It requires a causal connection between the phrase preceding it —"providing benefits"—and the list of factors that comes after it. *Cf. Rousey v. Jacoway,* 544 U.S. 320, 326–27, 125 S.Ct. 1561, 161 L.Ed.2d 563 (2005) ("We have interpreted the phrase 'on account of' elsewhere within the Bankruptcy Code to mean 'because of,' thereby requiring a causal connection between the term that the phrase 'on account of' modifies and the factor specified in the statute at issue."). Accordingly, for any of the listed retirement products, the statute requires that one of the listed conditions triggers payment of benefits.

The bankruptcy judge took a more expansive view of section 815.18(3)(j), relying on reasoning from *In re Bogue,* 240 B.R. 742, 749 (Bankr.E.D.Wis.1999), in which another bankruptcy judge in Wisconsin read the statute to include any retirement product that was *purchased* by reason of age, death, etc. The trustee, on the other hand, argues for an interpretation that narrows the reach of the retirement-benefits exemption, at least where annuities are concerned. He proposes that to qualify ***878** for exemption as a "retirement benefit" under section 815.18(3)(j), an annuity must "provide [ ] income as a substitute for wages upon the withdrawal from occupation or active working life" rather than "operat[ing] merely as a savings account."

Both interpretations stray from the statutory text. By its terms, the statute requires that the retirement product "*provid[e] benefits* " by reason of age, illness, death, etc., not that it be "*purchased* " by reason of age. Moreover, there is no special test for annuities.

Bronk's annuity begins paying on a fixed date—January 3, 2035—and thus does not pay benefits because of age, length of service, or the onset of an illness or disability. But the annuity also contains a death benefit. That feature brings it under the umbrella of section 815.18(3)(j).

There is a second requirement, however. To qualify for full exemption as a "retirement benefit," a retirement product must be either employer sponsored or "compl[y] with the provisions of the internal revenue code." § 815.18(3)(j)2.a. Bronk's annuity is not employer sponsored, so it must comply with the Internal Revenue Code to be exempt under section 815.18(3)(j). What it means to comply with the Internal Revenue Code is an important legal question not clearly answered by the text of the statute.

One possible meaning is that the retirement product must comply with Internal Revenue Code §§ 401–409, which govern tax treatment of certain retirement plans. But Wisconsin bankruptcy courts have uniformly interpreted the exemption as simply requiring that an annuity be tax deferred under Internal Revenue Code § 72.[5] This approach originated prior to the addition of annuities to the life-insurance exemption in section 815.18(3)(f) in 2003, and we question whether it survives the change in the law. Many annuities that have nothing to do with retirement in fact provide benefits by reason of age or death, and if the requirement that an annuity comply with the Internal Revenue Code means only that it be tax deferred, a large swath of nonretirement annuities may fall under section 815.18(3)(j), making the annuity exemption under section 815.18(3)(f) largely redundant.

Despite these reservations, we do not reach the question whether Bronk's annuity "complies with" the Internal Revenue Code as required by section 815.18(3)(j)2.a. The trustee raised this issue for the first time in the district court, and even then simply asserted—without developing an argument—that Bronk's annuity was not tax qualified. The district judge considered the argument waived and we agree. *See Judge v. Quinn,* 612 F.3d 537, 557 (7th Cir.2010).

Accordingly, for the foregoing reasons, we REVERSE the judgment of the district court to the extent that it affirmed the disallowance of the exemption for the college ***879** savings plans. In all other respects, the judgment is AFFIRMED.

All Citations

775 F.3d 871, 72 Collier Bankr.Cas.2d 1565, Bankr. L. Rep. P 82,756

Footnotes

1 These statutes were renumbered during the pendency of this case. *See* 2011 Wis. Act 32 §§ 75–76. Section 16.641 (college savings accounts) was previously codified at section 14.64. Section 16.64 (prepaid tuition plans) was codified at section 14.63. We use the current statutory designations.

2 Bronk argues that we lack jurisdiction over the trustee's cross-appeal because he did not file a separate appeal in the district court from the bankruptcy court's ruling on remand. We disagree. Both sides have appealed from a judgment of the district court explicitly preserving all issues raised and decided in the case. We have jurisdiction over the final judgment of the district court, and "[t]he general rule is that an appeal from a final judgment allows the appellant to challenge any interlocutory actions by the district court along the way toward that final judgment." *Luevano v. Wal–Mart Stores, Inc.*, 722 F.3d 1014, 1019 (7th Cir.2013). The issues before us now were presented to and decided by the district court in its initial opinion, which became final and appealable upon entry of the final judgment after the case returned following remand to the bankruptcy court.

3 *See* WIS. STAT. § 815.18(2) (defining certain terms in the statute); *see also* WIS. ADMIN. CODE ADMIN. § 81.02.

4 This subsection of the exemption statute initially covered only life insurance, but annuities were added in 2003. *See* 2003 Wis. Act 304.

5 *See, e.g., In re Woller*, 483 B.R. 886, 900–01 (Bankr.W.D.Wis.2012) ("The Wisconsin legislature did not expressly mandate compliance with the requirements of §§ 401–409 of the IRC (which cover pension, profit-sharing, stock bonus, and other retirement plans), and the Court will not write such a requirement into the exemption statute."); *In re Vangen*, 334 B.R. 241, 244 (Bankr.W.D.Wis.2005) ("All that is required for an annuity to be exempt under this section is that it qualify for tax-deferred status under the Federal Internal Revenue Code."); *In re Bogue*, 240 B.R. 742, 746 (Bankr.E.D.Wis.1999) ("The Wisconsin retirement benefits exemption statute does not limit its application to 'traditional' retirement plans, 'qualified' annuities, or annuities which comply with IRC §§ 401–409."); *In re Bruski*, 226 B.R. 422, 424 (Bankr.W.D.Wis.1998) ("It is not whether the annuity is taxable in accordance with the code, but whether the tax is deferred in accordance with the code. If so, the annuity qualifies for the exemption.").

