M B C NEWSLETTER

MISSISSIPPI BANKRUPTCY CONFERENCE

Editors: Robert Byrd and William P. Wessler **Fall 2023**

PRESIDENT'S MESSAGE

Happy Fall everyone! It's hard to believe it has been nearly a year since I saw most of your faces at our Seminar in Flowood. I look forward to interacting with each of you in Oxford in less than a month. Know that the Seminar Committee has been hard at work, for months, trying to put together the best seminar ever. I am eager to see it all come together in a few short weeks!

Likewise, please know that I have been hard at work as your Mississippi Bankruptcy Conference President over the last year. When I accepted the position as President-Elect two years ago, I wanted to be sure I could fulfill the obligations of the role and help take MBC to even greater heights. Since that time, I have transitioned to the Mississippi Center of Justice where I am the Director of Operations and General Counsel. While I may no longer see you in Court or talk to you on the phone to discuss cases set for hearing, my ear is still to the ground on bankruptcy, even if in a different way than before.

To the Conference members, I have spoken to a number of you about what you would like to see from MBC—including celebrating others' wins and milestones, developing a more robust website and social media presence, involving both the very "seasoned" and newer attorneys, and remembering that this bankruptcy bar is statewide. I too share these desires. I thank you for being vocal, and I encourage you to serve on (and even create) committees to help turn your great ideas into reality. On that note, please email me if you want to help on the Technology Committee! Your Board has been working to bring you an ever-evolving and aware MBC.

To the current MBC Board, thank you for serving and helping to make MBC the organization it is. I cannot wait to see where it goes! Thank you for allowing me to serve as the 2023 Mississippi Bankruptcy Conference President.

Stacey Moore Buchanan, President, Mississippi Bankruptcy Conference

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Opinion Summaries by JUDGE JASON D. WOODWARD

[1]*These opinion summaries were prepared by Robert Byrd and William P. Wessler.*

In re Prather v. Prather, Adv. Proc. No. 22-01005 JDW - 4/20/23

In this adversary, the Chapter 13 Debtor filed an adversary complaint to avoid a foreclosure pursuant to Federal and State law theories.

The Prathers - no relation to the Debtor, owner financed the purchase of the home purchased by Jennifer Prather, the Debtor=s then wife. The Deed to the house was in her name and she alone signed the Promissory Note. Bother Jennifer and the Debtor signed the Deed of Trust. As a prelude to their divorce, Jennifer moved out of the home and stopped making mortgage payments or property tax payments. The Debtor stayed in the home and made no payments.

Jennifer filed two (2) Chapter 13's, but an agreed order lifting the stay was entered in her second Chapter 13. The lender then proceeded to foreclosure. The Debtor filed his Chapter 13 to stop a pending eviction proceeding.

The Debtor first contended that the foreclosure violated the co-debtor stay provisions of Section 1301 of the Bankruptcy Code. The Court held there was no violation of Section 1301 because the Debtor was not a co-debtor nor was he Aliable@ on such debt nor did he secure such debt. The Debtor did not own the property and therefore did not convey any interest in the Deed of Trust. His signature was required by Mississippi law pursuant to Section 89-1-29 Miss. Code Ann. (1972)

The Debtor next contended the lender had not property complied with contractual notice requirements in the Deed of Trust. The Court noted that the Plaintiff has the burden of proof because a Asale by a trustee under a deed of trust is presumed valid and the burden of proof is on the party attacking the validity@. This Court found this argument likewise failed because the Deed of Trust did not contain any particular notice requirements. The Court found the foreclosure notice was properly published and posted at the courthouse. The Debtor was also mailed a copy of the notice but claimed he never received it. The Court concluded noting that Mississippi law presumes an individual receives a letter unless that person can come forward with evidence to the contrary. AA statement by a party that he did not receive the mail is insufficient as a matter of law to overcome the presumption.

In re Vasser v. Thomas Autobody & Repairs, Adv. Pro. No. 22-01013 JDW - 2/3/23

Prior to filing her Chapter 13 petition, the Debtor=s 2015 GMC Yukon was repossessed by the lender who refused to turn it over after the petition was filed. The Debtor filed an adversary seeking turnover pursuant to Section 542(a) of the bankruptcy code. The Debtor was admittedly in default but the court found substantial equity in the vehicle. To succeed on a turnover complaint, the Debtor must prove, by a preponderance, that (a) the property is in the possession or control of a non-custodial third party; (2) the property constitutes property of the estate; (3) the property is of the type the Trustee could use, sell or lease pursuant to Section 363 or that the Debtor could exempt under Section 522; and (4) that the property is not of inconsequential value to the benefit of the estate. The Court observed it in Mississippi Aa debtor possesses a right of redemption up until the time the property is sold (or contracted to be sold) by the creditor to a third party . . .@ In this case, the court found the Debtor had proved the four (4) elements by a preponderance of the evidence and sustained a complaint compelling turnover.

In re U.S. Trustee v. Stephen K. Jenkins, Adv. Proc. No. 21-01025-JDW - 6/20/23

In this chapter 7 case, the U.S. Trustee filed an adversary complaint to deny the Debtor a discharge under several subsections of § 727 of the code, and filed a motion for summary judgment seeking that relief. The Debtor failed to disclose assets, most notably, his ownership of a charter fishing boat valued at $300,000.00. The Debtor also refused to provide documents to the Trustee, resulting in the meeting of creditors being rescheduled sixteen times. The Debtor also failed or refused to comply with other court orders, including agreed orders. At one point the Debtor filed a motion to convert the case to a chapter 12, but that request was denied. The Debtor elected not to defend the adversary, and did not oppose the summary judgment motion. The Court granted the summary judgment motion denying the Debtor a discharge under §727 (a) (4) (A) of the Bankruptcy Code.

In re Jelisha H. McGee v. Ma My Dung, Sylvia Baker and Sherry Wall, Adv. Proc. No. 22-01008-JDW - 6/7/23

In this chapter 13 case, the Debtor filed an adversary complaint to set aside a tax sale of her homestead property. The sale was held approximately two months after the bankruptcy petition was filed. The two year deadline to redeem the sale under state law expired and the Chancery Clerk issued a tax deed to the purchaser. At that point, the Debtor realized that there was a problem and filed the adversary to set aside the sale. The Court granted the Debtor's motion for a default judgment, holding that the sale violated the automatic stay and setting it aside, but also found that the tax purchaser was entitled to a nondischargeable judgment for all the taxes she paid, plus all other charges and interest under Mississippi Code §27-45-27.

Opinion Summaries by JUDGE KATHARINE M. SAMSON

Robertson v. Murray (In re Murray),
Adv. Proc. No. 20-00032-KMS, ECF No. 109, 2023 WL 310344 (Bankr. S.D. Miss. Jan. 18, 2023).

Ch. 7: Trial on adversary complaint objecting to the discharge of a particular debt under § 523(a)(6).

