AMERICAN BANKRUPTCY INSTITUTE

2021 Consumer Practice Extravaganza

Great Debates

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2021

THE ENHANCED VALUE SHOULD GO TO CREDITORS

Barbosa v. Solomon, 235 F.3d 31, 41 (1st Cir. 2000)

[W]e find that the Trustee and Mellon were not precluded by *res judicata* from seeking an amendment to the plan[to capture proceeds from a post petition sale]. In addition, given the factual circumstances of this case—where the Debtors realized through the sale an appreciation in value of almost 215% of the stipulated value of the property at confirmation—we find that the bankruptcy court did not abuse its discretion in granting the amendment. *Witkowski,* 16 F.3d at 746 ("Because modification under § 1329 is discretionary, our review is limited to a determination of whether the district court abused its discretion in modifying the plan.").

[A]s the bankruptcy judge said, it is antithetical to the bankruptcy system to allow a debtor to "strip down" a mortgage, underpay the unsecured creditors, and obtain a super discharge under section 1328(a) of the Code, while selling the property mortgaged for a price of two times its estimated value for purposes of the "strip down", and keeping to himself the excess of the proceeds. *In re Barbosa,* 236 B.R. at 552. In fact, to allow the Debtors to keep the proceeds of the sale in such circumstances effectively defeats Congress' intention to extend the application of the "ability-to-pay" standard forward throughout the duration of the plan. *Oversight Hearings, supra*.

In re Berkley, 613 B.R. 547, 553 (B.A.P. 9th Cir. 2020)

Most recently, in *Black v. Leavitt (In re Black)*, 609 B.R. 518 (9th Cir. BAP 2019), we reaffirmed our view that the estate terminates at confirmation. We stated that "the revesting provision of the confirmed plan means that the debtor owns the property outright and that the debtor is entitled to any postpetition appreciation." 609 B.R. at 529 (citing *In re Jones*, 420 B.R. at 515).

We acknowledge that the bankruptcy court in this case, and some other bankruptcy courts within our circuit, take the view that postconfirmation windfalls become property of the estate upon receipt, even if the plan provides for revesting. *See, e.g.*, *In re Shay*, 553 B.R. 412, 418 (Bankr. W.D. Wash. 2016)

(holding that "[a] plan provision that automatically vests post-petition property with the debtor without ever becoming property of the estate, as proposed by the debtors in their amended plan, is inconsistent with the Code"); *In re Jackson*, 403 B.R. 95, 100 (Bankr. D. Idaho 2009) (rejecting the estate termination approach and holding that an inheritance received postconfirmation was property of the estate).

In our view, these decisions reach the right result for an incorrect reason. Mr. Berkley's arguments, and the cases cited above, all rest on the unstated assumption that, unless the postconfirmation income is property of the estate, the debtor cannot be compelled to devote it to his plan. This assumption is incorrect. Nothing in the Code provides that plan payments may only be funded by estate property. In fact, debtors are often compelled (in order to formulate a confirmable plan) to fund the plan from non-estate sources (family contributions, loans or withdrawals from pension plans, sale of exempt assets, etc.). *See, e.g.*, *In re Deutsch*, 529 B.R. 308, 312 (Bankr. C.D. Cal. 2015) ("Reliance on contributions from family is disfavored, but not prohibited." (citation omitted)); *In re Feiling*, Case No. 11-71474 MEH, 2013 WL 2451333, at *5 (Bankr. N.D. Cal. June 6, 2013) (confirming plan funded by gifts and non-estate property). Under § 1329, the bankruptcy court can approve a plan modification that increases the debtor's plan payments due to a postconfirmation increase in the debtor's income, whether or not the additional income is property of the estate.

In re Castleman, No. 19-12233-MLB, 2021 WL 2309994 (Bankr. W.D. Wash. June 4, 2021)

Under the circumstances, the legal issue of whether the postpetition, pre-conversion increase in the property's value was part of the estate would be decided as a contested matter, rather than through an adversary proceeding, and

As a matter of apparent first impression for the court, the full present value of the real property, including any appreciation between the Chapter 13 petition date and the date of conversion, was property of the Chapter 7 bankruptcy estate.