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135 S.Ct. 1686
Supreme Court of the United States

Louis B. BULLARD, Petitioner
v.
BLUE HILLS BANK, fka Hyde Park Savings Bank.

No. 14–116. | Argued April 1, 2015. | Decided May 4, 2015.

Synopsis

Background: Confirmation hearing was held on Chapter 13 debtor's proposed "hybrid" plan. The United States Bankruptcy Court for the District of Massachusetts, William C. Hillman, J., 475 B.R. 304, entered order refusing to confirm plan. Debtor appealed. The Bankruptcy Appellate Panel (BAP), 494 B.R. 92, affirmed. Debtor appealed. The Court of Appeals for the First Circuit, Stahl, Circuit Judge, 752 F.3d 483, dismissed appeal for lack of jurisdiction. Certiorari was granted.

[**Holding:**] The Supreme Court, Chief Justice Roberts, held that a bankruptcy court's order denying confirmation of a proposed repayment plan with leave to amend is not a "final" order that the debtor can immediately appeal.

Affirmed.

West Headnotes (25)

[1] **Bankruptcy**
Finality

In ordinary civil litigation, a case in federal district court culminates in a "final decision," a ruling by which a district court disassociates itself from a case. 28 U.S.C.A. § 1291.

Cases that cite this headnote

[2] **Bankruptcy**
Finality

Party can typically appeal as of right only from the final decision of a district court. 28 U.S.C.A. § 1291.

1 Cases that cite this headnote

[3] **Bankruptcy**
Finality

Rule, that a party can typically appeal as of right only from the final decision of a district court, reflects the conclusion that permitting piecemeal, prejudgment appeals undermines efficient judicial administration and encroaches upon the prerogatives of district court judges, who play a special role in managing ongoing litigation. 28 U.S.C.A. § 1291.

2 Cases that cite this headnote

[4] **Bankruptcy**
Finality

Because bankruptcy cases involve aggregations of individual controversies, many of which would exist as stand-alone lawsuits but for the bankrupt status of the debtors, Congress has long provided that orders in bankruptcy cases may be immediately appealed if they finally dispose of discrete disputes within the larger case. 28 U.S.C.A. § 158(a).

Cases that cite this headnote

[5] **Bankruptcy**
Finality

For purposes of the statute authorizing appeals as of right from final judgments, orders, and decrees in bankruptcy cases and proceedings, the immediately appealable "proceeding" in the context of a bankruptcy court's consideration of a Chapter 13 plan is the entire process culminating in confirmation of a plan that would allow the bankruptcy to move forward or in dismissal of the case. 28 U.S.C.A. § 158(a).

2 Cases that cite this headnote

[6] **Bankruptcy**
Finality

Bankruptcy court's order denying confirmation of a proposed Chapter 13 repayment plan with leave to amend is not a "final" order that the debtor can immediately appeal. 28 U.S.C.A. § 158(a).

2 Cases that cite this headnote

[7] **Bankruptcy**
⇦ Conclusiveness; res judicata; collateral estoppel

When the bankruptcy court confirms a Chapter 13 plan, its terms become binding on debtor and creditor alike. 11 U.S.C.A. § 1327(a).

1 Cases that cite this headnote

[8] **Bankruptcy**
⇦ Conclusiveness; res judicata; collateral estoppel

Confirmation of a Chapter 13 plan has preclusive effect, foreclosing relitigation of any issue actually litigated by the parties and any issue necessarily determined by the confirmation order.

3 Cases that cite this headnote

[9] **Bankruptcy**
⇦ Property of estate

Subject to certain exceptions, confirmation of a Chapter 13 plan vests all of the property of the bankruptcy estate in the debtor, and renders that property free and clear of any claim or interest of any creditor provided for by the plan. 11 U.S.C.A. § 1327(b, c).

Cases that cite this headnote

[10] **Bankruptcy**
⇦ Representation of debtor, estate, or creditors

Bankruptcy
⇦ Effect

Confirmation of a Chapter 13 plan triggers the trustee's duty to distribute to creditors those funds already received from the debtor. 11 U.S.C.A. § 1326(a)(2).

1 Cases that cite this headnote

[11] **Bankruptcy**
⇦ Duration and termination

Bankruptcy
⇦ Effect; proceedings in converted case

Dismissal of a Chapter 13 case lifts the automatic stay entered at the start of bankruptcy, exposing the debtor to creditors' legal actions and collection efforts. 11 U.S.C.A. § 362(c)(2).

Cases that cite this headnote

[12] **Bankruptcy**
⇦ Duration and termination

Bankruptcy
⇦ Effect; proceedings in converted case

Dismissal of a Chapter 13 case may limit the availability of an automatic stay in a subsequent bankruptcy case. 11 U.S.C.A. § 362(c)(3).

Cases that cite this headnote

[13] **Bankruptcy**
⇦ Duration and termination

Bankruptcy
⇦ Representation of debtor, estate, or creditors

Bankruptcy
⇦ Effect

Following denial of confirmation of a proposed Chapter 13 plan with leave to amend, the automatic stay persists, the parties' rights and obligations remain unsettled, and the trustee continues to collect funds from the debtor in anticipation of a different plan's eventual confirmation.

Cases that cite this headnote

[14] **Bankruptcy**
⇦ Effect

Order denying confirmation of a Chapter 13 plan rules out the specific arrangement of relief embodied in that particular plan.

Cases that cite this headnote

[15] **Bankruptcy**
Particular proceedings or issues

Confirmations of plans are "core proceedings" statutorily entrusted to bankruptcy judges. 28 U.S.C.A. § 157(b)(2)(L).

Cases that cite this headnote

[16] **Bankruptcy**
Finality

Avoiding the delays and inefficiencies caused by multiple appeals of bankruptcy court orders is the reason for a rule of finality in bankruptcy cases. 28 U.S.C.A. § 158(a).

Cases that cite this headnote

[17] **Bankruptcy**
Plan

Bankruptcy
Time for completion; extension or modification

Chapter 13 debtor has the exclusive right to propose plans, which he can modify freely. 11 U.S.C.A. §§ 1321, 1323.