Robertson alleged that Murray had posted false and defamatory statements about her on Twitter, that she was entitled to compensatory and punitive damages for the harm she suffered, and that the damages were nondischargeable because Murray willfully and maliciously inflicted the injury. Robertson's husband had authored a book about a recruiting scandal at Ole Miss that ultimately led to the resignation of its football coach. Murray, an Ole Miss football fan, intended to hurt Robertson's husband by hurting Robertson with tweets falsely stating that Robertson was promiscuous.

Robertson proved libel under Mississippi law and willful and malicious injury under § 523(a)(6). The humiliation and embarrassment Robertson suffered entitled her to $75,000 in compensatory damages. Punitive damages were not awarded because (1) Murray had no money, no job, and scant prospects of ever paying even the compensatory award; and (2) the compensatory award was substantial enough to deter Murray and others from similar conduct.

Held: Judgment in favor of Robertson, awarding $75,000 in compensatory damages that was nondischargeable as a debt for willful and malicious injury under § 523(a)(6).

Opinion Summaries by JUDGE KATHARINE M. SAMSON (continued)

In re Campbell,
Case No. 22-51153-KMS, ECF No. 108, 649 B.R. 831 (Bankr. S.D. Miss. 2023).

Ch. 7: On Campbell's motion alleging contempt and willful violation of the automatic stay by creditor Adam Pittman; his attorney, Matthew Thompson; and Thompson's law firm, Thompson Addison PLLC ("the Law Firm").

Campbell and Pittman were each involved in divorce proceedings against their respective wives. While the divorces were pending, Campbell filed his bankruptcy case under chapter 13. Approximately two months into the case, Campbell moved to convert to chapter 7. On the day the case was converted, Thompson and the Law Firm filed and served on Campbell an $8.5 million lawsuit on behalf of Pittman for alienation of affection, alleging that Pittman's wife and Campbell were having an affair.

Campbell proved all three elements of a willful stay violation under § 362(k): (1) Pittman, Thompson, and the Law Firm knew Campbell had filed bankruptcy, which was legally equivalent to knowledge of the stay. (2) Filing and serving the lawsuit were intentional acts. (3) Filing and serving the lawsuit violated the stay. Campbell was entitled to only attorney's fees and costs as damages, having failed to prove that the filing and service of the lawsuit caused emotional distress. The circumstances did not warrant punitive damages, but the Court admonished Thompson, a nonbankruptcy lawyer, that he "would do well to learn from this experience." 649 B.R. at 842.

Held: Motion granted, awarding damages under § 362(k) in the amount of Campbell's reasonable attorney's fees and costs incurred in prosecuting the stay violation.

In re Robinson,
Case No. 22-02414-KMS, ECF No. 90, 2023 WL 2975630 (Bankr. S.D. Miss. Apr. 17, 2023).

Ch. 11: On U.S. Trustee's Objection to Debtor's Petition Designating Subchapter V Election.

Trustee objected that Robinson was ineligible to elect subchapter V of chapter 11 of the Bankruptcy Code because at the time of his petition, Robinson was not "engaged in commercial or business activities" within the meaning of 11 U.S.C. § 1182(1), which defines "debtor" under subchapter V. Robinson did not dispute that his poultry farming business was no longer operating when he filed the bankruptcy case. He argued instead that he was winding down his operation with activities that met the "engaged in" requirement—that is, activities to preserve the value of the business's assets and to market them for sale.

Held: Objection overruled. Bankruptcy courts across jurisdictions have held that a debtor may be "engaged in commercial or business activities" when the business itself is no longer operating.

The phrase "commercial or business activities" is broadly construed, and totality of circumstances determines whether a debtor is "engaged in" them. Trustee cited no authority for premise that wind-down must be completed within a certain amount of time after the business ceased operation, and bare assertion that Robinson's activities did not meet the standard could not, without more, carry the day.

In re Burdette,
Case No. 22-51165-KMS, ECF No. 90, 2023 WL 4759403 (Bankr. S.D. Miss. July 25, 2023).

Ch. 13: Sua sponte on proposed order presented for approval by judgment lien creditor Hajoca Corporation and agreed to by Burdette ("Proposed Agreed Order").

Prepetition, Hajoca had contracted with Burdette, a handyman, to repair the roof at one of its business locations. Burdette submitted an estimate and Hajoca made a down payment, the balance to be paid when the work was completed. Burdette did not perform any of the contracted-for repairs and did not return the down payment.

Hajoca sued Burdette in state court. The parties settled, with Burdette executing a promissory note to Hajoca in which he expressly waived his rights of exemption under the laws of Mississippi and any other jurisdiction. Burdette defaulted on the promissory note, and Hajoca reduced the debt to a judgment.

The Proposed Agreed Order would have resolved Hajoca's objection to confirmation and objection to exemptions by its legal conclusions that (1) Burdette waived all rights of exemption when he signed the promissory note and (2) as a result, Hajoca's judgment lien attached to the real and personal property that Burdette claimed as exempt in his bankruptcy case.

Held: Proposed Agreed Order not approved because (1) the promissory note's waiver of exemptions was invalid under Mississippi law and (2) the Bankruptcy Code invalidates exemption waivers as to unsecured debts and judgment liens.

In re Knight,
Case No. 15-50011-KMS, ECF No. 145, 2023 WL 5024024 (Bankr. S.D. Miss. Aug. 7, 2023).

Ch. 7: On objection to exemptions by the administratrix of the estate of Debtor Benny night's deceased brother, Harold, a judgment creditor.

Benny sought to claim homestead and wildcard exemptions in the real property that a Mississippi chancery court ruled he fraudulently transferred to his wife to avoid paying Harold's earlier judgment, which had been held nondischargeable in the bankruptcy case. The chancery court lawsuit, which had been filed prepetition, had proceeded to a final judgment under an agreed order modifying the automatic stay. The administratrix argued that Benny was not entitled to the exemptions because at the time of the petition, he did not own the property, either because the chancery court had divested him of ownership rights or because his wife held record title as the fraudulent transferee.

Held: Objection overruled. The chancery court did not divest Benny of any ownership rights in the property, because under the terms of the agreed order modifying the stay, the chancery court had no subject matter jurisdiction to rule on any issue except whether Benny's transfer of the property was fraudulent. The chancery court having validly ruled only that the transfer was fraudulent, the judgment voided the transfer only to the extent necessary to satisfy Harold's claim. Benny's wife did indeed hold title to the property on the date of the petition. But that she held record title did not preclude Benny's claiming homestead and wildcard exemptions, because under longstanding Mississippi law, a fraudulent transfer entitles the creditor only to the value the creditor could have reached if the property had not been conveyed. And had Benny not conveyed the property, Harold could not have reached the amount of Benny's exemptions.

"We can't think about bankruptcy until we've explored all of our options. Do you still have that e-mail from the Nigerian prince?"

