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Caselaw Update

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3rd Annual Southern District of Texas Consumer Bankruptcy Conference

How Sub Chapter V may intersect with individual bankruptcy option analysis

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When Did Subchapter V get established? Why?

Subchapter V bankruptcy was established by the **Small Business Reorganization Act of 2019 (SBRA)**, which was enacted on **August 23, 2019**. The provisions became effective on **February 19, 2020**, coincidentally right before COVID pandemic hit but unrelated to this dynamic. It was just good timing for small businesses impacted by COVID.

The overarching goal of setting up the SBRA was a good one: the cost of filing and administering a chapter 11 case was getting cost prohibitive for small entities. Businesses were too broke to avail themselves of the option of filing chapter 11 when taking into account the cost of debtor's counsel, the administrative burden and professionals hired by an Official Committee of Unsecured Creditors. The predicate for the SBRA was very well intentioned.

The goal of Subchapter V is to provide a streamlined, more cost-effective Chapter 11 reorganization process for small businesses.

Key details about the establishment and implementation:

- **Enactment Date:** The legislation was signed into law on **August 23, 2019**.
- **Effective Date:** Subchapter V went into effect on **February 19, 2020**.
- **Initial Debt Limit:** The original eligibility required a small business debtor to have total debts of less than approximately $2.75 million (specifically $2,725,625).
- **Temporary Increase:** Due to the COVID-19 pandemic, the CARES Act temporarily increased the debt limit to $7.5 million in March 2020 to allow more businesses to use this process.
- **Current Status:** The temporary $7.5 million limit expired in June 2024, and the limit reverted to the inflation-adjusted original amount, which is currently around **$3.43**

million. There has been a lot of discussion about increasing the debt limit to a higher amount such as $15 or 10 million or at least back to $7.5 million but that has been lost in the legislative messy process right now. This author believes a $15 million debt cap limit would make Subchapter V a phenomenal tool for small businesses to get a second chance.

The SBRA actually creates two options. A **Subchapter V debtor** case is a specialized, streamlined form of Chapter 11 bankruptcy that an eligible small business can elect to use, while a **small business debtor election** refers to the standard, more complex Chapter 11 process, but with specific rules for cases where the debtor meets the small business definition and does not choose Subchapter V. From the author's point of view, if a debtor can qualify for Subchapter V, it should pursue this option versus a small business debtor election.

Illustrative list of some differences between Sub V and normal chapter 11

Feature	Subchapter V Debtor Case	Small Business Debtor Election (Traditional Chapter 11)
Trustee	A trustee is automatically appointed to monitor the case and facilitate a plan, but the debtor remains in possession of assets and operations.	A trustee is generally not appointed unless there is evidence of fraud or gross mismanagement.
Creditors' Committee	No unsecured creditors' committee is appointed unless the court orders one for cause.	An unsecured creditors' committee is typically appointed.
Disclosure Statement	Not required, saving time and expense.	A detailed disclosure statement must be filed and approved by the court.
Plan Filing Exclusivity	Only the debtor can file a reorganization plan.	Other parties (like a creditors' committee) can file a plan after the debtor's 120-day exclusivity period expires.
Plan Filing Deadline	The debtor must file a plan within 90 days of filing for bankruptcy.	The debtor has an initial 120 days to file a plan, which can be extended.
Absolute Priority Rule	Does not apply, allowing existing equity holders to retain their interests even if unsecured creditors aren't fully paid, provided the plan is "fair and equitable".	Applies, generally requiring higher-priority claims to be paid in full before lower-priority claims (like equity) receive anything.

Plan Voting/Confirmation	Creditor voting is not required; the court confirms the plan if it is "fair and equitable".	At least one impaired class of creditors must vote in favor of the plan for confirmation.
U.S. Trustee Fees	The debtor does not pay quarterly U.S. Trustee fees based on disbursements.	Quarterly U.S. Trustee fees are required.
Debt Limit	Currently a maximum of around $3.43 million in aggregate noncontingent liquidated debts (adjusted periodically for inflation).	The same debt limit as Subchapter V applies to qualify as a "small business debtor" in a traditional Chapter 11 case if Subchapter V is not elected.

In essence, Subchapter V provides a faster, simpler, and less expensive path to reorganization that is more debtor-friendly, while the small business debtor election under traditional Chapter 11 remains a more formal process with greater creditor protection.

First Priority Option: Can a Subchapter V business filing be used to protect a non-debtor guarantor on the same business debt(s)?

A bankruptcy lawyer should explore any and all options to **avoid** filing for bankruptcy given the cost and uncertainty. Toward this end, one possible alternative to avoid a filing for an individual that shares business debts with a Subchapter V business debtor: a temporary injunction in the bk case of the company that protects the non debtor guarantor pending fulfillment and hopefully eventual payment and discharge of the debt under the Subchapter V plan. The individual can avoid bk!

See In re Eng'g Recruiting Experts, 673 B.R. 32 (Bankr. M.D. Fla. 2025); the written opinion is attached for your reference as attachment #1.

Second Path: Joint Filing of the Business and Individual or possibly just the Individual?

Individuals should consider pursuing Subchapter V bankruptcy if they meet the eligibility requirements and seek a streamlined, cost-effective reorganization process. Subchapter V is designed for small business debtors, including individuals, with limited debt, at least half of which arises from commercial or business activities. **In re Fama-Chiarizia**, 655 B.R. 48. It offers significant advantages over traditional Chapter 11 bankruptcy, such as the elimination of the absolute priority rule, no requirement for a disclosure statement unless ordered by the court, and reduced administrative costs, including the absence of U.S. Trustee fees.

Subchapter V also provides debtors with exclusive rights to propose a reorganization plan, which must be filed within 90 days of the order for relief unless an extension is granted due to circumstances beyond the debtor's control. The plan allows debtors to pay disposable income to unsecured creditors over three to five years while retaining ownership of their business. Additionally, the process is expedited, with fewer procedural hurdles, making it particularly suitable for individuals or small businesses aiming to reorganize quickly and efficiently.

However, individuals should carefully evaluate their circumstances before electing Subchapter V. For instance, the process involves the appointment of a trustee, who oversees the case and may scrutinize the debtor's financial activities. **In re Carolina Sleep Shoppe, LLC**, 670 B.R. 764. Moreover, certain debts, such as those listed under § 523(a), may not be dischargeable under Subchapter V, depending on the jurisdiction and the nature of the debtor (individual or corporate). **Avion Funding, L.L.C. v. GFS Indus., L.L.C**. **(In re GFS Indus., L.L.C.)**, 99 F.4th 223, **Benshot LLC v. 2 Monkey Trading, LLC (In re 2 Monkey Trading, LLC)**, 142 F.4th 1323. Therefore, individuals should assess whether the benefits of Subchapter V align with their financial goals.

The relationship between Subchapter V bankruptcy and individual liability is multifaceted, particularly in the context of the discharge of debts and the applicability of certain provisions of the Bankruptcy Code. Subchapter V provides a streamlined process for small business debtors, including individuals, to reorganize their debts.

However, it imposes specific limitations on the discharge of certain debts, particularly those outlined in 11 USC § 523. Courts have debated whether these discharge exceptions apply solely to individual debtors or extend to corporate debtors as well. The Fourth and Fifth Circuits have concluded that § 523(a) exceptions apply to both individual and corporate debtors under Subchapter V, while other courts, such as the Ninth Circuit Bankruptcy Appellate Panel, have held that these exceptions apply only to individual debtors.