Cases that cite this headnote

[18] **Bankruptcy**
Nature and form; adversary proceedings

Objection to a proposed bankruptcy plan initiates a "contested matter." Fed.Rules Bankr.Proc.Rules 3015(f), 9014, 11 U.S.C.A.

Cases that cite this headnote

[19] **Bankruptcy**
Finality

Bankruptcy court's order resolving a contested matter by overruling an objection and confirming a proposed Chapter 13 plan is a "final" order. 28 U.S.C.A. § 158(a).

Cases that cite this headnote

[20] **Bankruptcy**
Finality

For purposes of appeal, the concept of "finality" cannot stretch to cover a bankruptcy court order resolving a disputed request for an extension of time. 28 U.S.C.A. § 158(a).

Cases that cite this headnote

[21] **Bankruptcy**
Finality

Order granting a motion for summary judgment is "final" for purposes of appeal; order denying such a motion is not. 28 U.S.C.A. § 1291.

Cases that cite this headnote

[22] **Bankruptcy**
Petition for leave; appeal as of right; certification

District court or Bankruptcy Appellate Panel (BAP) may grant leave to hear an appeal of a question that is important enough that it should be addressed immediately. 28 U.S.C.A. § 158(a)(3).

Cases that cite this headnote

[23] **Bankruptcy**
Interlocutory orders; collateral order doctrine

Bankruptcy
Petition for leave; appeal as of right; certification

Debtor who appeals to the district court and loses there may seek certification to the Court of Appeals under the general interlocutory appeals statute, which permits certification when three enumerated factors suggesting importance are all present. 28 U.S.C.A. § 1292(b).

Cases that cite this headnote

[24] **Bankruptcy**
Petition for leave; appeal as of right; certification

Statute allowing a bankruptcy court, district court, Bankruptcy Appellate Panel (BAP), or the parties acting jointly to certify a bankruptcy court's order to the Court of Appeals, which then has discretion to hear the matter, permits certification when any one of several factors suggesting importance exists. 28 U.S.C.A. § 158(d)(2).

Cases that cite this headnote

[25] **Bankruptcy**
⇐ Interlocutory orders; collateral order doctrine

Bankruptcy
⇐ Petition for leave; appeal as of right; certification

While discretionary review mechanisms providing for interlocutory review of bankruptcy court orders do not provide relief in every case, they serve as useful safety valves for promptly correcting serious errors and addressing important legal questions. 28 U.S.C.A. §§ 158(a)(3), (d)(2), 1292(b).

1 Cases that cite this headnote

1688** ***Syllabus *

After filing for Chapter 13 bankruptcy, petitioner Bullard submitted a proposed repayment plan to the Bankruptcy Court. Respondent Blue Hills Bank, Bullard's mortgage lender, objected to the plan's treatment of its claim. The Bankruptcy Court sustained the Bank's objection and declined to confirm the plan. Bullard appealed to the First Circuit Bankruptcy Appellate Panel (BAP). The BAP concluded that the Bankruptcy Court's denial of confirmation was not a final, appealable order, see 28 U.S.C. § 158(a)(1), but heard the appeal under a provision permitting interlocutory appeals "with leave of the court," § 158(a)(3), and agreed with the Bankruptcy Court that Bullard's proposed plan was not allowed. Bullard appealed to the First Circuit, but it dismissed for lack of jurisdiction. It concluded that its jurisdiction depended on the finality of the BAP's order, which in turn depended on the finality of the Bankruptcy Court's order. And it found that the Bankruptcy Court's order denying confirmation was not final so long as Bullard remained free to propose another plan.

Held : A bankruptcy court's order denying confirmation of a debtor's proposed repayment plan is not a final order that ***1689** the debtor can immediately appeal. Pp. 1691 – 1696.

(a) Congress has long treated orders in bankruptcy cases as immediately appealable "if they finally dispose of discrete disputes within the larger case," *Howard Delivery Service, Inc. v. Zurich American Ins. Co.*, 547 U.S. 651, 657, n. 3, 126 S.Ct. 2105, 165 L.Ed.2d 110. This approach is reflected in the current statute, which provides that bankruptcy appeals as of right may be taken not only from final judgments in cases but from "final judgments, orders, and decrees ... in cases and proceedings." 28 U.S.C. § 158(a). Bullard argues that a bankruptcy court conducts a separate proceeding each time it reviews a proposed plan, and therefore a court's order either confirming or denying a plan terminates the proceeding and is final and immediately appealable. But the relevant proceeding is the entire process of attempting to arrive at an approved plan that would allow the bankruptcy case to move forward. Only plan confirmation, or case dismissal, alters the status quo and fixes the parties' rights and obligations; denial of confirmation with leave to amend changes little and can hardly be described as final. Additional considerations —that the statute defining core bankruptcy proceedings lists "confirmations of plans," § 157(b)(2)(L), but omits any reference to denials; that immediate appeals from denials would result in delays and inefficiencies that requirements of finality are designed to constrain; and that a debtor's inability to immediately appeal a denial encourages the debtor to work with creditors and the trustee to develop a confirmable plan —bolster the conclusion that the relevant proceeding is the entire process culminating in confirmation or dismissal. Pp. 1691 – 1694.