In re Murphy, 474 F.3d 143 (4th Cir. 2007)

Background: Chapter 13 trustee moved for modification of two debtors' separate confirmed plans to increase dividend to unsecured creditors. The United States Bankruptcy Court for the Eastern District of Virginia granted motion with respect to one debtor's plan, and denied motion with respect to the other debtor's plan. Trustee appealed. The United States District Court for the Eastern District of Virginia, Claude M. Hilton, J., affirmed.

1 refinancing of home mortgage was not substantial change in financial condition, as required to modify Chapter 13 plan;

2 sale of debtor's condominium was “substantial and unanticipated change” in debtor's financial circumstances; and

3 proposed modification of plan was warranted

Sale of Chapter 13 debtor's condominium 11 months after his bankruptcy petition was filed at price 51.6 percent higher than that assigned to residence on petition date amounted to a “substantial and unanticipated change” in debtor's financial circumstances, as would support modification of confirmed Chapter 13 plan to allow increased payment to creditors; debtor received substantial amount of readily available cash without any debt, and such a large increase in such a short time was unexpected given current housing market trends. 11 U.S.C.A. §§ 1325, 1329(a)(1, 2).

In re Kieta, 315 B.R. 192 (Bankr. D. Mass. 2004)

Ddebtor was bound by language in plan confirmation order, providing that estate property, including any postpetition appreciation therein, would remain property of the estate once plan was confirmed; and

Debtor could not use refinancing that she obtained, based on significant postpetition appreciation in value of her home, in order to make early, lump sum payment of minimum dividend that she had promised to unsecured creditors, while retaining balance of this postpetition appreciation for her own benefit.

hapter 13 Practice & Procedure § 11:9

Honorable W. Homer Drake, Jr., Honorable Paul W. Bonapfel, Adam M. Goodman

§ 11:9. Applicability of "best interest of creditors" test of § 1325(a)(4) to postconfirmation modification, Chapter 13 Practice & Procedure § 11:9

Because the hypothetical liquidation to which Code § 1325(a)(4) refers is properly determined by reference to what a Chapter 7 trustee would produce for payment at the time of the postconfirmation modification, proper application of the best interest test requires determination of the liquidation result if conversion to Chapter 7 occurred at that time.

Code § 348(f) thus controls application of the best interest test when a party seeks modification even if the "effective date" for doing so is the modification date. Code § 348(f)(1)(A) determines the contents of the estate as the debtor's property at the time of filing the petition, while Code § 348(f)(1)(B) requires that the value of that property be redetermined as of the modification date.

Under these principles, the best interest test in the postconfirmation modification context properly takes into account appreciation in value of a debtor's prepetition property as of the date of modification, but does not result in inclusion of property that the debtor acquired after confirmation.

THE ENHANCED VALUE BELONGS TO THE DEBTORS

In re Baker, 620 B.R. 655 (Bankr. D. Colo. 2020)

ddate for "performing best interests of creditors" calculation, for purpose of determining whether confirmed Chapter 13 plan may be modified, remains the petition date and does not shift to plan modification date;

Confirmation of Chapter 13 plan results in termination of bankruptcy estate; and

Iit was not bad faith by Chapter 13 debtor, following post-confirmation sale of his home, to propose plan modification under which he would retain any net proceeds.

In re Barrera, No. BAP CO-20-003, 2020 WL 5869458, at *9 (10th Cir. BAP (Colo.) Oct. 2, 2020)

The Bankruptcy Code provides that property of the estate upon converting from chapter 13 to other chapters consists of property of the estate as of the date of the original petition. However, neither § 348(f) nor § 541(a) clearly delineate a debtor's interest in the postpetition appreciation of a homestead. Interpreting congressional intent as incentivizing chapter 13 repayment and following the guidance of many other courts that have reviewed this issue, we hold any postpetition appreciation in the value of the debtor's prepetition property—including postpetition appreciation of a homestead—belongs to the debtor and does not become property of the estate upon conversion to chapter 7.

In re Trumbas, 245 B.R. 764, 767 (Bankr. D. Mass. 2000)

I decline to construe the provision in such a manner that would lead to the "absurd result that a Chapter 13 debtor could be required by consecutive motions from unsecured claim holders to continuously modify the confirmed plan if the debtor owns an asset that appreciates after confirmation of each modified plan." 2 Keith M. Lundin, Chapter 13 Bankruptcy 6–132 (1996). That the Debtor's home would increase in value was foreseeable when the Court confirmed the Debtor's plan in 1995. Neither FNMA nor the Debtor provided for the use of post-confirmation appreciation in value, either in the confirmation order or the parties' stipulation, to fund the Debtor's plan. And nothing in the Bankruptcy Code requires the Debtor—after diligently making 57 months of plan payments (out of 60 plan payments) under a confirmed plan—to incur new debt or to sell her home as a condition precedent to obtaining her discharge. I therefore decline to extend the scope of § 1329 to require the modification FNMA seeks to accomplish here.