Additionally, Subchapter V offers significant benefits to individual debtors, such as relief from the absolute priority rule, which typically requires debtors to dedicate prepetition assets to creditor repayment. This allows individual debtors to retain certain assets while committing projected disposable income to a repayment plan over three to five years. This structure mirrors Chapter 13 but is tailored for individuals with higher debt levels who are ineligible for Chapter 7 or Chapter 13.

Subchapter V bankruptcy is designed for qualifying small business owners with less than $3.43 million in certain types of debt, allowing them to reorganize their debts rather than liquidate their business. Unlike Chapter 13, which is typically used by individuals with regular income to repay debts over time, Subchapter V is tailored for individuals or entities engaged in commercial or business activities that are able to present a set of projections for the next three to five years which shows some disposable income that can be dedicated to unsecured creditors. Key considerations include eligibility requirements, the ability to confirm a reorganization plan, and the impact of deadlines under Subchapter V.

• **In re McCune**, 635 B.R. 409, the court held that the debtors were not eligible for Subchapter V relief because they were not engaged in commercial or business activities, a requirement under 11 USCS § 1182. The court emphasized that eligibility for Subchapter V depends on whether the debtor is currently engaged in such activities. Additionally, the court considered factors such as good faith in filing the initial bankruptcy petition and the ability to effectuate a Chapter 11 plan when evaluating the debtors' motion to convert from Chapter 13 to Chapter 11.

• **In re Keffer**, 628 B.R. 897. the court allowed the debtor to convert his Chapter 13 case to Subchapter V despite the expiration of deadlines under 11 USC § 1188 and 11 USC § 1189. The court reasoned that the delay was caused by circumstances beyond the debtor's control, such as the IRS submitting an amended proof of claim that increased his debts beyond Chapter 13 limits. The court highlighted that Subchapter V is a valuable tool for qualifying debtors and that conversion was appropriate under the circumstances.

• **Barcelona Capital, LLC v. Neno Cab Corp**., 648 B.R. 578. the court discussed the purpose and features of Subchapter V, noting that it enables debtors to reorganize their debts with the sole right to confirm a plan of reorganization, unlike typical Chapter 11 proceedings. The court also highlighted that Subchapter V modifies the rules for creditor objections, allowing greater authority for the court to adopt a debtor's plan even if creditors object. This case underscores the distinct advantages of Subchapter V for qualifying debtors.

Subchapter V offers significant advantages for individual debtors, especially those with above median income or high debt levels who may not qualify for Chapter 7 or Chapter 13. Unlike Chapter 13, Subchapter V allows individuals to retain prepetition assets without violating the absolute priority rule, which is a critical difference. Additionally, Subchapter V requires debtors to commit their projected disposable income for three to five years to the plan, similar to Chapter 13, but with a distinct definition of disposable income under Subchapter V. This flexibility can make Subchapter V a more favorable option for individuals with substantial business-related debts.

Another notable aspect of Subchapter V is its treatment of secured claims related to a debtor's principal residence. If the value given was not primarily used to acquire the residence but was instead used for the debtor's small business, the debtor can modify the rights of the secured party. This provision is particularly beneficial for small business owners who have leveraged their homes for business purposes, offering them a tailored solution not available under Chapter 13.

Finally, Subchapter V introduces a non-operating trustee to monitor the case, which differs from the trustee role in Chapter 13. This trustee can take over the operation of the debtor's business if the debtor is removed for cause. This structure provides a balance of oversight and flexibility, ensuring that the debtor can reorganize effectively while maintaining accountability.

Hypothetical Fact Scenarios to Illustrate some of the salient practical points:

Scenario #1:

To file or not to file the individual sub v case

First scenario: Individual A ("A") owns and controls Entity B ("B") and A has guaranteed the business debts of B. B needs to file sub v. Should A file?

- Eligibility issues for A – did B already file sub v and if A files would the total debts of A and B exceed the debt limit
- Is an injunction available to protect A if A doesn't file but B has filed
    - Before the plan is confirmed, there is no protection for A and obtaining a 105 extension of stay will be extraordinary; If MCA's have already attached A's bank accounts, will this cause A to file? Is A commingling (not following formalities) business assets of B with personal asserts, which may have causes A's "assets" to be seized?
    - Cases allow plans to be confirmed with a temporary injunction (during the term of the plan) protecting A from collection activity. **Eng'g Recruiting Experts** 673 BR 32 Bankr MD Fla
    - Cases in the wdtx and sdtx (Neutral Posture) have confirmed plans with a temporary injunction (during the term of the plan) protecting A from collection activity from creditors that are being paid in full under the plan.
- Other considerations for A if both A and B file sub v
    - A must be prepared for full transparency on schedule I and J, which will include specific accounting for personal versus business expenses regarding income from B. See Schedule I question 8a
    - Conflicts of interest
    - Separate disposable income analysis – even if A and B are being jointly administered, will need to be separate disposable income projections

Scenario #2:

Second scenario: A owns and controls B, A has significant business debt (judgment and/or tax debt), B is not liable for A's debt, and A's income source ("engaged in business") is from B. There is no reason to file bankruptcy for B but should A file a sub v?

- Can't file chapter 7 because risk of losing control of B
- A must be prepared for full transparency on schedule I and J, which will include specific accounting for personal versus business expenses regarding income from B. See Schedule I question 8a.
- The projections will have to be consistent with historical accounting, meaning A can't arbitrarily reduce income from nondebtor entities and arbitrarily inflate A's liabilities.

See Ozcelebi 639 B.R. 365 Bankr. SDTX Rodriguez. There are cases in the WDTX (unreported) Duke and Estes.

- Must comply with Rule 2015.3 – reporting about entities in which estate holds controlling interest

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Random Bonus Addition: Case of First Impression on the use of AI and the implications of Southern District of Texas General Order 2025-04.

See: ***Kheir v. Titan Team LLC (In re Kheir)***; this case is attached hereto as Attachment #2.

See: **Southern District of Texas General Order 2025-04**; this order is attached hereto as Attachment #3.

Attachment 1

Neutral
As of: December 31, 2025 8:57 PM Z

In re Eng'g Recruiting Experts

United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division

September 2, 2025, Decided

Case No.: 3:24-bk-03292-BAJ, Chapter 11, Subchapter V

Reporter
673 B.R. 32 *; 2025 Bankr. LEXIS 2169 **; 74 Bankr. Ct. Dec. 240; 2025 LX 379589; __ B.R. __; 2025 WL 2506031

IN RE: ENGINEERING RECRUITING EXPERTS, LLC, Debtor.

Core Terms

injunction, third-party, confirm, temporary **injunction**, non-consensual, bankruptcy court, non-debtor, permanent, temporary, unsecured creditor, reorganize

Case Summary

Overview
Key Legal Holdings

- The court held that Purdue Pharma prohibits only non-consensual third-party permanent releases, not temporary third-party **injunctions** necessary for plan implementation.
- The court held that *§1123(a)(5)* in conjunction with *§105* authorizes temporary third-party **injunctions** necessary for plan implementation.
- The court held that the Plan **Injunction** satisfied the Zale factors because Mr. McHatton and the Debtor share an identity of interest.
- The court held that the Plan **Injunction** met all four factors required for issuance of a preliminary **injunction**.

Material Facts

- The Debtor operates an engineering recruiting business with Mr. McHatton as its sole owner and only employee bringing in clients.
- The Plan **Injunction** would temporarily protect Mr. McHatton from creditor actions during the plan period.
- No creditors objected to the Plan **Injunction**; only the United States Trustee objected.
- The Plan **Injunction** would terminate upon discharge, dismissal, Mr. McHatton's departure, or plan default.