(b) The Solicitor General suggests that because bankruptcy disputes are generally classified as either "adversary proceedings" or "contested matters," and because an order denying confirmation and an order granting confirmation both resolve a contested matter, both should be considered final. This argument simply assumes that confirmation is appealable because it resolves a contested matter, and that therefore anything else that resolves the contested matter must also be appealable. But one could just as easily contend that confirmation is appealable because it resolves the entire plan consideration process, while denial is not because it does not. Any asymmetry in denying the debtor

an immediate appeal from a denial while allowing a creditor an immediate appeal from a confirmation simply reflects the fact that confirmation allows the bankruptcy to go forward and alters the legal relationships among the parties, while denial lacks such significant consequences. Nor is it clear that the asymmetry will always advantage creditors. Finally, Bullard contends that unless denial orders are final, a debtor will be required to choose between two untenable options: either accept dismissal of the case and then appeal, or propose an amended but unwanted plan and appeal its confirmation. These options will often be unsatisfying, but our litigation system has long accepted that certain burdensome rulings will be "only imperfectly reparable" by the appellate process. *Digital Equipment Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 872, 114 S.Ct. 1992, 128 L.Ed.2d 842. That prospect is made tolerable by the Court's confidence that bankruptcy courts rule correctly most of the time and by the existence of several mechanisms for interlocutory review, *e.g.*, §§ 158(a)(3), (d)(2), which "serve as useful safety valves for promptly correcting serious errors" and resolving legal questions important enough to be addressed immediately. ***1690** *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111, 130 S.Ct. 599, 175 L.Ed.2d 458. Pp. 1694 – 1696.

752 F.3d 483, affirmed.

ROBERTS, C.J., delivered the opinion for a unanimous Court.

Attorneys and Law Firms

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Opinion

Chief Justice ROBERTS delivered the opinion of the Court.

Chapter 13 of the Bankruptcy Code affords individuals receiving regular income an opportunity to obtain some relief from their debts while retaining their property. To proceed under Chapter 13, a debtor must propose a plan to use future income to repay a portion (or in the rare case all) of his debts over the next three to five years. If the bankruptcy court confirms the plan and the debtor successfully carries it out, he receives a discharge of his debts according to the plan.

The bankruptcy court may, however, decline to confirm a proposed repayment plan because it is inconsistent with the Code. Although the debtor is usually given an opportunity to submit a revised plan, he may be convinced that the original plan complied with the Code and that the bankruptcy court was wrong to deny confirmation. The question presented is whether such an order denying confirmation is a "final" order that the debtor can immediately appeal. We hold that it is not.

I

In December 2010, Louis Bullard filed a petition for Chapter 13 bankruptcy in Federal Bankruptcy Court in Massachusetts. A week later he filed a proposed repayment plan listing the various claims he anticipated creditors would file and the monthly amounts he planned to pay on each claim over the five-year life of his plan. See 11 U.S.C. §§ 1321, 1322. Chief among Bullard's debts was the roughly $346,000 he owed to Blue Hills Bank, which held a mortgage on a multifamily house Bullard owned. Bullard's plan indicated that the mortgage was significantly "underwater": that is, the house was worth substantially less than the amount Bullard owed the Bank.

Before submitting his plan for court approval, Bullard amended it three times over the course of a year to more accurately reflect the value of the house, the terms of the mortgage, the amounts of creditors' claims, and his proposed payments. See § 1323 (allowing preconfirmation modification). Bullard's third amended plan—the one at issue here—proposed a "hybrid" treatment of his debt to the Bank. He proposed splitting the debt into a secured claim in the amount of the house's then-current value (which he estimated at ***1691** $245,000), and an unsecured claim for the remainder (roughly $101,000). Under the plan, Bullard would

continue making his regular mortgage payments toward the secured claim, which he would eventually repay in full, long after the conclusion of his bankruptcy case. He would treat the unsecured claim, however, the same as any other unsecured debt, paying only as much on it as his income would allow over the course of his five-year plan. At the end of this period the remaining balance on the unsecured portion of the loan would be discharged. In total, Bullard's plan called for him to pay only about $5,000 of the $101,000 unsecured claim.

The Bank (no surprise) objected to the plan and, after a hearing, the Bankruptcy Court declined to confirm it. *In re Bullard,* 475 B.R. 304 (Bkrtcy.Ct.D.Mass.2012). The court concluded that Chapter 13 did not allow Bullard to split the Bank's claim as he proposed unless he paid the secured portion in full during the plan period. *Id.,* at 314. The court acknowledged, however, that other Bankruptcy Courts in the First Circuit had approved such arrangements. *Id.,* at 309. The Bankruptcy Court ordered Bullard to submit a new plan within 30 days. *Id.,* at 314.

Bullard appealed to the Bankruptcy Appellate Panel (BAP) of the First Circuit. The BAP first addressed its jurisdiction under the bankruptcy appeals statute, noting that a party can immediately appeal only "final" orders of a bankruptcy court. *In re Bullard,* 494 B.R. 92, 95 (2013) (citing 28 U.S.C. § 158(a)(1)). The BAP concluded that the order denying plan confirmation was not final because Bullard was "free to propose an alternate plan." 494 B.R., at 95. The BAP nonetheless exercised its discretion to hear the appeal under a provision that allows interlocutory appeals "with leave of the court." § 158(a)(3). The BAP granted such leave because the confirmation dispute involved a "controlling question of law ... as to which there is substantial ground for difference of opinion," and "an immediate appeal [would] materially advance the ultimate termination of the litigation." 494 B.R., at 95, and n. 5. On the merits, the BAP agreed with the Bankruptcy Court that Bullard's proposed treatment of the Bank's claim was not allowed. *Id.,* at 96–101.

Bullard sought review in the Court of Appeals for the First Circuit, but that court dismissed his appeal for lack of jurisdiction. *In re Bullard,* 752 F.3d 483 (2014). The First Circuit noted that because the BAP had not certified the appeal under § 158(d)(2), the only possible source of Court of Appeals jurisdiction was § 158(d)(1), which allowed appeal of only a final order of the BAP. *Id.,* at 485, and n. 3. And under First Circuit precedent "an order of the BAP cannot be final unless the underlying bankruptcy court order is final." *Id.,* at 485. The Court of Appeals accordingly examined whether a bankruptcy court's denial of plan confirmation is a final order, a question that it recognized had divided the Circuits. Adopting the majority view, the First Circuit concluded that an order denying confirmation is not final so long as the debtor remains free to propose another plan. *Id.,* at 486–490.

We granted certiorari. 574 U.S. ——, 135 S.Ct. 781, 190 L.Ed.2d 649 (2014).