Opinion Summaries by JUDGE JAMIE WILSON

Killarney Development Corp. v. Hogben (In re Hogben), Adv. Proc. 21-00005-JAW (Oct. 21, 2021), affirmed in part & vacated in part, Case Killarney Development Corp. v. Hogben (In re Hogben), Adv. Proc. 21-00005-JAW (Oct. 21, 2021), affirmed in part & vacated in part, Case No. 3:21-cv-00716-DPJ-FKB (S.D. Miss. Oct. 14, 2022)

The Debtor pleaded guilty to embezzling $45,816.00 from his former employer, Killarney Devel-opment Corporation ("Killarney"), a company doing business as Fenian's Pub, a restaurant and bar near downtown Jackson, Mississippi. The Debtor was sentenced to ten years in prison, with nine years suspended and five years of supervised probation. Before the Debtor's plea agreement, Kil-larney obtained a state court judgment against the Debtor in the amount of $105,816.00 for embez-zlement and breach of his employment contracts. Eleven days later, the state court sua sponte en-tered a second judgment awarding Killarney post-judgment interest. In 2018, Killarney filed a no-tice renewing the second judgment.

The Debtor filed bankruptcy under chapter 7. Killarney initiated an adversary proceeding seeking a declaration that the debt was non-dischargeable under § 523(a)(2), (4), and/or (6). The Debtor con-tested the validity and existence of the debt. He argued that the first judgment expired under Mis-sissippi's seven-year statute of limitations and the state court lacked authority to enter the second judgment sua sponte. The parties filed competing summary judgment motions. The Court granted summary judgment in favor of Killarney and ruled that the debt was nondischargeable as a debt resulting from embezzlement under § 523(a)(4).

The Court found that even assuming the November 28, 2011 judgment was void ab initio, the Debtor's challenge came too late. The Rooker-Feldman doctrine barred the Debtor from collaterally attacking the November 28, 2011 judgment. Although there is an exception to the Rooker-Feldman doctrine when a state court judgment is void, the Court found that the November 28, 2011 judg-ment was not void ab initio under Mississippi law. The Court, therefore, ruled that the November 28, 2011 judgment had preclusive effect.

In its final judgment, the Court included as part of the nondischargeable debt post-judgment interest awarded by the state court in the November 28, 2011 judgment at the rate of 8% per annum accru-ing through the date of the final judgment and interest at the federal judgment interest rate thereaf-ter.

The Debtor appealed the award of summary judgment in favor of Killarney. Killarney cross-appealed the Court's award of interest at the federal judgment interest rate. The District Court af-firmed the decision regarding the dischargeability of the debt owed to Killarney but vacated the award of post-judgment interest at the federal judgment interest rate.

In re Kelvin A. Sledge, 22-01482-JAW (Oct. 5, 2022)

The Debtor twice previously filed petitions for bankruptcy relief under chapter 13, first on March 26, 2020, and again on October 1, 2021. The Court dismissed both the Debtor's prior cases for failure to make plan payments. The subject Bankruptcy Case was commenced on July 28, 2022.

On July 29, 2022, the Debtor filed a Motion for Continuation of the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(3)(B). The Court issued an order denying that motion on August 25, 2022. On August 19, 2022, and before the notice period had expired on the Motion for Continuation of Stay, the Debtor changed course by filing a Motion to Impose Stay pursuant to 11 U.S.C. § 362(c)(4)(B), arguing that he was entitled to a stay based on his good faith in filing the subject Bankruptcy Case. The creditor argued that the stay never came into effect in the current Bankruptcy Case under § 362(c)(4)(A)(i) and that the Debtor could not overcome the presumption of bad faith that arose under § 362(c)(4)(D)(i).

The Court found that because the Debtor had two other chapter 13 cases pending within the previ-ous year, both of which were dismissed for failure to make plan payments, the automatic stay was not in effect in the subject Bankruptcy Case, pursuant to § 362(c)(4)(A)(i). The Debtor did not provide the Court with clear and convincing evidence to rebut the presumption of bad faith under § 362(c)(4)(D).

In re Kevin Cassell, Jr., Case No. 22-01380-JAW (Oct. 11, 2022)

In his chapter 13 plan, the Debtor proposed to make monthly payments of $1,100.21 on a debt of $52,734.25 secured by a 2022 Dodge Charger. The 2022 Dodge Charger was a "910" car, but the proposed plan reduced the interest rate from 6.84% per annum to the Till rate of 5.25%. The pro-posed plan paid nothing to unsecured creditors whose claims totaled $25,610.15.

The current bankruptcy case was the second chapter 13 case filed by the Debtor since June 2022. The Debtor purchased the 2022 Dodge Charger just eleven days before he filed his prior chapter 13 case, and less than a month later voluntarily dismissed that case "due to financial hardship." Ten days after the dismissal, the Debtor filed the current case.

The chapter 13 trustee objected to confirmation of the plan on the ground it was not proposed in good faith. The Court sustained the trustee's objection finding that where the Debtor's income was below median, the proposed plan included a monthly expense for a luxury car that was more than his monthly mortgage, and unsecured creditors were not being paid, the Debtor had not satisfied his burden of proving good faith under § 1325(a)(3).

In re Jimmy Frierson, II, Case No. 18-01656-JAW (Dec. 6, 2022)

The Debtor filed a voluntary petition for relief under chapter 13 on April 25, 2018. On Schedule D: Creditors Who Have Claims Secured by Property, the Debtor disclosed a claim owed to "MS Postal Federal" in the amount of $1,038.00 secured by a 2010 Jeep Liberty. In the Chapter 13 Plan, confirmed on July 24, 2018, the Debtor agreed to pay in full the claim of "MS Postal Federal." As of December 6, 2022, Mississippi Postal Employee's Federal Credit Union (the "Credit Union") had not filed a proof of claim in the Bankruptcy Case. The Trustee filed a Motion to Modify, seek-ing to make no further payments on the secured claim of the Credit Union and to distribute the funds to unsecured creditors. No response was filed by the Debtor or the Credit Union, and the Court entered the Order Modifying Plan. The next day, the Debtor filed a motion seeking relief from the Order Modifying Plan. The Debtor asserted that if the Credit Union did not file a proof of claim within two weeks, he would file a proof of claim on its behalf.

The Court denied the Debtor's motion for relief from the Order Modifying Plan because he failed to establish either a manifest error of law or fact or present newly discovered evidence as required by Rule 59(e) of the Federal Rules of Civil Procedure, as made applicable by Rule 9023.