Controlling Law

- *Harrington v. Purdue Pharma, L.P., 603 U.S. 204 (2024)*.
- *11 U.S.C.S. §1123(a)(5)*.
- *11 U.S.C.S. §105*.

- *Feld v. Zale Corp. (In re Zale Corp.), 62 F.3d 746 (5th Cir. 1995)*.

Court Rationale

The court reasoned that Purdue Pharma's narrow holding addressed only permanent releases, not temporary **injunctions**. The court reasoned that *§1123(a)(5)* provides authority for temporary **injunctions** necessary for plan implementation. The court reasoned that Mr. McHatton's undivided attention to the business was essential for reorganization success. The court reasoned that creditors would ultimately benefit more from the **injunction** than from immediate collection actions.

Outcome
Procedural Outcome

The court overruled the United States Trustee's objection and approved the Plan **Injunction** protecting Mr. McHatton during the plan period.

LexisNexis® Headnotes

Business & Corporate Compliance > ... > Plans > Plan Contents > Discretionary Provisions
Bankruptcy Law > ... > Plans > Plan Contents > Discretionary Provisions

Governments > Legislation > Interpretation

HN1 **Plan Contents, Discretionary Provisions**

The United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division, narrowly construes Purdue and finds that it prohibits only non-consensual third-party permanent releases as outlined by the Supreme Court but certainly not temporary third-party **injunctions**.

Business & Corporate Compliance > ... > Plans > Plan Contents > Discretionary Provisions
Bankruptcy Law > ... > Plans > Plan Contents > Discretionary Provisions

HN2 **Plan Contents, Discretionary Provisions**

The Supreme Court found that *11 U.S.C.S. 1123(b)(6)*, in conjunction with *11 U.S.C.S. 105*, does not permit bankruptcy courts to issue non-consensual third-party releases because paragraph (6) is a catchall phrase tacked on at the end of a long and detailed list of specific directions. *Section 1123(b)* also provides for what a plan may do.

Business & Corporate Compliance > ... > Plans > Plan Contents > Mandatory Provisions
Bankruptcy Law > ... > Plans > Plan Contents > Mandatory Provisions

HN3 **Plan Contents, Mandatory Provisions**

11 U.S.C.S. 1123(a) outlines mandatory provisions to be included in a plan, including *11 U.S.C.S. 1123(a)(5)*, which states that a plan shall provide adequate means for the plan's implementation, such as and then provides a non-exhaustive list of examples. Unlike the catchall provision in *11 U.S.C.S. 1123(b)(6)*, which follows a detailed and

descriptive list, *11 U.S.C.S. 1123(a)(5)* begins with a mandate and includes examples of providing adequate means for the plan's implementation.

Business & Corporate Compliance > ... > Plans > Plan Contents > Discretionary Provisions
Bankruptcy Law > ... > Plans > Plan Contents > Discretionary Provisions

Bankruptcy Law > ... > Plans > Postconfirmation Effects > Plan Implementation
Business & Corporate Compliance > ... > Plans > Postconfirmation Effects > Plan Implementation

HN4 **Plan Contents, Discretionary Provisions**

11 U.S.C.S. 1142 allows the court to direct the debtor and any other necessary party to perform any other act that is necessary for the consummation of the plan.

Business & Corporate Compliance > ... > Plans > Plan Contents > Discretionary Provisions
Bankruptcy Law > ... > Plans > Plan Contents > Discretionary Provisions

Civil Procedure > Remedies > **Injunctions** > Preliminary & Temporary **Injunctions**

HN5 **Plan Contents, Discretionary Provisions**

In determining whether to issue a temporary **injunction** of third-party actions as part of confirmation, the court applies the Zale factors used by the Fifth Circuit and then applies the traditional four-factor test for issuance of a temporary **injunction**.

Business & Corporate Compliance > ... > Plans > Plan Contents > Discretionary Provisions
Bankruptcy Law > ... > Plans > Plan Contents > Discretionary Provisions

Civil Procedure > Remedies > **Injunctions** > Permanent **Injunctions**

HN6 **Plan Contents, Discretionary Provisions**

Although permanent **injunctions** are prohibited based on the language of *11 U.S.C.S. 524(e)*, temporary **injunctions** are not and may be warranted in certain circumstances, including: (1) When the non-debtor and the debtor enjoy such an identity of interest that the suit against the non-debtor is essentially a suit against the debtor, and (2) when the third-party action will have an adverse impact on the debtor's ability to accomplish reorganization. When either of these circumstances occur, an **injunction** may be warranted.

Civil Procedure > ... > **Injunctions** > Grounds for **Injunctions** > Balance of Hardships

Civil Procedure > Remedies > **Injunctions** > Preliminary & Temporary **Injunctions**

Civil Procedure > ... > **Injunctions** > Grounds for **Injunctions** > Public Interest

Civil Procedure > ... > **Injunctions** > Grounds for **Injunctions** > Likelihood of Success

HN7 **Grounds for Injunctions, Balance of Hardships**

The traditional four-factor test for a preliminary **injunction** requires the **injunction** proponent to show that: (1) it has a substantial likelihood of success on the merits; (2) it will suffer an irreparable injury unless the **injunction** is granted; (3) the harm from the threatened injury outweighs the harm the **injunction** would cause the opposing party; and (4) the **injunction** would not be adverse to the public interest.

Business & Corporate Compliance > ... > Plans > Plan Contents > Discretionary Provisions
Bankruptcy Law > ... > Plans > Plan Contents > Discretionary Provisions

Bankruptcy Law > ... > Plan Confirmation > Prerequisites > Feasibility Test

HN8 **Plan Contents, Discretionary Provisions**

The enhanced standard provided by *11 U.S.C.S. 1191(c)(3)* fortifies the more relaxed feasibility test that *11 U.S.C.S. 1129(a)(11)* contains.

Counsel: [1]** For Ascendus, Inc, Creditor: Barry B Johnson, South Milhausen, PA, Orlando, FL.

For Regions Bank, Creditor: Aaron J Nash, Evans Petree, Memphis, TN.

For VYSTAR CREDIT UNION, Creditor: Curtis Campbell, Jimerson Birr, Jacksonville, FL; Christopher Michael Wittbrodt, Jimerson Birr, P.A., Jacksonville, FL.

For Engineering Recruiting Experts, LLC, c/o Christopher MacHatton, Debtor: Bryan K. Mickler, Mickler & Mickler, Jacksonville, FL.

For Jerrett M McConnell, McConnell Law Group, P.A., Trustee: Jerrett M McConnell, McConnell Law Group, P.A., Jacksonville, FL.

For United States Trustee -JAX 11, Office of the United States Trustee, U.S. Trustee: Scott E Bomkamp, Ust, United States Trustee, Orlando, FL.

Judges: Jason A. Burgess, United States Bankruptcy Judge.

Opinion by: Jason A. Burgess

Opinion

[*34] ORDERED.

Dated: September 02, 2025

ORDER OVERRULING OBJECTION TO NON-DEBTOR CHAPTER 11 PLAN INJUNCTION

This Case came before the Court on July 17, 2025, for a trial on confirmation of the *Debtors' Third Amended* ***Subchapter V*** *Plan of Reorganization* (the "Third Amended Plan") (Doc. 58) and the *Objection to Confirmation* (Doc. 61) filed by the United States Trustee (the "UST"). At the conclusion of the trial, the Court overruled the UST's objection **[**2]** to feasibility and confirmed the Third Amended Plan.[1] The sole remaining issue relates to the propriety of the non-debtor **injunction** contained in the Third Amended Plan. (the "Plan **Injunction**") (Doc. 58, p. 2). The Court took this issue under advisement.[2] Upon review, the Court will grant the Plan **Injunction** requested by

[1] The Court entered the Confirmation Order on July 29, 2025. (Doc. 86).

the Debtor. Importantly, no creditors objected to the temporary injunctive relief,[3] unsecured creditors voted to accept the plan terms,[4] the **Subchapter V** Trustee supported confirmation, and the Internal Revenue Service was carved out as an exception to the Plan **Injunction**.