II

[1] [2] [3] In ordinary civil litigation, a case in federal district court culminates in a "final decisio[n]," 28 U.S.C. § 1291, a ruling "by which a district court disassociates itself from a case," *Swint v. Chambers County Comm'n,* 514 U.S. 35, 42, 115 S.Ct. 1203, 131 L.Ed.2d 60 (1995). A party can typically appeal as of right only from that final decision. This rule reflects ***1692** the conclusion that "[p]ermitting piecemeal, prejudgment appeals ... undermines 'efficient judicial administration' and encroaches upon the prerogatives of district court judges, who play a 'special role' in managing ongoing litigation." *Mohawk Industries, Inc. v. Carpenter,* 558 U.S. 100, 106, 130 S.Ct. 599, 175 L.Ed.2d 458 (2009) (quoting *Firestone Tire & Rubber Co. v. Risjord,* 449 U.S. 368, 374, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981)).

[4] The rules are different in bankruptcy. A bankruptcy case involves "an aggregation of individual controversies," many of which would exist as stand-alone lawsuits but for the bankrupt status of the debtor. 1 Collier on Bankruptcy ¶ 5.08[1][b], p. 5–42 (16th ed. 2014). Accordingly, "Congress has long provided that orders in bankruptcy cases may be immediately appealed if they finally dispose of discrete disputes within the larger case." *Howard Delivery Service, Inc. v. Zurich American Ins. Co.,* 547 U.S. 651, 657, n. 3, 126 S.Ct. 2105, 165 L.Ed.2d 110 (2006) (internal quotation marks and emphasis omitted). The current bankruptcy appeals statute reflects this approach: It authorizes appeals as of right not only from final judgments in cases but from "final judgments, orders, and decrees ... in cases and proceedings." § 158(a).

The present dispute is about how to define the immediately appealable "proceeding" in the context of the consideration of Chapter 13 plans. Bullard argues for a plan-by-plan approach. Each time the bankruptcy court reviews a proposed plan, he

says, it conducts a separate proceeding. On this view, an order denying confirmation and an order granting confirmation both terminate that proceeding, and both are therefore final and appealable.

In the Bank's view Bullard is slicing the case too thin. The relevant "proceeding," it argues, is the entire process of considering plans, which terminates only when a plan is confirmed or—if the debtor fails to offer any confirmable plan—when the case is dismissed. An order denying confirmation is not final, so long as it leaves the debtor free to propose another plan.

[5] [6] [7] [8] [9] [10] We agree with the Bank. The relevant proceeding is the process of attempting to arrive at an approved plan that would allow the bankruptcy to move forward. This is so, first and foremost, because only plan confirmation—or case dismissal—alters the status quo and fixes the rights and obligations of the parties. When the bankruptcy court confirms a plan, its terms become binding on debtor and creditor alike. 11 U.S.C. § 1327(a). Confirmation has preclusive effect, foreclosing relitigation of "any issue actually litigated by the parties and any issue necessarily determined by the confirmation order." 8 Collier ¶ 1327.02[1][c], at 1327–6; see also *United Student Aid Funds, Inc. v. Espinosa,* 559 U.S. 260, 275, 130 S.Ct. 1367, 176 L.Ed.2d 158 (2010) (finding a confirmation order "enforceable and binding" on a creditor notwithstanding legal error when the creditor "had notice of the error and failed to object or timely appeal"). Subject to certain exceptions, confirmation "vests all of the property of the [bankruptcy] estate in the debtor," and renders that property "free and clear of any claim or interest of any creditor provided for by the plan." §§ 1327(b), (c). Confirmation also triggers the Chapter 13 trustee's duty to distribute to creditors those funds already received from the debtor. § 1326(a)(2).

[11] [12] When confirmation is denied *and the case is dismissed as a result,* the consequences are similarly significant. Dismissal of course dooms the possibility of a discharge and the other benefits available ***1693** to a debtor under Chapter 13. Dismissal lifts the automatic stay entered at the start of bankruptcy, exposing the debtor to creditors' legal actions and collection efforts. § 362(c)(2). And it can limit the availability of an automatic stay in a subsequent bankruptcy case. § 362(c)(3).

[13] [14] Denial of confirmation with leave to amend, by contrast, changes little. The automatic stay persists. The parties' rights and obligations remain unsettled. The trustee continues to collect funds from the debtor in anticipation of a different plan's eventual confirmation. The possibility of discharge lives on. "Final" does not describe this state of affairs. An order denying confirmation does rule out the specific arrangement of relief embodied in a particular plan. But that alone does not make the denial final any more than, say, a car buyer's declining to pay the sticker price is viewed as a "final" purchasing decision by either the buyer or seller. "It ain't over till it's over."

[15] Several additional considerations bolster our conclusion that the relevant "proceeding" is the entire process culminating in confirmation or dismissal. First is a textual clue. Among the list of "core proceedings" statutorily entrusted to bankruptcy judges are "confirmations of plans." 28 U.S.C. § 157(b)(2)(L). Although this item hardly clinches the matter for the Bank—the provision's purpose is not to explain appealability—it does cut in the Bank's favor. The presence of the phrase "confirmations of plans," combined with the absence of any reference to denials, suggests that Congress viewed the larger confirmation process as the "proceeding," not the ruling on each specific plan.

[16] In Bullard's view the debtor can appeal the denial of the first plan he submits to the bankruptcy court. If the court of appeals affirms the denial, the debtor can then revise the plan. If the new plan is also denied confirmation, another appeal can ensue. And so on. As Bullard's case shows, each climb up the appellate ladder and slide down the chute can take more than a year. Avoiding such delays and inefficiencies is precisely the reason for a rule of finality. It does not make much sense to define the pertinent proceeding so narrowly that the requirement of finality would do little work as a meaningful constraint on the availability of appellate review.

Bullard responds that concerns about frequent piecemeal appeals are misplaced in this context. Debtors do not typically have the money or incentives to take appeals over small beer issues. They will only appeal the relatively rare denials based on significant legal rulings—precisely the cases that should proceed promptly to the courts of appeals. Brief for Petitioner 43–46.