In re Johnny A. Rowland, Sr., Case No. 05-06194-JAW (Dec. 21, 2022)

In 2005, the Debtor filed a chapter 7 petition. A notice was issued informing creditors not to file a proof of claim. The trustee concluded that there were no assets to administer for the benefit of cred-itors of the estate. The Debtor received a discharge in 2006 and the bankruptcy case was closed. Fifteen years later, in 2021, the trustee became aware of an undisclosed product liability claim be-longing to the bankruptcy estate. The case was reopened, and a notice was issued to creditors to file proofs of claim by April 13, 2022. AmEx filed a proof of claim for credit card debt of $12,887.89 before that deadline. Yellow Book had previously filed a proof of claim of $1,269.72. The trustee, with the Court's approval, settled the Debtor's product liability claim for $39,618.08. The trustee filed the Trustee's Final Report ("TFR") indicating that $35,325.27 was available for payment of chapter 7 fees and administrative expenses of $21,438.01 and the

Opinion Summaries by JUDGE JAMIE WILSON (continued)

balance of $13,887.26, pro rata, to AmEx and Yellow Book. The Debtor objected to the TFR, arguing that the unsecured claims were barred by Mississippi's three-year statute of limitations. The Trustee argued that the operative date for determining the validity of the claims was the petition date, not the date the case was reo-pened. The parties did not dispute that when the petition was filed, the claims of AmEx and Yellow Book were valid and enforceable. The Court ultimately agreed with the trustee that the petition date was the operative date for determining whether the claims were enforceable under § 502(b).

The Court concluded that the post-petition running of the statute of limitations could not be the ba-sis for disallowing valid prepetition claims against the estate when the reopened bankruptcy case was initially designated a no-asset case, and Yellow Book and AmEx were instructed not to file proofs of claim under Rule 2002(e) but later instructed to do so under Rule 3002(c)(5) after the trustee's discovery of undisclosed assets. To disallow these claims would invite mischief in the reporting of undisclosed assets by debtors.

In re William Byrd McHenry, Jr., Case No. 22-01755-JAW (Feb. 28, 2022)

The subject Bankruptcy Case, filed on August 31, 2022, was the sixth bankruptcy case commenced by the Debtor. Of relevance was his fifth bankruptcy case filed on January 24, 2020, In re McHenry, Case No. 20-00268-NPO (Bankr. S.D. Miss. Jan. 24, 2020) (the "Prior Case"). In the Prior Case, the Court denied the Debtor a discharge of all of his debts under § 727 as a result of an adversary proceeding initiated by the receiver for the estates of Arthur Lamar Adams and Madison Timber, LLC (the "Receiver"). Mills v. McHenry (In re McHenry), Adv. Proc. 20-00022-NPO (Bankr. S.D. Miss. Apr. 23, 2020).

The Debtor indicated at the creditors' meeting that he intended to seek a discharge of his $3,473,320.00 judgment debt owed to the Receiver in his current case. As a result, the Receiver sought a comfort order confirming that the debts declared nondischargeable in the Prior Case re-mained nondischargeable in the current case.

The Court determined that a comfort order was unnecessary because §523(a)(10) is self-executing, but any such relief sought had to be requested, if at all, in the form of an adversary proceeding.

In re Re-Build Seville, LLC, Case No. 22-01976-JAW (Mar. 23, 2023)

On March 30, 2017, Vulcan Industries, LLC ("Vulcan") borrowed $1,387,500.00, secured by a first deed of trust on an apartment complex, known as the Seville Apartments, in Jackson, Missis-sippi. The Debtor, a Mississippi limited liability company, was formed in 2021 for the sole pur-pose of purchasing the Seville Apartments from Vulcan as an investment property. The note was assigned to Fairview Investment Fund V, LP ("Fairview"). The Debtor purchased the Seville Apartments from Vulcan, but neither party gave notice to Fairview. The Debtor began making payments on the loan to Fairview. At some point, Fairview discovered that Vulcan had sold its col-lateral without its knowledge or consent. On January 27, 2022, Fairview sent Vulcan a demand letter declaring the loan in default and accelerating the entire indebtedness owed.

On March 24, 2022, Fairview filed a state court complaint against the Debtor. As relief, Fairview sought the appointment of a receiver to take possession of the property, manage the property pend-ing a judicial foreclosure, and collect rent from the tenants. The parties disputed the amount due on the loan, including the calculation of default interest. Fairview's request for the appointment of a receiver was set for hearing in state court on September 29, 2022. On September 28, 2022, the Debtor filed its chapter 11 petition for relief.

Fairview asked the Court to dismiss the bankruptcy case as a bad faith filing pursuant to § 1112(b). The Court found that the Debtor was solvent and financially healthy when it filed bankruptcy and concluded that the bankruptcy case was filed in an attempt to abate the accrual of interest on the loan to which the Debtor was not a party. Allowing the Debtor to remain in Bankruptcy while it was solvent, was not experiencing financial distress, and was not a party to the loan would contra-vene the principles of good faith and would amount to an abuse of the reorganization process in what was a two-party dispute between the Debtor and Fairview. The Court granted Fairview's mo-tion dismissing the bankruptcy case.

In re First Fidelity Trust Services, Inc., Case No. 22-02666-JAW (March 15, 2023)

The Debtor filed its petition for chapter 11 relief electing to proceed under Subchapter V. The Debtor's bankruptcy schedules listed one asset – a vacant condominium located in Pensacola and identified two unsecured creditors. It disclosed in its statement of financial affairs that it was cur-rently a defendant in a foreclosure action in Florida.

The United States Trustee filed a motion to dismiss the case largely predicated on the argument that the Debtor was ineligible to be a debtor under Subchapter V because the Debtor's primary activity was the business of owning single asset real estate, and the definition of "debtor" under Subchapter V of the Bankruptcy Code excludes single asset real estate.

At the hearing on the motion to dismiss the Debtor's representative testified that the primary busi-ness of the Debtor was, and had historically been, funding car loans, not leasing the Condo. The Debtor funded the sale of cars from wholesalers and dealer-to-dealer transactions and that COVID-19 had stopped most of the Debtor's business operations, but he was now working each day from 9:30 AM until 6:00 PM attempting to revitalize the business. The representative explained that the Debtor owned the condo because it had previously conducted a large amount of business at car auctions in Mobile, Alabama, and Pensacola, Florida, and that the Condo was leased out to provide supplemental income for the Debtor to further fund loans.

The Court found that based on the testimony of the Debtor's principal, the Debtor was not a single asset real estate debtor and was eligible to be a debtor under Subchapter V of chapter 11.

In re Angenita Smith, Case No. 21-01696-JAW (Apr. 21, 2023)

The Debtor filed a voluntary petition for Chapter 13 relief on October 11, 2021, listing residential property as an asset of the estate valued at $111,000.00. She also identified Statebridge as a credi-tor holding a claim of $45,479.59 secured by the property. The Debtor's plan proposed to pay an arrearage of $45,479.59 within the sixty-month term of the plan and maintain an ongoing monthly mortgage payments of $292.06. Statebridge, the loan servicer, filed a proof of claim, alleging that the Debtor owed $82,011.57 secured by a deed of trust on the Property. Of that total amount, Statebridge alleged that the Debtor owed an arrearage of $50,279.50. The Debtor objected to the claim on the basis that it did not clearly indicate who owned the loan. Statebridge did not respond to the objection and the Court disallowed Statebridge's claim.