Background

The Debtor operates an engineering recruiting business based in Jacksonville, Florida. The Debtor's sole owner is Christopher J. McHatton ("Mr. McHatton").[5] At the confirmation hearing, Mr. McHatton testified that he is primarily responsible for operating the Debtor's business. He communicates with the candidates, and the Debtor earns a commission based on a percentage of the new hire's salary. For example, a manufacturing company would pay the Debtor a $20,000.00 commission for a new hire with a salary of $100,000.00. The Debtor averages sixteen placements per year. Going forward, Mr. McHatton **[**3]** will be the sole employee in the United **[*35]** States and the *only* employee that brings in new clients and business, while the Debtor will continue to employ personnel located in Columbia, South America for more menial tasks.

Unsecured Distributions and Plan Injunction in Third Amended Plan

The Third Amended Plan provides for unsecured creditors to receive $500.00 per month over five years for a total of $30,000.00.[6] In addition to the foregoing payments, Mr. McHatton will contribute $5,000.00 annually to the unsecured creditors for a total distribution to unsecured creditors of $55,000.00 over the five-year plan term.[7]

The Plan **Injunction** provides for an extension of the automatic stay to "any co-debtor."[8] Despite this broad language, the Debtor only offered evidence and argument warranting injunctive relief in favor of Mr. McHatton. To the extent any other co-debtors exist, the Court will limit the injunctive relief to Mr. McHatton alone.

The Plan **Injunction** terminates upon the earliest of: (1) discharge or dismissal; (2) Mr. McHatton leaves his employment; (3) plan default;[9] or (4) voluntary written waiver by the co-debtor. The Third Amended Plan also requires the Debtor to submit quarterly **[**4]** reports to the **Subchapter V** Trustee and to all creditors.[10] Any creditor or interested party, including the **Subchapter V** Trustee, may file an objection with the Court post-confirmation to increase payments based on actual disposable income exceeding projected disposable income, thereby potentially increasing plan payments.[11] Finally, the Third Amended Plan tolls any applicable statute of

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[2] The Debtor and the UST previously submitted memoranda in support of their respective positions. (Docs. 54, 61).

[3] Only the UST objected to the Plan **Injunction**.

[4] Ballot Tabulation (Doc. 77).

[5] Statement of Financial Affairs #28 (Doc. 1, p. 36).

[6] Third Amended Plan (Doc. 58, p. 6).

[7] Id. at p. 11.

[8] Id. at p. 10.

[9] This third provision is ambiguous and could be construed as terminating the Plan **Injunction** only as to a single creditor; however, the Court determines that any plan default will terminate the Plan **Injunction** as to all creditors.

[10] Id. at p. 11.

[11] Id.

limitations, thus allowing creditors to pursue their claims against Mr. McHatton after the plan payments are completed and a discharge is entered.[12]

Discussion

The UST argues that the Plan **Injunction** is prohibited because the Supreme Court abrogated past decisions relied on by bankruptcy courts in this Circuit.[13] However, these decisions, like Purdue,[14] related to non-consensual third-party permanent releases rather than temporary **injunctions**.[15] Furthermore, bankruptcy courts have narrowly construed Purdue.[16] **[*36]** This is unsurprising because the Supreme Court itself stated "[t]oday's decision is a narrow one."[17] ***HN1*** This Court will also narrowly construe Purdue and finds that it prohibits only non-consensual third-party permanent releases as outlined by the Supreme Court but certainly not temporary third-party **injunctions**. **[**5]**

The Court notes that the Supreme Court focused its attention on *§ 1123(b)(6)* because "the plan proponents primarily relied upon, and the Second Circuit rested upon, *§ 1123(b)(6)*."[18] ***HN2*** The Supreme Court found that *§ 1123(b)(6)*, in conjunction with *§ 105*, does not permit bankruptcy courts to issue non-consensual third-party releases because "[p]aragraph (6) is a catchall phrase tacked on at the end of a long and detailed list of specific directions."[19] *Section 1123(b)* also provides for what a plan "may" do.

The Supreme Court did not consider *§ 1123(a)(5)*, which the Court finds distinguishable from *§ 1123(b)(6)*. ***HN3*** *Section 1123(a)* outlines mandatory provisions to be included in a plan, including *subsection (5)*, which states that "a plan shall provide adequate means for the plan's implementation, such as--" and then provides a *non-exhaustive* list of examples. Unlike the catchall provision in *§ 1123(b)(6)*, which follows a detailed and descriptive list, *§ 1123(a)(5)* begins with a mandate and includes examples of providing "adequate means for the plan's implementation." In the circumstances at bar, the Plan **Injunction** is necessary for implementation of the plan and

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[12] Id.

[13] UST Objection (Doc. 61, pp. 7-8) (discussing *Harrington v. Purdue Pharma, L.P., 603 U.S. 204, 144 S. Ct. 2071, 219 L. Ed. 2d 721 (2024)*).

[14] *Harrington v. Purdue Pharma, L.P., 603 U.S. 204, 144 S. Ct. 2071, 219 L. Ed. 2d 721 (2024)*.

[15] *SE Prop. Holdings, LLC v. Seaside Eng'g & Surveying (In re Seaside Eng'g & Surveying), 780 F.3d 1070, 1076 (11th Cir. 2015)* (addressing the propriety of non-debtor releases as part of a Chapter 11 plan); *In re Dow Corning Corp., 280 F.3d 648, 658 (6th Cir. 2002)* (addressing the unusual circumstances that warrant a non-debtor release).

[16] See, e.g., *In re Hal Luftig Co., 667 B.R. 638, 658 (Bankr. S.D.N.Y. 2025)* ("The Supreme Court did not address the bankruptcy courts' authority to grant non-consensual third-party automatic stay extensions in Purdue Pharma."); *In re Miracle Rest. Group, 2025 Bankr. LEXIS 1188, at *14-15 (Bankr. E.D. La. May 13, 2025)* ("the Supreme Court's holding in Purdue Pharma focused on the narrow question of whether a bankruptcy court may effectively extend to non-debtors the benefits of a Chapter 11 discharge and did not address the propriety of temporary, non-consensual, non-debtor **injunction** issued through plan confirmation."); *In re Commercial Express, 670 B.R. 573, 583 (Bankr. M.D. Fla. 2025)* ("The Supreme Court expressed its decision as a narrow one confined solely to the question presented — whether a bankruptcy court 'may effectively extend to *nondebtors* the benefits of a Chapter 11 discharge usually reserved for *debtors*.'") (quoting *Purdue Pharma, 603 U.S. at 215*) (emphasis in original).

[17] *Purdue Pharma, 603 U.S. at 206*.

[18] *In re Commercial Express, 670 B.R. 573, 583 (Bankr. M.D. Fla. 2025)*.