Bullard's assurance notwithstanding, debtors may often view, in good faith or bad, the prospect of appeals as important leverage in dealing with creditors. An appeal extends the automatic stay that comes with bankruptcy, which can cost creditors money and allow a debtor to retain property he might

lose if the Chapter 13 proceeding turns out not to be viable. These concerns are heightened if the same rule applies in Chapter 11, as the parties assume. Chapter 11 debtors, often business entities, are more likely to have the resources to appeal and may do so on narrow issues. See Tr. of Oral Arg. 51. But even if Bullard is correct that such appeals will be rare, that does not much support his broader point that an appeal of right should be allowed in every case. It is odd, after all, to argue in favor of allowing more appeals by emphasizing that almost nobody will take them.

***1694** [17] We think that in the ordinary case treating only confirmation or dismissal as final will not unfairly burden a debtor. He retains the valuable exclusive right to propose plans, which he can modify freely. 11 U.S.C. §§ 1321, 1323. The knowledge that he will have no guaranteed appeal from a denial should encourage the debtor to work with creditors and the trustee to develop a confirmable plan as promptly as possible. And expedition is always an important consideration in bankruptcy.

III

Bullard and the Solicitor General present several arguments for treating each plan denial as final, but we are not persuaded.

[18] [19] The Solicitor General notes that disputes in bankruptcy are generally classified as either "adversary proceedings," essentially full civil lawsuits carried out under the umbrella of the bankruptcy case, or "contested matters," an undefined catchall for other issues the parties dispute. See Fed. Rule Bkrtcy. Proc. 7001 (listing ten adversary proceedings); Rule 9014 (addressing "contested matter[s] not otherwise governed by these rules"). An objection to a plan initiates a contested matter. See Rule 3015(f). Everyone agrees that an order resolving that matter by overruling the objection and confirming the plan is final. As the Solicitor General sees it, an order denying confirmation would also resolve that contested matter, so such an order should also be considered final. Brief for United States as *Amicus Curiae* 19–22.

[20] The scope of the Solicitor General's argument is unclear. At points his brief appears to argue that an order resolving *any* contested matter is final and immediately appealable. That version of the argument has the virtue of resting on a general principle—but the vice of being implausible. As a leading treatise notes, the list of contested matters is "endless" and covers all sorts of minor disagreements. 10 Collier ¶ 9014.01, at 9014–3. The concept of finality cannot stretch to cover, for example, an order resolving a disputed request for an extension of time.

At other points, the Solicitor General appears to argue that because one possible resolution of this particular contested matter (confirmation) is final, the other (denial) must be as well. But this argument begs the question. It simply assumes that confirmation is appealable because it resolves a contested matter, and that therefore anything else that resolves the contested matter must also be appealable. But one can just as easily contend that confirmation is appealable because it resolves the entire plan consideration process, and that therefore the entire process is the "proceeding." A decision that does not resolve the entire plan consideration process—denial—is therefore not appealable.

[21] Perhaps the Solicitor General's suggestion is that a separately appealable "proceeding" must coincide precisely with a particular "adversary proceeding" or "contested matter" under the Bankruptcy Rules. He does not, however, provide any support for such a suggestion. More broadly, it is of course quite common for the finality of a decision to depend on which way the decision goes. An order granting a motion for summary judgment is final; an order denying such a motion is not.

Bullard and the Solicitor General also contend that our rule creates an unfair asymmetry: If the bankruptcy court sustains an objection and denies confirmation, the debtor (always the plan proponent in Chapter 13) must go back to the drafting table and try again; but if the bankruptcy ***1695** court overrules an objection and grants confirmation, a creditor can appeal without delay. But any asymmetry in this regard simply reflects the fact that confirmation allows the bankruptcy to go forward and alters the legal relationships among the parties, while denial does not have such significant consequences.

Moreover, it is not clear that this asymmetry will always advantage creditors. Consider a creditor who strongly supports a proposed plan because it treats him well. If the bankruptcy court sustains an objection from another creditor —perhaps because the plan treats the first creditor too well— the first creditor might have as keen an interest in a prompt appeal as the debtor. And yet, under the rule we adopt, that creditor too would have to await further developments.

Bullard also raises a more practical objection. If denial orders are not final, he says, there will be no effective means of obtaining appellate review of the denied proposal. The debtor's only two options would be to seek or accept dismissal of his case and then appeal, or to propose an amended plan and appeal its confirmation.

The first option is not realistic, Bullard contends, because dismissal means the end of the automatic stay against creditors' collection efforts. Without the stay, the debtor might lose the very property at issue in the rejected plan. Even if a bankruptcy court agrees to maintain the stay pending appeal, the debtor is still risking his entire bankruptcy case on the appeal.

The second option is no better, says Bullard. An acceptable, confirmable alternative may not exist. Even if one does, its confirmation might have immediate and irreversible effects—such as the sale or transfer of property—and a court is unlikely to stay its execution. Moreover, it simply wastes time and money to place the debtor in the position of seeking approval of a plan he does not want.

All good points. We do not doubt that in many cases these options may be, as the court below put it, "unappealing." 752 F.3d, at 487. But our litigation system has long accepted that certain burdensome rulings will be "only imperfectly reparable" by the appellate process. *Digital Equipment Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 872, 114 S.Ct. 1992, 128 L.Ed.2d 842 (1994). This prospect is made tolerable in part by our confidence that bankruptcy courts, like trial courts in ordinary litigation, rule correctly most of the time. And even when they slip, many of their errors—wrongly concluding, say, that a debtor should pay unsecured creditors $400 a month rather than $300—will not be of a sort that justifies the costs entailed by a system of universal immediate appeals.