In re Cofer, 625 B.R. 194, 202 (Bankr. D. Idaho 2021)

The Court finds the reasoning of *Barrera I* and *Lynch* more persuasive than that of *Goins* because it better reflects the legislative intent of § 348. Conversion from chapter 13 to chapter 7 creates an estate in the property that would have been property of the estate as of the date of the petition that is still possessed or controlled by the debtor. Based on the comments in the House Report, Congress took issue with the remedy Trustee seeks in this motion. Further, as Debtor had

equity in the Home on the date of the petition, the home would likely have been abandoned to the Debtor if this case had proceeded under chapter 7 from its commencement. Thus, the appreciation should not belong to the estate now merely because the case began as a chapter 13 case and was converted to a chapter 7 case. The Court also notes that a trustee maintains a recourse against a debtor who converts in bad faith which includes all postpetition assets in the estate of the converted case. § 348(f)(2). Trustee has pointed to nothing indicating Debtor converted this case in bad faith. Therefore, the Court concludes that the appreciation in the Home inured to the Debtor upon conversion.

re Smith, 514 B.R. 464, 472 (Bankr. N.D. Tex. 2014)

The appreciation of the property, and thus the $35,341.59, is not property of the estate and is not subject to the Motion to Distribute Funds and Pay Creditors in Full. In reaching this conclusion, the Court recognizes that its holding is contrary to the holding of the First Circuit in *Barbosa.*[7] The holding in *Barbosa* is premised upon the theory that though estate property vests in the debtor upon confirmation, its proceeds,[8] if realized post-confirmation, become estate property. This simply does not accord with the Court's reading and analysis of the statute.

Even if the post-confirmation appreciation in value was property of the estate, the appreciation is not disposable income.

In re Black, 609 B.R. 518, 529 (B.A.P. 9th Cir. 2019)

We acknowledge that there is a split in authority on this point. *Compare Barbosa*, 235 F.3d at 37, *and In re Suratt*, Case No. 95-6183-HO, 1996 WL 914095, at *3 (D. Or. Jan. 10, 1996) (allowing modification of chapter 13 plan to account for postconfirmation appreciation in property), *with In re Smith*, 514 B.R. 464, 472 (Bankr. N.D. Tex. 2014) (“Even if the post-confirmation appreciation in value was property of the estate, the appreciation is not disposable income [that could be made available to creditors in the analogous chapter 12 context.]”), *and In re Niles*, 342 B.R. at 75 (when considering whether property is property of the estate upon conversion from chapter 13 to chapter 7, “the value of the estate's interest in the [postpetition appreciation] proceeds from Debtor's sale of the property does not include any of the nonexempt sales proceeds”).

In our view, the revesting provision of the confirmed plan means that the debtor owns the property outright and that the debtor is entitled to any postpetition appreciation.

The Chapter 7 discharge erases all dischargeable, unsecured debts. The discharge, however, only prevents creditors from collecting against the debtors personally. Any liens on secured property ride through the bankruptcy. The liens become non-recourse loans. When the debtor then files under Chapter 13…the remaining liens are claims in the Chapter 13.

***In re Winitzky*, 2009 WL 9139891 at *1 (Bankr. C.D. Cal. 2009) (citations omitted).**

2021 CONSUMER PRACTICE Extravaganza

The discharge only eliminates personal liability

11 U.S.C. 524(a)(2): The discharge operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor. "The bankruptcy discharge creates something akin to nonrecourse debt." *In re Okosisi*, 451 B.R. 90 (Bankr. D. Nev. 2011).

2021 CONSUMER PRACTICE Extravaganza

The discharge does not eliminate liens

Section 524 does not affect the fundamental principle of bankruptcy law that, unless otherwise avoidable under the bankruptcy code, valid liens survive the bankruptcy discharge. *Dewsnup v. Timm*, 502 U.S. 410, 417 (1992).