After the claim was disallowed, Statebridge filed a motion for relief from the stay, and an eviden-tiary hearing was held on April 17, 2023. The Debtor was the only witness at the hearing. The Debtor admitted that she had signed a deed of trust on the property on March 17, 2005, and that she had not made a payment on the loan since 2012. She explained that she had not made any fur-ther payments because she was informed over the telephone by the original noteholder that the mortgage had been "discharged." When the Court inquired what she meant by "discharged," the Debtor explained that she had applied for a loan modification with the original note holder which had not been approved. She testified that when she called the original note holder to ask why the modification was not approved, she was told that it was "going out of business" and that her mort-gage would be "zeroed out." Statebridge, without a witness, could not refute this testimony.

Opinion Summaries by JUDGE JAMIE WILSON (continued)

The Court denied the motion for relief without prejudice because Statebridge did not have a valid proof of claim constituting prima facie evidence of the amount and validity of the debt, and further failed to provide any evidence at the hearing regarding the existence or validity of the debt, the amount owed, or the value of the property. Therefore, the Court could not determine if Statebridge was adequately protected and otherwise if cause existed to grant relief from the stay under § 362(d)(1). For the same reason, the Court could not undertake an equity analysis to determine if Statebridge was entitled to relief from the automatic stay under § 362(d)(2).

In re Kenneth Wayne Washington, Case No. 23-00259-JAW (May 25, 2023)

The Debtor filed a chapter 13 petition for relief on February 6, 2023. Prior to filing the petition, the Debtor purchased a 2017 Chevrolet Tahoe from Gowdy Autoplex and entered into a retail install-ment contract on December 29, 2022 with a purchase price of $25,427.55 for a term of 55 months at an annual interest rate of 21.99%. Gowdy sold the contract to Westlake Financial Services, re-sulting in Gowdy getting its money up front and payments being made to Westlake. The Debtor's first payment to Westlake was due on February 12, 2023. Gowdy's agreement with Westlake re-quired Gowdy to refund Westlake and buy back the contract if a buyer did not make the first pay-ment on the contract within 30 days of it becoming due. The petition was filed before the first pay-ment on the contract became due. The Debtor filed a Modified Chapter 13 Plan on March 7, 2023, proposing to pay the Till rate of 7% on the vehicle instead of the contract rate of 21.99%. Gowdy filed a motion for relief from the automatic stay as to the vehicle.

The Court granted Gowdy's motion for relief finding that because no payments had been made on the vehicle, the Debtor had no equity in it, and the Debtor's attempted use of the Till rate to unilat-erally refinance the contract for the vehicle was impermissible.

In re Tunica Hospitality & Entertainment, LLC, Case No. 22-01693-JAW (June 6, 2023)

The Debtor proposed an extensive redevelopment and renovation of the former Harrah's Casino & Resort located on 2,200 acres of land in Tunica, Mississippi (the "Property"). The main attraction of the resort would be a new twenty-acre waterpark, but the Debtor also proposed to build a new convention and conference center, sports complex, music venue, and beach and boardwalk. The Debtor additionally planned to rehabilitate and renovate the existing facilities, including two hotels with a total of 1,164 rooms, an 18-hole golf course and clubhouse, a 200-slot RV park, a family entertainment center, administrative facilities, a warehouse, a sporting clays facility, numerous res-taurants and retail outlets, and an upscale spa. The total cost of the proposed construction and reno-vation of the Property was approximately $157 million. The Debtor was formed as a "special pur-pose entity" on May 17, 2017 to purchase and operate the Property.

The Debtor's principal eventually formulated the "Urban Renewal Plan (Southern Celebration Boulevard Project)" that contemplated Tunica County's acquisition, construction, and renovation of the Property and provided: "The owner and operator of the Urban Renewal Project will be [the Debtor] or its assignees." The Board of Supervisors of Tunica County, Mississippi adopted a reso-lution approving the urban renewal plan and the issuance of county renewal bonds for funding the project, and on March 19, 2018, adopted a second resolution that approved the purchase of the Property from TJM Tunica, LLC ("TJM") for $12 million. Tunica County entered into an asset purchase agreement with TJM, on May 10, 2018 to buy the Property. The Debtor was not, and never was, a signatory party to the asset purchase agreement between Tunica County and TJM.

On August 30, 2018, Tunica County signed a resale agreement with ATBS, another business owned by the Debtor's principal, whereby Tunica County agreed to re-sell the Property to ATBS for $12 million. Between August 2018 and March 2022, Tunica County and either the Debtor or ATBS failed to close on the property 7 different times. In late April 2022, TJM commenced a fore-closure action, and in response, the Debtor filed a lawsuit in the Chancery Court of Tunica County seeking a preliminary and permanent injunction against TJM to enjoin the foreclosure sale. The same day as the scheduled foreclosure sale, the Debtor filed a petition for relief under subchapter V of chapter 11.

The Debtor proposed to obtain a $20 million loan from an unnamed "co-developer" to acquire the Property, but over the more than 7-month pendency of the Bankruptcy Case, the Debtor never ob-tained financing of any sort. The Court determined that for the Debtor to successfully reorganize, it would have had to: (1) succeed in a separate, related adversary proceeding invalidating the foreclo-sure sale of the Property to TJM and returning title of the Property to Tunica County; (2) negotiate and enter into a new agreement with Tunica County allowing the Debtor to purchase the Property for $12 million; and (3) obtain financing somewhere between $20 million and $150 million for the purchase and development of the Property. The Court dismissed the Bankruptcy Case, finding that there was no reasonable likelihood of success by the Debtor in the Adversary; the plan was not feasible or fair and equitable to creditors; the proposed plan had numerous other deficiencies; the estate was incurring continuing losses; and rehabilitation of the Debtor was unlikely.

In re Charles Richard Robb, Case No. 22-02410-JAW (June 30, 2023)

Denise McLaughlin and the debtor, Charles Richard Robb, were co-workers at a business where Robb served as the director of information technology. At some point, McLaughlin formally com-plained about Robb's alleged inappropriate conduct in the workplace. When Robb learned about McLaughlin's complaint, he posted her "personal information on a website advertising her falsely as a prostitute." McLaughlin sued Robb for intentional infliction of emotional distress, defamation, invasion of privacy and other causes of action in the Circuit Court of Rankin County, Mississippi. A jury trial was held in Circuit Court in early 2021. At the conclusion, the jury found in favor of McLaughlin on her claims for negligent and intentional infliction of emotional distress, invasion of privacy, defamation, negligence, and gross negligence. The Circuit Court entered the Final Judg-ment by Verdict awarding McLaughlin $285,750 on March 8, 2021. That same day, the Judgment was enrolled in The Judgment Roll of Rankin County. The Judgment was never enrolled in The Judgment Roll of Madison County.