[22] **[23]** Sometimes, of course, a question will be important enough that it should be addressed immediately. Bullard's case could well fit the bill: The confirmability of his hybrid plan presented a pure question of law that had divided bankruptcy courts in the First Circuit and would make a substantial financial difference to the parties. But there are several mechanisms for interlocutory review to address such cases. First, a district court or BAP can (as the BAP did in this case) grant leave to hear such an appeal. 28 U.S.C. § 158(a)(3). A debtor who appeals to the district court and loses there can seek certification to the court of appeals under the general interlocutory appeals statute, § 1292(b). See *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992).

[24] **[25]** Another interlocutory mechanism is provided in § 158(d)(2). That provision allows a bankruptcy court, district court, BAP, or the parties acting jointly to ***1696** certify a bankruptcy court's order to the court of appeals, which then has discretion to hear the matter. Unlike § 1292(b), which permits certification only when three enumerated factors suggesting importance are all present, § 158(d)(2) permits certification when any one of several such factors exists, a distinction that allows a broader range of interlocutory decisions to make their way to the courts of appeals. While discretionary review mechanisms such as these "do not provide relief in every case, they serve as useful safety valves for promptly correcting serious errors" and addressing important legal questions. *Mohawk Industries*, 558 U.S., at 111, 130 S.Ct. 599 (internal quotation marks and brackets omitted).

Bullard maintains that interlocutory appeals are ineffective because lower courts have been too reticent in granting them. But Bullard did, after all, obtain one layer of interlocutory review when the BAP granted him leave to appeal under § 158(a)(3). He also sought certification to the Court of Appeals under § 158(d)(2), but the BAP denied his request for reasons that are not entirely clear. See App. to Pet. for Cert. 17a. The fact that Bullard was not able to obtain further merits review in the First Circuit in this particular instance does not undermine our expectation that lower courts will certify and accept interlocutory appeals from plan denials in appropriate cases.

* * *

Because the Court of Appeals correctly held that the order denying confirmation was not final, its judgment is

Affirmed.

All Citations

135 S.Ct. 1686, 191 L.Ed.2d 621, 83 USLW 4288, 60 Bankr.Ct.Dec. 258, Bankr. L. Rep. P 82,793, 15 Cal. Daily Op. Serv. 4282, 2015 Daily Journal D.A.R. 4917, 25 Fla. L. Weekly Fed. S 228

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

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See Fed. Rule of Appellate Procedure 32.1
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decisions issued on or after Jan. 1, 2007.
See also U.S.Ct. of App. 7th Cir. Rule 32.1.
United States Court of Appeals,
Seventh Circuit.

Timothy D. BARTLETT and Kim K. Bartlett, Debtors–Appellants,
v.
FIFTH THIRD BANK, Creditor–Appellee.

No. 14–2508. | Argued Dec. 3, 2014. | Decided July 15, 2015.

Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division. No. 13–cv–00432, William T. Lawrence, Judge.

Attorneys and Law Firms

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Before DANIEL A. MANION, Circuit Judge, ILANA DIAMOND ROVNER, Circuit Judge and DAVID F. HAMILTON, Circuit Judge.

ORDER

*1 Fifth Third Bank held a mortgage on property owned by the Bartletts' wholly-owned corporation, High–Q Farms, Inc. Although the Bartletts owned no interest in the property, they claimed they did when they personally filed for bankruptcy. The bankruptcy court allowed Fifth Third to collaterally attack the Bartletts' confirmed bankruptcy plan based on a lack of subject matter jurisdiction, even though Fifth Third did not appear in the bankruptcy proceeding to object or appeal the confirmation. The district court affirmed. We hold that Fifth Third was not barred from collaterally attacking the bankruptcy court's lack of jurisdiction because Fifth Third did not receive adequate notice of the proceeding. Therefore, we also affirm.

I. Background

The Bartletts owned High–Q Farms, Inc., an Indiana corporation which owned a small farm where the Bartletts lived and Tim Bartlett practiced equine veterinary medicine ("the property"). In 2005, High–Q Farms borrowed $142,000 from Fifth Third Bank and gave the bank a promissory note and a mortgage on the property. The Bartletts personally guaranteed the loan. In 2009, after defaulting on the loan, High–Q Farms filed for Chapter 7 bankruptcy for the purpose of dissolving the corporation. The bankruptcy was dismissed after a few months. After the dismissal of High–Q Farms' bankruptcy, the Bartletts assumed High–Q Farms' obligations under the loan and endeavored to pay the property taxes. High–Q Farms never transferred title to the Bartletts; ownership of the property remained with High–Q Farms.

In November 2010, the Bartletts filed for Chapter 13 bankruptcy. For reasons unknown, they claimed that they owned the property in joint tenancy and claimed that Fifth Third's interest was limited to "[p]ortions of real estate including bar[n] and outbuildings used for vet practice."The plan proposed to cram down the loan to the market value of the property, estimated to be $40,000. Fifth Third received notice of the bankruptcy, but did not participate in the proceedings. The bankruptcy court confirmed the plan in April 2011. Fifth Third did not appeal from this final judgment of the bankruptcy court. The Indiana Secretary of State administratively dissolved High–Q Farms sometime later in March 2013.

In July 2013, over two years after confirmation of the Bartletts' bankruptcy plan, Fifth Third moved for relief from the automatic stay for cause under 11 U.S.C. § 362(d). The claim was that the property was not property of the Bartletts' bankruptcy estate on the petition date because at that time High–Q Farms, not the Bartletts, owned the property. Since the property was not the property of the Bartletts' bankruptcy estate, the bankruptcy court lacked subject matter jurisdiction over it. The bankruptcy court granted the motion, lifted the automatic stay from Fifth Third, and ordered the trustee to abandon the property.

The Bartletts appealed to the district court, claiming that they had acquired an equitable interest in the property by assuming High–Q Farms' obligations. Alternatively, they

argued that Fifth Third had waived its subject matter jurisdiction argument by failing to object to the plan's confirmation and could not now collaterally attack it. The district court found that the Bartletts did not have an interest in the property and that the bankruptcy court lacked jurisdiction over the property. Relying on the principle that questions of subject matter jurisdiction cannot be waived, the district court affirmed. The district court noted that had Fifth Third's motion been premised on anything but subject matter jurisdiction, it would have agreed with the Bartletts that Fifth Third's motion should have been denied. The Bartletts appeal.