2021 CONSUMER PRACTICE Extravaganza

Valid liens on estate property are still claims

11 U.S.C. 101(5)(A): A claim means a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured."

2021 CONSUMER PRACTICE Extravaganza

Claims are generally allowed

A claim is allowed, unless a party in interest objects. 502(a). Absent an objection, a proof of claim constitutes prima facie evidence of the validity and amount of a claim. Fed.R.Bankr.P. 3001. When an objection is made, the claim will still be allowed, except to the extent that one of several conditions are met. These conditions include (1) that the claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than the claim is contingent or unmatured, (2) it's for unmatured interest… or (9) proof of the claim is not timely filed.

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When allowed claims are unsecured (1):

Under 11 U.S.C. 506(a)(1), an allowed claim of a creditor secured by a lien on property in which the estate has an interest, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property.

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When allowed claims are unsecured (2):

The term "unsecured," in the context of bankruptcy essentially means "not secured by value"; the term does not imply that there must be is *in personam* liability on the underlying claim.

Same treatment/classification:

Under 1322(a)(3), if the plan classifies claims, the plan shall provide for the same treatment for each claim within a particular class.

The non-recourse stripped claim has to be paid pro rata with any other allowed unsecured claims in the case.

Nothing in the Bankruptcy Code Prohibits Chapter 20

Had Congress wished to prohibit "Chapter 20" debtors from voiding or modifying creditors' in rem rights, "it would not have done so by restricting the availability of a mechanism that by definition only affects in personam liability." A conclusion to the contrary would "ignore the Bankruptcy Code's unequivocal distinction between in personam and in rem liability."

Quoted from *In re Blendheim*, 803 F.3d 477 (9th Cir. 2015)
See Curwen v. Whiton, 557 B.R. 39 (D. Conn. 2016)

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What is a “Chapter 20”

Within the four years after the Chapter 7 case, the Debtors file a chapter 13, ineligible for a discharge, but able to utilize different sections of the code to obtain relief

2021 CONSUMER PRACTICE Extravaganza

What does it mean to “Strip off” in a Chapter 20

“strip off” involves a scenario in which the underlying collateral securing a junior mortgage has insufficient value beyond the amount owing on the senior mortgage. As a result, the entirety of the junior mortgage lien is avoided. A chapter 20 case arises where the debtor files a chapter 13 petition shortly after receiving a chapter 7 discharge, thus becoming a “chapter 20” debtor

Nothing in the Code Prohibits Sequential Filings

In *Johnson v. Home State Bank,* 501 U.S. 78 (1991), the Court held that Congress expressly prohibited the sequential and serial filings of a variety of bankruptcy cases but did not prohibit the sequential filing of a chapter 7 and chapter 13 case; thus a chapter 20 case is not prohibited under the Code. *Id*. at 87

A Discharged Secured Claim is a Claim for Chapter 13 Inclusion

A mortgage lien securing an obligation for which a debtor's personal liability has been discharged in a Chapter 7 liquidation is a "claim" within the meaning of § 101(5) and is subject to inclusion in an approved Chapter 13 reorganization plan.

Johnson v. Home State Bank, 501 U.S. 78, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991)
Quoting Pennsylvania Dept. of Public Welfare v. Davenport, 110 S.Ct. 2126, (1990)

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1325(a)(5)(B) is not a Bar to Chapter 20 Lien Strip

§ 1325(a)(5)(B) is not a bar to chapter 20 lien stripping because the unsecured status of the in rem claim (as determined after bifurcation under § 506(a)) precludes application of this section, which expressly applies only to allowed "secured claims".

Branigan v. Davis (In re Davis), 716 F.3d 331 (4th Cir. 2013)
Larson v. Nationstar Mortg. LLC (In re Larson), 544 B.R. 883 (Bankr. W.D. Wis. 2016)

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Eligibility for Discharge is "Irrelevant"

Nothing in the code ties modification of an unsecured lien to a discharge in Chapter 13

In re Scantling, 754 F.3d at 1329–30
In re Davis, 716 F.3d at 337–38
In re Cain, 513 B.R. at 322
In re Waterman, 469 B.R. at 339–40
Boukatch v. Midfirst Bank (In re Boukatch), 533 B.R. 292 (B.A.P. 9th Cir. 2015)

Congress did not intend to prevent lien Stripping through 1328(f)(1)

1328(f)(1) states, "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter

In re Okosisi, 451 B.R. at 101
In re Hill, 440 B.R. at 182
In re Frazier, 448 B.R. at 809 (citing Johnson, 501 U.S. 78, 111 S.Ct. 2150)

Junior lien holders do not have allowed unsecured claims

Those in personam rights and claims cannot now be resurrected and allowed as an unsecured claim in this case in contravention of that discharge simply because Real Time's in rem rights were stripped off in this case.