When the lawsuit was filed, Robb lived in Rankin County, but during the pendency of the state court litigation, Robb and his wife purchased a new home at 445 Johnstone Drive, Madison Coun-ty, Madison Mississippi (the "Johnstone Property"). Four days after entry of the Judgment, Robb and his wife executed a quitclaim deed to themselves that changed how they held title to the home from joint tenants to "tenants by the entirety with full rights of survivorship." The Rankin County Circuit Court voided this quitclaim deed as a fraudulent transfer.

In early 2022, McLaughlin asked the Circuit Court to levy execution on the Johnstone Property. The Circuit Court granted McLaughlin's request, and on September 15, 2022, the Circuit Court Clerk issued a Writ of Execution directing the sheriff of Madison County "to attach and take into your possession [the Johnstone Property] and dispose of the same according to law" to satisfy the Judgment pursuant to section 13-3-123 of the Mississippi Code. The Writ of Execution recited that McLaughlin recovered the Judgment in the Circuit Court of Rankin County, and the "Judgment is also enrolled in Madison County, Mississippi."

Before McLaughlin was able to obtain an execution of the home, Robb filed the chapter 13 petition for relief. McLaughlin filed a proof of claim in the amount of $324,046.87, which she alleged was secured by "real estate." The alleged basis for the perfection of her claim was "Judgment lien rec-orded in Madison County, Mississippi."

Opinion Summaries by JUDGE JAMIE WILSON (continued)

Robb objected to the claim and asked the Court to disallow it as a secured debt and only allow it as an unsecured debt. He contended that McLaughlin did not record her Judgment in the Circuit Court Clerk's Office of Madison County. McLaughlin countered that her judgment lien was perfected when the sheriff of Madison County levied the Johnstone Property.

The Court sustained Robb's objection to the claim, finding that the judgment was only recorded in the land records of Madison County, not in the Judgment Roll of Madison County, and that McLaughlin was unable to provide any authority in Mississippi that would allow perfection of a judgment lien solely by virtue of an attachment to real property pursuant to a writ of execution.

Opinion Summaries by JUDGE SELENE D. MADDOX

(Case summaries prepared by Jace Ferraez and Will Knotts, Law Clerks to Judge Selene D. Maddox).

In Re: Nathaniel and Carla Ratliff, 22-12481-SDM; Dkt. #22; Order Dismissing Bankruptcy Case for the Failure to Comply with Prepetition Credit Counseling Requirement; December 6, 2022.

The Debtors, Nathaniel and Carla Ratliff, filed chapter 7 bankruptcy on September 29, 2022. Along with their petition, the Debtors filed their Certificates of Credit Counseling, indicating that they had completing credit counseling on January 1, 2022. The next day, September 30, 2022, the Court ordered the Debtors to appear and show cause as the Debtors had failed to obtain prepetition credit counseling within 180 days before filing their petition, as required under 11 U.S.C. § 109(h). The Court conducted the hearing at which the Debtor's counsel asserted that his clients had attempted to retake the counseling course multiple times but were unable to complete it for various reasons. Nevertheless, the Court afforded the Debtors an opportunity to file a written brief opposing dismissal of their bankruptcy case. In said brief, the Debtors' only argument was that they should be exempted from the credit counseling requirement due to incapacity or disability, claiming that both Debtors were mentally infirm.

HELD: The Court found that the Bankruptcy Code and Rules governing counseling requirements were clear, and that failure to timely obtain such counseling, absent exemption, warranted dismissal. To support its decision, the Court reviewed § 109(h)(1) of the Bankruptcy Code, which provides that an individual is not eligible to be a debtor unless such individual has, within the 180 day period ending on the date of filing the petition by such individual, received an individual or group briefing that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis. Finding that the Debtors had not complied with the above section, the Court then explored the exceptions enumerated in § 109 including § 109(h)(4), which defines incapacity and disability for exemption purposes. After stating that the legal standard for meeting one of these exceptions is very high, the Court found multiple reasons to disagree with the Debtor's arguments. First, the Debtors did not follow the Federal Rules of Bankruptcy Procedure, which require the Debtor to file, with the Petition, a request that the court determine they were unable to complete the counseling requirement due to incapacity or disability. In this case, the Debtor's did not file such a request and first made this argument in the brief submitted 54 days after filing their petition. Second, the Debtors failed to present any evidence of the assertions made in their Brief, and that even if they had, such evidence would not have overcome the procedural defects stated above. Last, the Court found that the Debtor's claims of incapacity were greatly undermined by the fact that Debtors had previously completed a credit counseling course. For these reasons, the Court found it far too speculative an inquiry to decide whether the Debtors qualified for an exemption, and that because of the Debtors failure to comply with the requirements in § 109, the bankruptcy case should be dismissed.

In Re: United Furniture Industries, Inc, 22-13422-SDM; Dkt. #106; Memorandum Opinion and Order Granting United Furniture Industries, Inc.'s Motion to Convert Case to Ch. 11, Denying as Moot Wells Fargo Bank, N.A.'s Emergency Motion for Appointment of an Interim Trustee, and Ordering the Appointment of Ch. 11 Trustee; January 27, 2023.

United Furniture Industries, LLC ("UFI") operated as a manufacturer of budget-friendly furniture for various retailers and operated facilities in multiple locations. On November 21,2021, UFI abruptly closed, ceased all operations, and terminated approximately 2,700 employees. On November 23, 2021, UFI's Chief Financial Officer and Chief Executive Officer tendered their resignations to the board of directors. Following these resignations, UFI appointed a new CFO, who in turn selected general counsel, re-employed former employees, and engaged Oxford Restructuring Advisors for assistance with a potential bankruptcy filing. Before UFI could file its own voluntary bankruptcy case, Wells Fargo, Security Associates of Mississippi/Alabama LLC, and V&B International, Inc. filed an involuntary Chapter 7 petition on December 30, 2022, alleging UFI had not been paying its debts as they became due. The following day, Wells Fargo, filed its Motion to Appoint an Interim Trustee. Before the hearing, UFI filed its Response to the Motion to Appoint an Interim Trustee and its Motion to Convert. In its Motion to Convert, UFI argued that § 706 of the Bankruptcy Code grants it the "absolute right" to convert a case from Chapter 7 to Chapter 11 relying on the legislative history of § 706(a). Wells Fargo challenged UFI's assertion that it was entitled to convert its case under § 706(a), arguing that under Marrama v. Citizens Bank of Massachusetts, 549 U.S. 365 (2007), a court may deny a request for conversion if the debtor engages in bad faith. Further, Wells Fargo argued that in addition to the bad faith evidenced by ceasing operations and terminating employees, they had been required to continue securing and preserving UFI's assets even after the appointment of chief administrative officers. Last, Wells Fargo urged the Court to consider that in the event the case was converted to chapter 11, the liquidation would be overseen by management appointed by the original board, specifically David Belford, who according to Wells Fargo, had a family trust holding security interests in UFI's real estate. In addition to opposing the conversion, Wells Fargo argued that should the Court determine to convert the case to Chapter 11, a trustee should be appointed under § 1104(a), as cause existed due to UFI's lack of integrity, "their ongoing incompetence", conflicts of interest, and UFI's lack of credibility among creditors.