[19] *Id. at 584* (quoting *Purdue Pharma, 603 U.S. at 217*).

thus is authorized by *§ 1123(a)(5)* in conjunction with *§ 105*.[20] Other courts have also found a temporary **injunction** like the one here **[**6]** to be necessary "to facilitate the successful implementation of the Plan."[21]

As other courts have discussed at length, "courts have indicated that non-consensual third-party stay extensions survived the Supreme Court's ruling."[22] Once courts determined that Purdue did not prohibit temporary third-party **injunctions**, they had to determine what standard to apply when considering the requested relief. In Hal Luftig Co.[23], Judge Mastando goes through the current state of the standard and ultimately follows the standard outlined in Parlement Techs,[24] which has **[*37]** also been applied in the subsequent Purdue[25] remanded proceeding. In Miracle Restaurant Group,[26] Judge Grabill goes through the current state of the standard and ultimately finds that Purdue did not change the Fifth Circuit's analysis regarding temporary non-debtor stays and relied on Zale[27] for the standard.[28]

HN5 In determining whether to issue a temporary **injunction** of third-party actions as part of confirmation, the Court will apply the *Zale* factors[29] used by the Fifth Circuit and will next apply the traditional four-factor test for issuance of a temporary **injunction**.[30]

HN6 Although permanent **injunctions** are prohibited based on the language of **[**7]** *section 524(e)*, temporary **injunctions** are not and may be warranted in certain circumstances, including:

> (1) When the non-debtor and the debtor enjoy such an identity of interest that the suit against the non-debtor is essentially a suit against the debtor, and (2) when the third-party action will have an adverse impact on the debtor's ability to accomplish reorganization. When *either* of these circumstances occur, an **injunction** may be warranted.[31]

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[20] ***HN4*** *Section 1142*, which allows the court to direct the debtor and "any other necessary party . . . to perform any other act . . . that is necessary for the consummation of the plan," could also be viewed as authority for temporary third-party **injunctions**.

[21] *In re Miracle Rest. Grp., 2025 Bankr. LEXIS 1188, at *22 (Bankr. E.D. La. May 13, 2025)*.

[22] *In re Hal Luftig Co., 667 B.R. 638, 658 (Bankr. S.D.N.Y. 2025)*.

[23] Id.

[24] *In re Parlement Techs., Inc., 661 B.R. 722 (Bankr. D. Del. 2024)*.

[25] *Purdue Pharma L.P. v. Mass. (In re Purdue Pharma L.P.), 666 B.R. 461, 473 (Bankr. S.D.N.Y. 2024)* ("This Court whole-heartedly agrees with the analysis of the *Parlement* court.")

[26] *In re Miracle Rest. Grp., 2025 Bankr. LEXIS 1188 (Bankr. E.D. La. May 13, 2025)*.

[27] *Feld v. Zale Corp. (In re Zale Corp.), 62 F.3d 746 (5th Cir. 1995)*.

[28] *In re Miracle Rest. Grp., 2025 Bankr. LEXIS 1188 at *18*. ("This Court finds that Zale Corp. continues to be a valid legal proposition.")

[29] This Court will follow the *Zale* standard given its extra level of scrutiny above and beyond the usual Eleventh Circuit temporary **injunction** standards.

[30] *In re Couture Hotel Corp., 536 B.R. 712, 751 (Bankr. N.D. Tex. 2015)*.

[31] Id. (quoting *Feld v. Zale Corp. (In re Zale Corp.), 62 F.3d 746, 761 (5th Cir. 1995)* (emphasis added)).

"The success or failure of the Debtor lies mainly, if not exclusively, with the efforts, reputation, and dedication of [Mr. McHatton]."[32] Mr. McHatton is the Debtor's founder, managing member, sole shareholder, and only employee that brings in new clients and business. Mr. McHatton and the Debtor share an identity of interest such that a suit against Mr. McHatton would in effect be a suit against the Debtor. In expanding the Debtor's business, Mr. McHatton guaranteed certain debts of the Debtor. Were these creditors to pursue Mr. McHatton they would take Mr. McHatton's focus away from bringing in new clients and business. Given that there are no other employees to bring in clients, Mr. McHatton's complete attention to the business is absolutely necessary for **[**8]** the success of the Debtor. Absent Mr. McHatton's continued involvement, the Debtor's operations could not continue. Such circumstances make Mr. McHatton's continued participation essential to the Debtor's successful reorganization[33] and meet the two-factor test established in *Zale*.[34]

HN7 Given the presence of the Zale factors, the Court will next consider the traditional **[*38]** four-factor test for a preliminary **injunction**, which requires the **injunction** proponent to show that:

> (1) it has a substantial likelihood of success on the merits; (2) it will suffer an irreparable injury unless the **injunction** is granted; (3) the harm from the threatened injury outweighs the harm the **injunction** would cause the opposing party; and (4) the **injunction** would not be adverse to the public interest.[35]

First, the Debtor has established a substantial likelihood of success on the merits, which in the present context is the likelihood that the Debtor will complete the Plan payments and receive a discharge. When the Court confirmed the Third Amended Plan, the Court determined that the Debtor satisfied feasibility under the heightened standard provided by *§ 1191(c)(3)*.[36] Mr. McHatton's testimony at the confirmation hearing demonstrated his **[**9]** business acumen and his familiarity with the Debtor's finances. Further demonstrating feasibility, the Debtor timely made all payments post-petition and pre-confirmation and timely filed monthly operating reports. Given the likelihood that Debtor will complete its plan payments, the first factor is easily met.

Second, absent the **injunction**, the Debtor will suffer irreparable injury. Mr. McHatton is not only the sole owner but also the only **individual** responsible for generating new business and attracting clients. Continued collection on business debts would ultimately proceed to lawsuits against Mr. McHatton. Defending such lawsuits would significantly divert his attention from critical business functions—particularly client acquisition and revenue generation. With no other personnel available to assume these responsibilities, the business would be left vulnerable, ultimately leading to its collapse and closure. Few consequences are more devastating to a business than forced closure.

Third, the harm from the threatened injury outweighs the harm the **injunction** would cause the opposing parties. The potential prejudice to the Debtor would be extreme. Absent the **injunction**, the Debtor's **[**10]** operations would likely cease. This would harm not only the Debtor but all creditors as well. Conversely, prejudice to enjoined creditors is limited. In fact, without the Plan **Injunction** the creditors would be harmed by diminished distributions under the Third Amended Plan. As noted by the **Subchapter V** Trustee at the confirmation hearing, the Debtor runs a services business. If the case were converted or dismissed or the Debtor were otherwise forced to liquidate its assets, the unsecured creditors would likely receive *no distributions* from the Debtor.

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[32] *Bernhard Steiner, 292 B.R. 109, 117 (Bankr. N.D. Tex. 2002)*.

[33] *In re Seatco, Inc., 257 B.R. 469, 476 (Bankr. N.D. Tex. 2001)*.

[34] *In re Couture Hotel Corp., 536 B.R. at 751* .

[35] *Gonzalez v. Governor of Georgia, 978 F.3d 1266, 1270-71 (11th Cir. 2020)*.

[36] ***HN8*** The enhanced standard "fortifies the more relaxed feasibility test that *§ 1129(a)(11)* contains." *In re Pearl Res. LLC, 622 B.R. 236, 269 (Bankr. S.D. Tex. 2020)*.

Further, the Plan **Injunction** will merely delay the enjoined creditors from collecting against Mr. McHatton. Given the plan provisions that will toll the applicable statute of limitations, the creditors will be able to pursue their claims against Mr. McHatton when the Debtor receives a discharge after completing the five-year unsecured payment schedule. If the Debtor's business improves in the next five years, then Mr. McHatton may be better situated to pay a meaningful distribution towards his debts.

Fourth, the **injunction** would not be adverse to the public interest. The public interest is served by facilitating the debtor's continued operations **[**11]** and ensuring **[*39]** plan payments to creditors are completed, including substantial payments to the Internal Revenue Service. At the same time, creditors are protected and may eventually realize the benefit of Mr. McHatton's personal guarantee. Thus, the fourth factor has been established.