In re Sweitzer, 476 B.R. 468 (Bankr. D.Md. 2012)
In re Scantling, 465 B.R. 671 (Bankr. M.D.Fla. 2012)
In re Rosa (Bankr. N.D. Cal. 2014)

Plan Completion makes Lien Strip Permanent

Lien strips in a no-discharge chapter 13 case become permanent upon completion of plan payments, and there is nothing in the Code which requires a discharge.

A sampling of supporting cases:

In re Fisette, 455 B.R. 177 (B.A.P. 8th Cir. 2011)
Wells Fargo Bank, N.A. v. Scantling, 754 F.3d 1323 (11th Cir. 2014)
Boukatch v. MidFirst Bank (In re Boukatch), 533 B.R. 292 (B.A.P. 9th Cir. 2015)
In re Blendheim, 803 F.3d 477 (9th Cir. 2015)
In re Prince, 236 B.R. 746, 750–51 (Bankr.N.D.Okla.1999);
In re Stroud, 219 B.R. 388, 390 (Bankr.M.D.N.C.1997)
In re Harris, 482 B.R. 899 (Bankr. N.D. Ill. 2012)

Great Debates: Should Bifurcation of Chapter 7 Fees Be Allowed?

ABI Consumer Practice Extravaganza 2021

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I. Why Bifurcate?

A. Traditionally, a chapter 7 debtor's attorney's fees must be paid in full before the case is filed. *Lamie v. United States Trustee*, 540 U.S. 526, 537 (2004). Chapter 7 debtors' counsel are not employed under 11 U.S.C. § 327 and, as a result, may not be compensated from the estate under 11 U.S.C. § 330. *Id.* at 534. And generally, attorney's fees owing under pre-petition retention agreements are subject to the automatic stay and discharge. *See, e.g., Rittenhouse v. Eisen*, 404 F.3d 395, 397 (6th Cir. 2005); *but see Gordon v. Hines (In re Hines)*, 147 F.3d 1185, 1191 (9th Cir. 1998) (chapter 7 debtors' attorney's fees collectable post-petition).

B. Bifurcation and other alternatives to the traditional prepaid chapter 7 fee model are largely driven by the realities of consumer bankruptcy practice. Filings have trended downwards in recent years, particularly during the COVID-19 pandemic. Alternative fee arrangements may provide attorneys with a competitive advantage and, when third-party financing is involved, immediate liquidity.

C. Bifurcation is also a suggested way to alleviate access to justice concerns in the consumer bankruptcy system. In the bankruptcy context, access to justice concerns often relate to cost barriers, particularly in chapter 7.

II. Bifurcated Agreements

A. Bifurcation involves dividing the debtor's attorney's retention across two agreements. The first agreement is entered into pre-petition, usually requires the debtor to pay either no fee or a nominal fee, and covers minimal services including filing a skeletal petition and the list of creditors required under Bankruptcy Code Section 521(a)(1)(A) and Bankruptcy Rule 1007(a)(1).

B. All other services to complete the chapter 7 case, including preparing and filing the schedules/statement of financial affairs and attending the meeting

of creditors under Section 341, are classified as post-petition services and are covered by a second contract executed post-petition. The second contract includes the balance of the total attorney's fee not covered under the pre-petition contract. The fees under the post-petition contract are arguably not subject to the automatic stay or discharge and are generally payable in installments. In theory, the debtor is under no obligation to sign the post-petition agreement and could elect to instead hire other counsel or complete the case *pro se*.

C. A common bifurcated fee model involves debtors' attorneys' use of specialized third-party financing to maintain a steady cash flow and offload the hassled and risk of post-petition collections. Under these models the debtor's attorney assigns, grants a security interest in, or factors the fees owing under the post-petition contract to the finance company. The finance company then pays the attorney a discounted lump sum and collects the full post-petition fee from the debtor.