Opinion Summaries by JUDGE SELENE D. MADDOX (continued)

HELD: The Court ultimately found that (1) UFI had made a prima facie case for conversion under § 706(a) but that Wells Fargo failed to demonstrate prepetition bad faith or post-petition cause under § 1112(b) as required under Marrama and (2) that appointment of a Chapter 11 trustee was in the best interests of the Creditors and bankruptcy estate. The Court began its discussion on the first issue by determining that under Marrama, UFI did not have an absolute right to convert, but that as interpreted by the Supreme Court, this right was conditioned on its ability to "qualify" as a debtor under this section. The Court then proceeded by determining that UFI's behavior that led to the filing of the case, while certainly abhorrent, did not rise to the level of bad faith. The Court's inquiry as to conversion of the case then continued into the discussion of "cause". The Court, in making this determination analyzed the entirety of UFI's conduct, both pre- and post-petition. During this analysis, the Court determined that UFI's postpetition conduct served to at least mitigate some of the risks created by their earlier actions. As a result, the Court held that Wells Fargo had not met their burden of showing bad faith nor cause under § 1112(b)(4). But while the Court found that Wells Fargo had not met their burden and that the case would be converted, the Court tempered this conversion by finding that the conduct of UFI required appointment of a Chapter 11 Trustee pursuant to § 1104(a)(2). The Court reasoned that while the Bankruptcy Code generally permits Chapter 11 debtors to remain in control of their assets and operations in a Chapter 11 case, such control comes with fiduciary duties owed to the bankruptcy estate. After applying the factors enumerated in § 1104(a)(2) as well as examining the totality of the circumstances, the Court harbored specific concerns relating to the possibility that Belford, among others, would ultimately retain control of UFI if allowed to proceed as a debtor in possession. The Court's reasoning focused on the potential inability for UFI and its current management to operate independently of Belford, a scenario which could certainly be avoided by the appointment of a Chapter 11 trustee. Therefore, the Court found that the appointment of a Chapter 11 trustee was in the best interests of the Creditors and the bankruptcy estate. As a result of the conversion of the case and appointment of a Chapter 11 trustee, the Court dismissed Wells Fargo's Emergency Motion for Appointment of an Interim Trustee as moot.

In Re: Shane Douglas Chatham, 22-13094-SDM; Dkt. #18; Memorandum Opinion and Order Sustaining In Part and Overruling In Part Objection to Confirmation of Chapter 13 Plan; March 24, 2023.

The Debtor, Shane Douglas Chatham, filed Chapter 13 bankruptcy on November 28, 2022. The same day the Debtor filed the Petition, he also filed his proposed Chapter 13 Plan. According to Chatham's schedules, only $13,747.00 of the $61,979.00 total amount of claims were secured by property. Included in the $13,747.00 was a $10,347.00 claim owed to Planters Bank& Trust Company ('Planters") secured by a 2005 Toyota Highlander. Among the remaining $48,232.00 in unsecured claims was another $5,535.00 owed to Planters on an unsecured "note loan". As a result of the $5,535.00 being listed as an unsecured claim, the plan did not include a provision regarding payments to be made to Planters for that claim. On January 13, 2023, Planters filed an Objection to Confirmation of Chapter 13 Plan. Planter's Objection stated that the Debtor's proposed plan failed to comply with 11 U.S.C. § 1325(a) as it was not proposed in good faith. In support of this the Objection Planters indicated that their claims arose out of two separate promissory notes. The first note, executed on May 11, 2021 for $10,306.25, granted Planters a security interest in a 1996 Chevrolet GMT and a 2005 Toyota Highlander. Subsequently, in January of 2022, the Debtor executed another note in the amount of $10,150.00, which importantly included a cross-collateralization provision. The Court scheduled a hearing on the objection, during which the Debtor testified that after the execution of the 2022 note, the 1996 Chevrolet stopped running and had been "sold" for parts without Planter's knowledge. The issues presented before the Court were: (1) whether the Debtor's prepetition disposition of the 1996 Chevrolet constitutes bad faith when proposing his Plan of Filing his Petition under § 1325(a)(3); and (2) whether the Debtor must surrender the 1996 Chevrolet to comply with § 1325(a)(5)(c).

HELD: The Court ultimately held that (1) the prepetition disposition of the 1996 Chevrolet did not constitute bad faith when proposing the plan, and (2) that while under §13225(a)(5)(c) the Debtor would certainly be required to surrender the 1996 Chevrolet, other treatment options were available for this claim. As to the Court's bad faith determination, the Court looked to the totality of the circumstances test relying on In re Crager, 691 F.3d 671, 676 (5th Cir. 2021). After consideration of each of the seven factors, the Court concluded that the Debtor had proposed his plan in good faith, and that while Planters Objection to Confirmation should be sustained in part, that Debtor's case should not be dismissed. The Court reached its decision on the second issue by finding that under Mississippi law, the Debtor retained legal ownership of the 1996 Chevrolet because he did not transfer the title as part of the prepetition sale. Despite the Debtor retaining legal ownership, the Court opined that secured property that is incapable of being made available for surrender due to a debtor's conduct cannot be surrendered under §1325(a)(5)(c). Because the Debtor lacked possession and was unable to surrender the collateral, his plan must be amended to propose treatment of Planter's claim under §1325(a)(5)(a) or §1325(a)(5)(b). Further, the Court held that while a debtor may select different options with respect to each allowed secured claim, one may not do such with multiple items securing the same claim. Therefore, because of both the cross-collateralization provision and both vehicles securing the 2021 note, the Debtor must amend the plan propose the same option for treatment of both the 1996 Chevrolet and the 2005 Toyota.

In Re: Toria Neal v. United Furniture Industries, Inc., Case No. 22-13422-SDM; A.P. No. 23-1005-SDM; Dkt. #36; Order Granting Motion to Appoint Interim Co-Lead Counsel and Consolidating Adversary Proceedings; August 11, 2023.