In sum, the Court finds the *Zale* factors and the factors for a preliminary **injunction** are present. Consequently, the Plan **Injunction** should be approved.

Lastly, the Court addresses a unique objection raised by the UST - one that appears to not previously been considered by other courts in post-Purdue decisions. The UST argues that the requested **injunction** is impermissible due to its preliminary nature and the lack of a subsequent court order specifically resolving the Plan **Injunction**. While inventive, this argument ultimately falls short. The requested Plan **Injunction** is requested by the Debtor and for the benefit of the Debtor and *not* Mr. McHatton. Viewed through that lens, the Debtor's Discharge Order will serve as the final adjudication resolving the preliminary nature of the Plan **Injunction**. The Discharge Order will ultimately make the Plan **Injunction** go away, which will then subject Mr. McHatton to potential **[**12]** lawsuits and collection actions should those creditors choose to pursue those actions. By that point, however, the Debtor will have already reaped the benefits of the Plan **Injunction**—namely, enabling Mr. McHatton to concentrate on his responsibilities to the Debtor and facilitate the optimal distribution to creditors.

Conclusion

In the wake of the Supreme Court's narrow ruling in Purdue, the UST seeks to stretch its implications beyond their intended reach—arguing that the Plan **Injunction** must be barred. This Court finds that argument unpersuasive. The Supreme Court's decision targeted non-consensual third-party *permanent* releases, not *temporary* **injunctions** that are at issue here. Bankruptcy courts have rightly read Purdue with precision, and this Court will do the same. The Plan **Injunction**, far from being a sweeping shield, is a tailored tool—one that ensures the Debtor's survival and successful reorganization by temporarily protecting the linchpin of its operations: Mr. McHatton.

Accordingly, it is

ORDERED:

1. The Objection is **OVERRULED**.

2. The Plan **Injunction** as outlined above is **APPROVED**.

ORDERED.

Dated: September 02, 2025

/s/ Jason A. Burgess

Jason A. Burgess

United States Bankruptcy Judge **[**13]**

End of Document

Attachment 2

Kheir v. Titan Team LLC (In re Kheir)

United States Bankruptcy Court for the Southern District of Texas, Houston Division

November 4, 2025, Decided; November 4, 2025, Entered

CASE NO: 24-35814, CHAPTER 7, ADVERSARY NO. 25-3033

Reporter
2025 Bankr. LEXIS 2858 *; 2025 LX 436586; 2025 WL 3083272

IN RE: DEONDRA JOYCE KHEIR, Debtor. DEONDRA JOYCE KHEIR, Plaintiff, VS. TITAN TEAM LLC, THE MONEY SOURCE INC., and AUCTION.COM, Defendants.

Notice: This decision contains references to invalid citations in the original text of the opinion. They are relevant to the decision and therefore have not been editorially corrected. Linking has been removed from those citations.

Subsequent History: Findings of fact/conclusions of law at, Motion granted by, Motion denied by, As moot, Dismissed by *In re Kheir, 2025 Bankr. LEXIS 2998 (Nov. 18, 2025)*

Core Terms

auction, attorney's fees, artificial intelligence, existing law, self-represented, legal contention, written motion, disciplinary, final order

Case Summary

Overview
Key Legal Holdings

- When attorney King filed a response containing 32 instances of AI-generated false case citations without verification, despite his client having used ChatGPT to create them, he violated Southern District of Texas General Order 2025-04 and *Bankruptcy Rule 9011(b)(2)*.
- The court ordered King to reimburse defendant's attorney fees, complete six hours of continuing education on AI use in courts, provide a copy of the order to his client, file a certificate of compliance, and referred him to the Chief District Judge and State Bar for possible disciplinary action.

Material Facts

- King filed a response to a motion to dismiss containing 32 instances of AI hallucinations, including non-existent cases and misrepresentations of authority.
- King admitted he did not verify all citations before filing.
- King's client testified she used generative AI to create the case citations she provided to King.
- King signed and filed the pleading without ensuring the accuracy of the citations.

Controlling Law

- Southern District of Texas General Order 2025-04, which cautions against submitting pleadings drafted using generative AI without checking for accuracy.
- *Federal Rule of Bankruptcy Procedure 9011(b)(2)*, requiring attorneys to certify that legal contentions are warranted by existing law after reasonable inquiry.

Court Rationale

The court determined that King violated both General Order 2025-04 and *Bankruptcy Rule 9011* by filing a pleading with numerous fabricated legal authorities. The court emphasized that confirming the accuracy of cited caselaw is a basic, routine matter expected from practicing attorneys. The court rejected any defense based on carelessness, good faith, or ignorance, stressing that no lawyer should use generative AI for legal research without verifying the results.

Outcome
Procedural Outcome

The court ordered King to: (1) reimburse defendant's reasonable attorney's fees and costs; (2) complete six hours of continuing education on generative AI use in courts; (3) provide a copy of the court's order to his client; and (4) file a certificate of compliance by December 31, 2025.

LexisNexis® Headnotes

Bankruptcy Law > Procedural Matters > Jurisdiction > Core Proceedings

Bankruptcy Law > Procedural Matters > Jurisdiction > Federal District Courts

HN1 **Jurisdiction, Core Proceedings**

28 U.S.C.S. § 157 allows a district court to "refer" all bankruptcy and related cases to the bankruptcy court, wherein the latter court will appropriately preside over the matter. § 157(a). Pursuant to § 157(b)(2)(A) and (O) a proceeding contains core matters where it primarily involves proceedings concerning the administration of the estate. § 157(b)(2)(A), (O). A proceeding is core under the general "catch-all" language when the imposition of sanctions on litigants in a bankruptcy case is clearly a matter 'arising in' such a case.

Bankruptcy Law > Procedural Matters > Venue > Proper Venue

Civil Procedure > ... > Venue > Federal Venue Transfers > Improper Venue Transfers

Bankruptcy Law > ... > Venue > Challenges to Venue > Transfers

HN2 **Venue, Proper Venue**

A bankruptcy court may only hear a case in which venue is proper. *28 U.S.C.S. 1408*.

Bankruptcy Law > Procedural Matters > Jurisdiction

HN3 **Procedural Matters, Jurisdiction**

While bankruptcy judges can issue final orders and judgments for core proceedings, absent consent, they can only issue reports and recommendations on non-core matters. § 157(b)(1), (c)(1).

Bankruptcy Law > Procedural Matters > Jurisdiction

HN4 **Procedural Matters, Jurisdiction**

Unless and until the Supreme Court visits other provisions of 28 U.S.C.S. § 157(b)(2), courts take the Supreme Court at its word and hold that the balance of the authority granted to bankruptcy judges by Congress in § 157(b)(2) is constitutional.

Civil Procedure > Sanctions > Baseless Filings > Signature Requirements

HN5 **Baseless Filings, Signature Requirements**

As expressly laid out in the Southern District of Texas General Order 2025-04, *Fed. R. Civ. P. 11* requires that an attorney or self-represented litigant certifies their claims, defenses, and other legal contentions are warranted by existing law and the factual contentions have evidentiary support. Attorneys and self-represented litigants are cautioned against submitting to the Court any pleading, written motion, or other paper drafted using generative artificial intelligence (e.g., ChatGPT, Harvey.AI, generative AI services) without checking the submission for accuracy as certain technologies may produce factually or legally inaccurate content and should never replace the lawyer's independent legal judgment. Any attorney or self-represented litigant who signs a pleading, written motion, or other paper submitted to the Court will be held responsible for the contents of that filing under *Rule 11*, regardless of whether generative artificial intelligence drafted any portion of that filing. *Fed. R. Civ. P. 11(c)*.