III. Advantages and Concerns

A. As recognized by the ABI's Commission on Consumer Bankruptcy and a number of courts, the limitations imposed under *Lamie* present substantial concerns regarding access to the financial relief afforded by chapter 7 bankruptcy. Without limitation, when potential chapter 7 debtors lack the funds necessary to pay all attorney's fees in advance, they often are deprived of the immediate relief necessary to prevent imminent collection activity, such as a garnishment, foreclosure, or repossession that will plunge the debtor into further financial despair. Alternatively, *Lamie* places substantial risk on attorneys that do not insist on payment in full in advance, as any fees for pre-petition work will become dischargeable and essentially uncollectible upon the filing of the petition. An unintended consequence of this conundrum is the funneling of many debtors into chapter 13 cases for the sole purpose of ensuring that the attorney is paid. While chapter 13 is an appropriate option for many debtors, many attorneys are steering their clients into chapter 13 when chapter 7 clearly is more appropriate, solely because they need a mechanism for getting paid. Bifurcation of fees, if fully voluntary and based on informed consent after meticulous disclosures, offers a means for providing chapter 7 relief to the debtors that need it the most. It affords debtors an opportunity to avoid financial calamity without imposing undue risk on their attorneys. Because bifurcation requires preparation on both sides of the filing date, however, it likely is appropriate only in the simplest chapter 7 cases where minimal due diligence and pre-petition preparation is required (i.e., below median income debtors with few assets).

B. Participants in the consumer bankruptcy system including judges, the United States Trustee Program, and other practitioners, have raised concerns about bifurcation. These include:

1. Whether the debtor has received adequate information from counsel to give fully informed consent.

2. Whether counsel has fully and properly disclosed the particulars of the arrangement as required under the Bankruptcy Code and Rules.

3. The implication that pre-petition services have little or no value, or worse, that those vital services were never performed.

4. Whether bifurcation is an improper effort to convert a pre-petition dischargeable obligation to a post-petition nondischargeable debt.

5. Whether the fees charged are reasonable. This is of particular concern when third-party financing is involved because many attorneys pass the cost of financing along to the debtor.

IV. Is Bifurcation Permissible?

A. One of the earliest, seminal decisions on bifurcated models was *In re Hazlett*, No. 16-30360, 2019 WL 1567751 (Bankr. D. Utah Apr. 10, 2019). The Court outlined four factors to be considered in determining whether a bifurcated fee arrangement is permissible:

1. Is it in the client's best interest?

2. Did the attorney provide appropriate disclosures?

3. Did the client give informed, written consent?

4. Are the attorney's fees and costs reasonable and necessary?

B. The bankruptcy court in *In re Carr* emphasized the need for meticulous disclosures and pre-petition counseling in connection with any bifurcation, and it approved bifurcation when based on informed consent and reasonable fees. *In re Carr*, 613 B.R. 427 (Bankr. E.D. Ky. 2020).

C. Similarly, in *In re Brown*, the bankruptcy court set standards for permissible bifurcation in the district that closely tracked the *Hazlett* factors. *In re Brown*, 631 B.R. 77 (Bankr. S.D. Fla. 2021). Notably, this decision prohibited "factoring." *Id.* at 99, n. 34.

D. In contrast, other recent cases have taken a different approach, evaluating holistically whether bifurcation comports with a debtor's attorney's ethical duties and applicable rules.

   1. In *In re Prophet*, 628 B.R. 788 (Bankr. D.S.C. 2021) (appeal pending), the court held that bifurcated agreements violated a local rule providing that (with the exception of appeals and adversary proceedings) "the law firm/attorney which files the bankruptcy petition for the debtor shall be deemed the responsible attorney of record for all purposes including the representation of the debtor at all hearings and in all matters arising in conjunction with the case." SC LBR 9011-1(b).

   2. Similarly, in *In re Baldwin*, No. 20-10009, 2021 WL 4592265 (Bankr. W.D. Ky. Oct. 5, 2021) the court followed *Prophet's* reasoning to conclude that bifurcated agreements violated a similar local rule. The court also held that the attorney's duties under the local rule created a nondischargeable prepetition obligation and that bifurcation violates the Kentucky Rules of Professional Conduct. Finally, the court held that the attorney in that case (which involved increased fees and third-party financing) charged unreasonable fees and made inadequate disclosures.

E. Other decisions involving third-party financing models have found the practice of charging increased fees to offset the cost of obtaining outside funding to be improper. *See Ridings v. Casamatta*, No. 20-6023 (B.A.P. 8th Cir. June 21, 2021), *In re Wright*, 591 B.R. 68 (Bankr. N.D. Okla. 2018), *In re Milner*, 612 B.R. 415 (Bankr. W.D. Okla. 2019) (appeal pending).