II. Analysis

***2** We review legal issues *de novo* and findings of fact for clear error.*In re Salem,* 465 F.3d 767, 773 (7th Cir.2006). We review the granting of relief from the automatic stay for an abuse of discretion. *Colon v. Option One Mortg. Corp.,* 319 F.3d 912, 916 (7th Cir.2003).

On appeal, the Bartletts raise the same arguments brought before the district court. First, the bankruptcy court had subject matter jurisdiction because they had an equitable interest in the property. Second, even if they did not have an interest in the property, Fifth Third is barred by *res judicata* from collaterally attacking the confirmation order. Fifth Third had a full and fair opportunity to litigate the lack of subject matter jurisdiction but failed to do so before the time for appealing the confirmation plan had expired. Therefore, the confirmation order is *res judicata* to all issues that could have been raised concerning it. As the district court held, neither argument prevails.

The Bartletts did not have an equitable interest in the property. The property was owned by High–Q Farms. High–Q Farms neither transferred, nor could it transfer, ownership of the property to the Bartletts. Indiana law prohibited High–Q Farms from transferring its assets to the Bartletts until it satisfied its liabilities to Fifth Third. I.C. 23–1–45–5(a)(3) & (b)(1). Whatever payments made by the Bartletts on the loan did not gain them an equitable interest because they were obligated to make those payments as guarantors. The Bartletts rely unsuccessfully on *In re Linderman,* 20 B.R. 826 (Bankr.W.D.Wash.1982), to support their claim. In *Linderman,* the corporation gained an equitable interest in *part* of the shareholders' property by paying part of the mortgage. *Id.* at 829. But as the district court observed, the Bartletts are shareholders who are seeking an equitable interest in the *whole* of the corporation's property based on paying an unspecified part of the mortgage. Indiana law does not restrict the transfer of a property interest from an individual to a corporation as found in *Linderman,* but, as we said above, it restricts the type of transfer sought by the Bartletts. Furthermore, the Bartletts presented no evidence to the district court of the amount of payments made toward the loan or property taxes.

Fifth Third was not barred by *res judicata* from challenging the bankruptcy court's lack of subject matter jurisdiction. Fifth Third's motion for relief from the automatic stay was, in effect, a collateral attack on the final judgment of the bankruptcy court that confirmed the Bartletts' plan. Subject matter jurisdiction may be raised at any point up to last direct appeal, but once the judgment is final it may not be attacked collaterally by a party who had a full and fair opportunity to litigate the issue:

> On direct appeal ..., anyone who objected was free to argue that the Bankruptcy Court had exceeded its jurisdiction, and the District Court or Court of Appeals could have raised such concerns *sua sponte.*In fact, one objector argued just that.... But once the [ ]Orders became final on direct review (whether or not proper exercises of bankruptcy court jurisdiction and power), they became res judicata to the " 'parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.' "

***3** *Travelers Indem. Co. v. Bailey,* 557 U.S. 137, 152 (2009) (citations omitted). This is true for a confirmed bankruptcy plan: "The reason for this is simple and mirrors the general justification for res judicata principles—after the affected parties have an opportunity to present their arguments and claims, it is cumbersome and inefficient to allow those same parties to revisit or recharacterize the identical problems in a subsequent proceeding."*In re Harvey,* 213 F.3d 318, 321 (7th Cir.2000).

Normally, a party must make an appearance to have a full and fair opportunity to litigate. *See Philos Technologies, Inc. v. Philos & D, Inc.,* 645 F.3d 851, 853 (7th Cir.2011) (collateral attack for lack of personal jurisdiction allowed "[b]ecause the defendants did not appear in the district court before entry of judgment, and because they are entitled to one full opportunity to litigate the jurisdictional issue"). In bankruptcy court, however, "a party with adequate notice of a bankruptcy proceeding cannot ordinarily attack a confirmed plan."*In re Harvey,* 213 F.3d at 321. Adequate notice of

a bankruptcy proceeding, then, supplies the opportunity to litigate sufficient to preclude collateral attack:

> Where, as here, a party is notified of a plan's contents and fails to object to confirmation of the plan before the time for appeal expires, that party has been afforded a full and fair opportunity to litigate, and the party's failure to avail itself of that opportunity will not justify ... relief.

United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 276 (2010).

This rule, however, does not apply to Fifth Third because it did not receive adequate notice of the Bartletts' bankruptcy proceeding. Fifth Third received notice of the Bartletts' bankruptcy proceeding concerning the Bartletts' supposed property. But Fifth Third did not possess collateral in the Bartletts' name; it had a mortgage on a property owned by High–Q Farms, a corporation that was not a party to the bankruptcy proceeding. Fifth Third did not receive adequate notice and is therefore not barred from collaterally attacking the judgment of the bankruptcy court for lack of subject matter jurisdiction. Although Fifth Third is "a sophisticated and organized creditor" that "must follow the administration of the bankruptcy estate to determine what aspects of the proceeding they may want to challenge," the erroneous notice provided in this case did not rise to the level of the "informal actual notice" that would bind a creditor such as Fifth Third. *In re Pence,* 905 F.2d 1107, 1109 (7th Cir.1990).

The Bartletts argue that Fifth Third's motion for relief from the automatic stay should be construed as a motion under Rule 60(b)(4), which is reviewed *de novo. United States v. Tittjung,* 235 F .3d 330, 335 (7th Cir.2000). We disagree. Fifth Third does not argue that the final order of the bankruptcy court was void. Instead, Fifth Third seeks to have the automatic stay lifted from itself. The remainder of the judgment of the bankruptcy court would not be affected. Nevertheless, if we were to construe the motion under Rule 60(b)(4) we still would hold that Fifth Third is not barred from collaterally attacking the confirmation order because it did not receive adequate notice for *res judicata* to apply.

***4** Consequently, the judgement of the district court is AFFIRMED.

All Citations

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