On February 9, 2023, the Plaintiff, Toria Neal, filed a Motion for Appointment of Interim Co-Lead Counsel, Consolidation of Cases, and Establishment of Procedures for Consolidation of Future-Filed Cases along with a Memorandum of Law in Support. In summary, the Motion and supporting memorandum requested that the Court appoint the law firms of Langston & Lott, PLLC (L&L) and The Hearn Law Firm, PLLC (Hearn) to serve as co-lead counsel concerning the adversary proceedings against Defendant's, United Furniture, Inc. (UFI), alleged violations of the WARN Act, 29 U.S.C. § 2101. At the time this motion was filed there were four pending adversary proceedings, each containing a plaintiff represented by a different firm, and all alleging similar causes of action against UFI. Counsel for the plaintiffs in each of the other adversary proceedings also filed similar motions, supporting briefs, and replies to the motions of the others, all enumerating their own experience, expertise and seeking appointment as lead counsel. In addition to the multiple motions and replies filed by counsel for the plaintiffs in the four cases, the Chapter 11 Trustee filed responses to each motion arguing that the appointment of interim counsel was premature, potentially unnecessary, and would burden the bankruptcy estate.

HELD: The Court ultimately held (1) that L&L and Hearn should be appointed as co-lead interim counsel of the prospective class, and (2) that the four adversary proceedings should be substantively consolidated. The Court determined that each of the four adversary proceedings as pled in their respective complaints involved facts and questions of law so similar that consolidation under Federal Rules of Civil Procedure, Rule 42, would best promote judicial economy and the interest of justice. In arriving at the decision of which of the four firms or

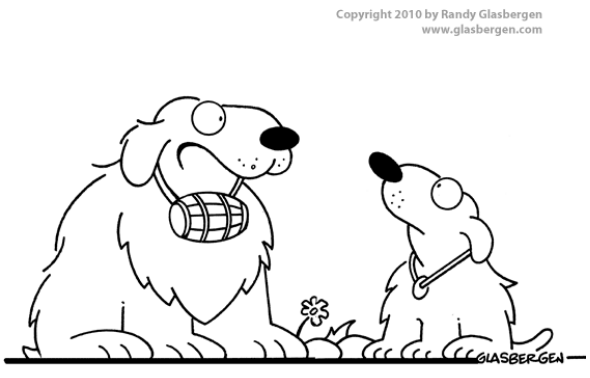
Opinion Summaries by JUDGE SELENE D. MADDOX (continued)

combination of firms should be appointed as lead counsel, if any, the Court looked to the factors found in Rule 23(g)(1)(a) of the Federal Rules of Civil Procedure as well as other factors pertinent to counsel's ability to fairly and adequately represent the prospective class. The Court assigned substantial weight to the fact that L&L and Hearn's geographic location would be beneficial to many members of the prospective class, that L&L and Hearn already represented approximately 1,500 plaintiffs and were the first and second to file district court actions in Mississippi. After consideration of these factors, among others, the Court ultimately found that, while each law firm and attorney seeking appointment were certainly capable of adequately representing the putative class, L&L and Hearn were best suited to be appointed as interim counsel to the prospective class.

In Re: John Coleman, Case No. 22-11833-SDM; Dkt. #316; Memorandum Opinion and Order Disapproving Applications to Employ and for Compensation; September 28, 2023.

John Coleman ("Coleman"), the Debtor and President of Express Grain Terminals, LLC ("Express Grain"), filed his Chapter 11 bankruptcy case on September 29, 2021. The Debtor employed the services of Craig Geno ("Geno") and Whittington, Brock & Swayze, P.A. ("WBS"). On the date the bankruptcy case was filed, the Debtor paid a $25,000.00 retainer to WBS, which it later disclosed as required under § 329 on January 14, 2022. Geno filed his application to employ in April of 2022, explaining that the retainer would be used to reduce the amount of future compensation due to either Geno or WBS. Geno also provided justification for why his employment application was delayed due to some questionable conduct by the Debtor and an attempt to voluntarily dismiss his Chapter 11 bankruptcy case. The Court denied the Debtor's voluntary dismissal motion in January of 2022. While the Court approved Geno's employment application above, the Court's order did not include WBS or its attorneys. Nevertheless, it was clear based on certain filings that WBS and its attorneys were representing the Debtor concerning the sale of real property. In fact, WBS filed a motion to approve the sale of the Debtor's homestead around November of 2021 and a report related to that sale in March of 2022. The Court eventually ordered the appointment an Examiner, and approved employment and compensation applications for attorneys and accountants to represent the Examiner and receive payment. The Court also approved Geno's compensation application. All of those employment and compensation applications were filed and approved during the 2022 calendar year. In January of 2023, the United States Trustee (the "UST") moved to convert the bankruptcy case to a case under Chapter 7. Prior to the Court ordering the conversion in March of 2023, Geno, the Examiner, and the Examiner's professionals all filed compensation applications, which the Court approved. In May of 2023, around 18 months after the bankruptcy case was filed and two months postconversion, WBS filed its applications for employment and for compensation. The UST and the Chapter 7 Trustee objected, arguing that WBS should not be employed retroactively on behalf of the bankruptcy estate because WBS failed to explain why it delayed in seeking court approved employment. The UST also argued that it was improper now that the case had been converted to Chapter 7.

HELD: The Court disapproved both the employment and compensation applications. In doing so, the Court had to determine whether it had the authority to enter retroactive employment orders after the Supreme Court's decision in Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano, 140 S. Ct. 696 (2020). The Court found that the Supreme Court's per curium opinion in Acevedo provided definitional clarity regarding "nunc pro tunc" and that the entry of nunc pro tunc orders is only acceptable if a court makes a ruling but simply fails to enter an order at the time. Further, the Court found that Acevedo is foremost jurisdictional: nunc pro tunc orders cannot be used to cure jurisdictional defects. Acevedo did not, however, alter the Court's authority to enter orders retroactively or "post facto", including employment orders, under the Bankruptcy Code and Rules. Regarding employment and compensation applications, the Court adopted the sound approach as explained in In re Hunanyan, 631 B.R. 904 (Bankr. C.D. Cal. 2021). The Court determined that the if employment applications are filed within a reasonable time after employment begins, § 327 authorizes approval without resorting to equitable principles. If, however, professionals file delayed employment applications, like the application at issue before it, the Court will continue to utilize the "exceptional circumstances" standard established by the Fifth Circuit to determine whether the employment application should be approved retroactively. In addition to the Local Rules providing certain factors or criteria for delayed application cases, the Court recognized that in delayed application cases, employment approval is performed alongside compensation and analyzed with more scrutiny. Regarding the conversion issue, the Court recognized there is precedent to allow post facto employment for a certain time period while the case was pending as a Chapter 11. The Court would not, however, retroactively approve employment of WBS on behalf of the bankruptcy estate or allow compensation as a professional effective in the Chapter 7. Finally, applying the requisite standard, the Court found that an 18-month delay postpetition and after employment began was too delayed and WBS failed to provide sufficient justification for why it delayed filing its employment application. Because the Court did not approve WBS's employment, WBS was precluded under § 330 from receiving any compensation or expense reimbursement.



"I once rescued a man who was buried under an avalanche of debt!"