Faculty

Penelope N. Bach is an attorney with Bach Law Offices, Inc. in Northbrook, Ill., and has been serving consumers and clients throughout Illinois for more than a decade. She focuses her practice on bankruptcy, bankruptcy litigation, mortgage foreclosure, real estate law and consumer defense. Ms. Bach is admitted to the Illinois Bar, the Northern District of Illinois Federal Trial Bar and the Northern District of Illinois Bankruptcy Court. She previously practiced with Sulaiman Law Group. Ms. Bach is a member of ABI, the American Bar Association, the Northbrook Chamber of Commerce and the National Association of Consumer Advocates (NACA), and she received the Illinois Rising Stars Award of Excellence. She received her Bachelor's degree in education from Drake University and her J.D. from DePaul University School of Law.

Gregory Burrell is a chapter 13 trustee in Minneapolis, appointed in 2013, and is a licensed attorney in Louisiana and Minnesota. He started his legal career with Murray & Murray Law firm as a consumer attorney representing debtors in chapter 7 and 13 bankruptcies, businesses in chapter 7 bankruptcies and the chapter 7 trustee in various litigation. Mr. Burrell founded a bankruptcy law clinic at Southern University Law Center, where he led student attorneys, who filed chapter 7 bankruptcies free of charge on behalf of individuals living below the poverty line. He also served as staff attorney to the chapter 13 trustee in the Western District of Louisiana. Mr. Burrell is a permanent member of the Bankruptcy Practice Committee in the District of Minnesota, a current NACTT board member and treasurer-elect for NACTT. He is very involved in the topic of equal justice under the law for marginalized communities and what can be done to correct such concerns within the bankruptcy system. Mr. Burrell received his Bachelor's degree in political science from Xavier University with a minor in business administration, and his J.D. from Southern University Law Center.

Christopher L. Hawkins is a partner in the Birmingham, Ala., office of Bradley Arant Boult Cummings LLP. Throughout his 20-year career, he has counseled individuals and businesses in a wide variety of bankruptcy and insolvency-related matters. He regularly represents debtors and creditors in out-of-court business restructurings, chapter 11 bankruptcy cases, and bankruptcy-related litigation, but for the past decade he has devoted most of his practice to advising large financial institutions on bankruptcy compliance and bankruptcy-related regulatory matters. In addition, he has represented financial institutions in nationwide consumer bankruptcy litigation, regulatory enforcement matters and large-scale remediation projects, as well as through his time serving as interim in-house bankruptcy counsel for one of the largest financial institutions in the Fortune 100. Over the years, Mr. Hawkins has counseled clients on a wide range of consumer bankruptcy engagements, including designing and conducting risk assessments, drafting policies and procedures, scoping and implementing bankruptcy remediation projects, preparing comments to regulators on proposed regulations impacting bankruptcy, training client bankruptcy departments, auditing third-party bankruptcy vendors and counseling clients on bankruptcy operational issues. He received his B.S. *summa cum laude* in 1996 from Spring Hill College and his J.D. *summa cum laude* in 1999 from the University of Alabama School of Law, where he was a member of the Order of the Coif, served on the *Alabama Law Review*, received the M. Leigh Harrison Award and was a Hugo Black Scholar.

Adam D. Herring has served as associate general counsel for Consumer Law in the Executive Office for U.S. Trustees in Washington, D.C., since 2016. He oversees high-profile litigation involving the U.S. Trustee Program's civil enforcement priorities, including redressing abuse of the bankruptcy process by debtors, creditors and professionals, and provides legal and policy advice to program and department leadership. Previously, Mr. Herring was in private practice in Atlanta, representing parties in chapter 7, 11 and 13 bankruptcy cases and in bankruptcy and commercial litigation. He is a 2019 honoree of ABI's "40 Under 40" program, received a Director's Award from the U.S. Trustee Program, and was named Volunteer of the Year for the Atlanta Legal Aid Society in 2015. Mr. Herring currently serves as Newsletter Editor for ABI's Ethics and Professional Compensation Committee. He is a frequent speaker on bankruptcy and consumer matters and has authored published articles on a range of bankruptcy topics. Mr. Herring received his undergraduate degree with distinction from the University of North Carolina at Chapel Hill and his J.D. from Emory University School of Law.