Bankruptcy Law > Procedural Matters > Professional Responsibility

Civil Procedure > Sanctions > Baseless Filings > Signature Requirements

HN6 **Procedural Matters, Professional**

Responsibility

Fed. R. Bankr. P. 9011(b)(1) to (2) provides that when a party presents a pleading to the Court, by signing, filing, submitting, or later advocating it, an attorney or unrepresented party certifies that it is not presented for any improper purpose and the claims, defenses, and other legal contentions are warranted by existing law. Furthermore, the court can impose an appropriate sanction for violations of *Fed. R. Bankr. P. 9011(b)*. *Fed. R. Bankr. P. 9011(c)(1)*. The available sanctions include a nonmonetary directive, an order to pay a penalty to the court, or, in some circumstances, an order directing the violator to pay his or her opponent's attorneys' fees. Rule 9011c)(4)(A). But sanctions must be limited to what suffices to deter repetition of the conduct or deter comparable conduct by others similarly situated. Rule 9011c)(4)(A).

Counsel: **[*1]** For JPMorgan Chase Bank, N.A., Creditor (4:24bk35814): Chandra Dianne Pryor, Bonial & Assoc PC, Dallas, TX.

For Deondra Joyce Kheir, Plaintiff (25-03033): Derrick D King, LEAD ATTORNEY, Rosenburg, Tx.

For Titan Team LLC, Defendant (25-03033): Richard A Simmons, Waldron & Schneider, PLLC, TX, Houston, TX.

For The Money Source inc., Defendant (25-03033): Valerie Schratz, Hall Griffin LLP, Santa Ana, CA.

For Auction.com, Defendant: Helen Turner, Troutman Pepper Locke LLP, Houston, TX.

Judges: Eduardo V. Rodriguez, Chief United States Bankruptcy Judge.

Opinion by: Eduardo V. Rodriguez

Opinion

MEMORANDUM OPINION

As a matter of first impression, this Court has been tasked with determining whether Mr. Derrick D. King, counsel for Deondra Joyce Kheir ("*Plaintiff*"), utilized generative artificial intelligence to manufacture legal authority without verifying the content within such authorities, or the existence of such authorities, in violation of the Southern District of Texas General Order 2025-04. The Court publishes this opinion to remind lawyers that confirming the accuracy of cited caselaw is a basic, routine matter, and something to be expected from a practicing attorney, especially because carelessness, good faith, or ignorance **[*2]** are not excuses for submitting materials that are non-compliant with *Federal Rule of Bankruptcy Procedure 9011* ("*Bankruptcy Rule*"). No lawyer should be using ChatGPT or any other generative AI product to perform legal research without verifying the results, much less placing such unverified results in pleadings filed in this Court.

On August 21, 2025, the Court conducted a hearing and for the reasons stated herein, the Court finds that Derrick D. King violated Southern District of Texas General Order 2025-04 and *Bankruptcy Rule 9011* and is ordered to (1) reimburse Counsel for Auction.Com, Inc. ("*Defendant*") its reasonable and necessary attorney's fees and costs associated with this matter. Counsel for Auction.Com, Inc. is invited to file a fee application for its reasonable and necessary fees associated with this matter no later than November 17, 2025; (2) register and obtain six hours of continuing education from the State Bar of Texas on the use of generative AI in the courts; (3) provide a copy of this Court's order to his client, and; (4) file a certificate of compliance with the Clerk of Court which must be accomplished no later than December 31, 2025. Mr. King will also be referred to Chief United States District Judge Randy Crane and the **[*3]** State Bar of Texas Chief Disciplinary Counsel for possible disciplinary action.

I. Findings of Fact

This Court makes the following findings of fact and conclusions of law pursuant to *Federal Rule of Civil Procedure 52*, which is made applicable to adversary proceedings pursuant to *Bankruptcy Rule 7052*. To the extent that any finding of fact constitutes a conclusion of law, it is adopted as such. To the extent that any conclusion of law constitutes a finding of fact, it is adopted as such. This Court made certain oral findings and conclusions on the record. This Memorandum Opinion supplements those findings and conclusions. If there is an inconsistency, this Memorandum Opinion controls.

A. Background

1. On February 11, 2025, Deondra Joyce Kheir filed

her "Original Complaint To Determine The Validity, Priority, Existence or Extent of The Valadity [Sic] Of Assignment(s), Contract, Title, Liens And Request For Declaratory Judgment and Other Claim(s)" (the "*Complaint*").[1]

2. On May 23, 2025, Auction.Com, LLC, filed "Defendant Auction.Com, LLC's Motion To Dismiss Plaintiff's Complaint (Doc. No. 1) And Brief In Support" ("*Auction's Motion to Dismiss*").[2]

3. On May 23, 2025, The Money Source Inc. filed its "Motion To Dismiss Plaintiff's Complaint (Doc. **[*4]** 1) and Brief In Support" ("*Money Source's Motion to Dismiss*").[3]

4. On June 11, 2025, Plaintiff filed "Plaintiff's Response In Opposition To Defendant Auction.Com, LLC's Motion To Dismiss" ("*Plaintiff's Response to Motion to Dismiss*").[4]

5. On July 2, 2025, Auction.Com, LLC, filed its "Auction.com, LLC's Reply In Support Of Its Motion to Dismiss Plaintiff's Complaint" (the "*Reply*") alleging that Derrick D. King utilized generative artificial intelligence to manufacture legal authority without verification the content within such authorities, or the existence of such authorities.[5]

6. On July 3, 2025, this Court issued an order requiring Mr. Derrick D. King to demonstrate to the Court either (1) why Derrick D. King has not violated *Federal Rule of Civil Procedure 11(b)* or (2) why Derrick D. King should not be sanctioned pursuant to *Federal Rule of Civil Procedure 11* or this Court's inherent authority (the "*Show Cause Order*").[6]

7. On July 16, 2025, Titan Team, LLC, filed its "Notice Of Appearance And Motion To Dismiss Plaintiff's Original Complaint (Doc 1)."[7]

8. On August 5, 2025, Plaintiff filed her "Formal Opposition To Titan Team LLC's Motion To Dismiss."[8]

9. On August 5, 2025, Plaintiff filed her "Motion For Leave To Filr [Sic] An Amended Response To Auction.Com And **[*5]** The Money Sources Inc.'s Motion To Dismiiss [Sic]."[9]

10. On August 6, 2025, Plaintiff filed her "Motion For Leave To Filr [Sic] An Amended Adversary Petition."[10]

11. On August 6, 2025, Plaintiff filed her "Motion For Leave To File An Amended Response To Auction .Com And The Money Sources Inc.'s Motion To Dismiiss [Sic]."[11]

12. On August 19, 2025, Auction.Com filed "Auction.Com's Response In Opposition To Plaintiff's Motion For Leave To File An Amended Response To Auction.Com's Motion To Dismiss."[12]

13. On August 19, 2025, Auction.Com filed "Auction.Com's Response In Opposition To Plaintiff's Motion For Leave To File An Amended Adversary Petition."[13]

14. On August 21, 2025, the Court held a hearing and now issues its instant Memorandum Opinion.

II. Conclusions of Law

A. Jurisdiction and Venue

This Court holds jurisdiction pursuant to 28 U.S.C. § 1334 and exercises its jurisdiction in accordance with Southern District of Texas General Order 2012-6.[14] ***HN1*** Section 157 allows a district court to "refer" all bankruptcy and related cases to the bankruptcy court, wherein the latter court will appropriately preside over the matter.[15] This Court determines that pursuant to 28 U.S.C. § 157(b)(2)(A) and (O) this proceeding contains

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[1] ECF No. 1.