Henry E. Hildebrand, III has served as standing trustee for chapter 13 matters in the Middle District of Tennessee in Nashville since 1982 and as standing chapter 12 trustee for that district since 1986. He also is Of Counsel to the Nashville law firm of Belcher Sykes Harrington, PLLC. Mr. Hildebrand is a Fellow of the American College of Bankruptcy and the Nashville Bar Foundation. He is Board Certified in Consumer Bankruptcy Law by the American Board of Certification and serves on its faculty committee, and he is chairman of the Legislative and Legal Affairs Committee for the National Association of Chapter 13 Trustees (NACTT). In addition, he is on the board of directors for the NACTT Academy for Consumer Bankruptcy Education, Inc. and is an adjunct faculty member for the Nashville School of Law and St. Johns University School of Law. Mr. Hildebrand served as a commissioner on ABI's Commission on Consumer Bankruptcy. He received his undergraduate degree from Vanderbilt University and his J.D. from the National Law Center of George Washington University.

Hon. Barbara J. Houser is a U.S. Bankruptcy Judge for the Northern District of Texas in Dallas, now serving on recall status since her retirement in May 2020, and she is ABI's Immediate Past President. She previously was with Locke, Purnell, Boren, Laney & Neely in Dallas and became a shareholder there in 1985. In 1988, she joined Sheinfeld, Maley & Kay, P.C. as the shareholder-in-charge of the Dallas office and remained there until she was sworn in as a U.S. Bankruptcy Judge in 2000. While at Sheinfeld, Judge Houser led the firm's representation of clients in a variety of significant national chapter 11 cases. She lectures and publishes frequently, is a past chairman of the Dallas Bar Association's Committee on Bankruptcy and Corporate Reorganization, is a member of the Dallas, Texas and American Bar Associations, and is a Fellow of the Texas and American Bar Foundations. Judge Houser served as a contributing author to *Collier on Bankruptcy* for many years and taught creditors' rights as a visiting professor at the SMU Dedman School of Law. She was elected a Fellow of the American College of Bankruptcy in 1994, and in 1996, she was elected a conferee of the National Bankruptcy Conference. In 1998, the National Law Journal named Judge Houser as one of the 50 most influential women lawyers in America. After becoming a bankruptcy judge, she joined the National Conference of Bankruptcy Judges and served as its president from 2009-10. Judge Houser has received a variety of awards and honors since taking the bench, the Distinguished Alumni Award for Judicial Service from the SMU Dedman School of Law in February 2011, ABI's Judge William Norton Jr. Judicial Excellence Award in October 2014, and the Distinguished Service Award from the Alliance of Bankruptcy Inns of the American Inns of Court in October 2016. She also received

the Distinguished Service Award from the American College of Bankruptcy in October 2021. Judge Houser has served the judiciary in a number of capacities during her 21 years on the bench, including as a member of the Judicial Conference Committee on the Administration of the Bankruptcy System for seven years, as a member of the faculty that the Federal Judicial Center selected to teach new bankruptcy judges for many years, and as a member of the board of directors of the Federal Judicial Center, which is chaired by Chief Justice John Roberts. In June 2017, she was appointed to serve as the leader of a five-federal-judge mediation team tasked with settling all of the issues in dispute in connection with the historic insolvency filings by the Commonwealth of Puerto Rico and certain related instrumentalities under Title III of PROMESA. Judge Houser received her undergraduate degree with high distinction from the University of Nebraska and her J.D. from Southern Methodist University Law School, where she was editor of its law review.

Justin R. Storer is a partner at the Law Office of William J. Factor, Ltd. in Chicago and has focused his practice in bankruptcy court and bankruptcy appellate work. He regularly represents debtors, creditors and trustees in complex chapter 7 and chapter 13 cases, and represents struggling small businesses in chapter 11. Mr. Storer has obtained significant victories for debtors and trustees in bankruptcy court, district court and the Seventh Circuit Court of Appeals. He has chaired the Chicago Bar Association's Bankruptcy and Reorganization Committee, has been an *Illinois Super Lawyers* "Rising Star" in consumer bankruptcy every year since 2013, and is the proud recipient of Chicago Volunteer Legal Services' 2019 "Distinguished Service" award for his work helping veterans and low-income individuals navigate the bankruptcy system. Mr. Storer received his J.D. from DePaul University College of Law.