[2] ECF No. 8.

[3] ECF No. 9.

[4] ECF No. 11.

[5] ECF No. 15.

[6] ECF No. 16.

[7] ECF No. 19.

[8] ECF No. 20.

[9] ECF No. 21.

[10] ECF No. 22.

[11] ECF No. 23.

[12] ECF No. 32.

[13] ECF No. 33.

[14] *In re*: *Order of Reference to Bankruptcy Judges*, Gen. Order 2012-6 (S.D. Tex. May 24, 2012).

[15] 28 U.S.C. § 157(a); *see also In re: Order of Reference to Bankruptcy Judges*, Gen. Order 2012-6 (S.D. Tex. May 24, 2012).

core matters, as it primarily involves proceedings concerning the administration of this **[*6]** estate.[16] This proceeding is also core under the general "catch-all" language because "the imposition of sanctions on litigants in a bankruptcy case is clearly a matter 'arising in' such a case."[17]

HN2 This Court may only hear a case in which venue is proper.[18] *28 U.S.C. § 1409(a)* provides that "a proceeding arising under title 11 or arising in or related to a case under title 11 may be commenced in the district court in which such case is pending." Plaintiff's main chapter 7 case is presently pending in this Court and therefore, venue of this proceeding is proper.

B. Constitutional Authority to Enter a Final Order

HN3 While bankruptcy judges can issue final orders and judgments for core proceedings, absent consent, they can only issue reports and recommendations on non-core matters.[19] This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Accordingly, this Court concludes that the narrow limitation imposed by *Stern v. Marshall* does not prohibit this Court from entering a final order here.[20] Thus, this Court wields the constitutional authority to enter a final order.

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[16] *See* 28 U.S.C. § 157(b)(2)(A), (O).

[17] *Wayland v. McVay (In re Tbyrd Enters. LLC), 354 F. App'x 837, 839 (5th Cir. 2009)*; *see also In re Stomberg, 487 B.R. 775, 805 (Bankr. S.D. Tex. 2013)*.

[18] *28 U.S.C. § 1408*.

[19] *See* 28 U.S.C. §§ 157(b)(1), (c)(1); *see also Stern v. Marshall, 564 U.S. 462, 480, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011)*; *Wellness Int'l Network, Ltd. v. Sharif, 575 U.S. 665, 135 S. Ct. 1932, 1938-40, 191 L. Ed. 2d 911 (2015)*.

[20] *See, e.g., Badami v. Sears (In re AFY, Inc.), 461 B.R. 541, 547-48 (8th Cir. BAP 2012)* (***HN4*** "Unless and until the Supreme Court visits other provisions of Section 157(b)(2), we take the Supreme Court at its word and hold that the balance of the authority granted to bankruptcy judges by Congress in 28 U.S.C. § 157(b)(2) is constitutional."); *see also Tanguy v. West (In re Davis), No. 00-50129, 538 F. App'x 440, 443 (5th Cir. 2013)* ("[W]hile it is true that *Stern* invalidated 28 U.S.C. § 157(b)(2)(C) with respect to 'counterclaims by the estate against persons filing claims against the estate,' *Stern* expressly provides that its limited holding applies only in that 'one isolated respect.' We decline to extend *Stern's* limited holding herein.") (citing *Stern v. Marshall, 564 U.S. 462, 503, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011)*).

III. Analysis [*7]

A. Generative A.I.

"Generative" AI, unlike the older "predictive" AI, is "a machine-learning model that is trained to *create* new data, rather than making a prediction about a specific dataset. A generative AI system is one that learns to generate more objects that *look like* the data it was trained on."[21] Platforms like ChatGPT are powered by "large language models" that teach the platform to create realistic-*looking* output.[22] They can write a story that reads like it was written by Stephen King (but wasn't) or pen a song that sounds like it was written by Taylor Swift (but wasn't).[23] But they can't do your legal research for you. ChatGPT does *not* access legal databases like Westlaw or Lexis, draft and input a query, review and analyze each of the results, determine which results are on point, and then compose an accurate, Bluebook-conforming citation to the right cases—all of which it would have to do to be a useful research assistant.[24] Instead, these AI platforms look at legal briefs in their training model and then create output that *looks like* a legal brief by "placing one most-likely word after another" consistent with the prompt it received.[25]

B. Whether Derrick D. King violated General Order 2025-04 and *Bankruptcy Rule 9011(b)(2)*

HN5 As expressly laid out in the Southern District of Texas General Order 2025-04[26]:

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[21] Adam Zewe, *Explained: Generative AI*, MIT News (Nov. 9, 2023), https://news.mit.edu/2023/explained-generative-ai-1109 (emphasis added).

[22] *Id.*

[23] *See id.*

[24] Jennifer Case, *AI Was Supposed **[*8]** to Democratize Legal Research. What Happened?*, LawNext (May 14, 2025), https://directory.lawnext.com/library/ai-was-supposed-to-democratize-legal-research-what-happened/.

[25] Brian Barrett, "*You Can't Lick a Badger Twice": Google Failures Highlight a Fundamental AI Flaw*, Wired (Apr. 23, 2025, 7:44 PM), https://www.wired.com/story/google-ai-overviews-meaning/.

[26] Bankruptcy Local Rule 1001-1(b) ("In addition to these rules,

> Rule 11 of the Federal Rules of Civil Procedure requires that an attorney or self-represented litigant certifies their claims, defenses, and other legal contentions are warranted by existing law and the factual contentions have evidentiary support. Attorneys and self-represented litigants are cautioned against submitting to the Court any pleading, written motion, or other paper drafted using generative artificial intelligence (e.g., ChatGPT, Harvey.AI, generative AI services) without checking the submission for accuracy as certain technologies may produce factually or legally inaccurate content and should never replace the lawyer's independent legal judgment. Any attorney or self-represented litigant who signs a pleading, written motion, or other paper submitted to the Court will be held responsible for the contents of that filing under Rule 11, regardless of whether generative artificial intelligence drafted any portion of that filing. *See* Fed. R. Civ. P. 11(c) (providing for imposition of an "appropriate **[*9]** sanction"—including nonmonetary directives, a penalty payable to the court, or payment to the opposing party of attorney's fees and expenses directly resulting from the violation—if, after notice and a reasonable opportunity to respond, the Court determines that Rule 11(b) has been violated).[27]

Additionally, Bankruptcy Rule 9011(b)(2) provides that:

> By presenting to the court a petition, pleading, written motion, or other document—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that, to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances . . . the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument to extend, modify, or reverse existing law, or to establish new law.[28]

Plaintiff's Response to the Motion to Dismiss contains the following Generative AI hallucinations:

Go to table1

Go to table2

Go to table3

Go to table4

Go to table5

Derrick D. King included the above AI-generated citations in the Plaintiff's Response to the Motion to Dismiss and failed to ensure the caselaw cited to was accurate before he filed the pleading with this Court. Southern District of Texas General Order 2025-04 provides: "[a]ny attorney or self-represented litigant who signs a pleading, written motion, or other paper submitted to the Court will be held responsible for the contents of that filing under Rule 11, regardless of whether generative **[*22]** artificial intelligence drafted any portion of that filing." ***HN6*** Bankruptcy Rule 9011(b)(1)-(2) provides that when a party presents a pleading to the Court, "by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that . . . it is not presented for any improper purpose . . . [and] the claims, defenses, and other legal contentions are warranted by existing law." Furthermore, the court can "impose an appropriate sanction" for violations of Bankruptcy Rule 9011(b).[61] The available sanctions include a nonmonetary directive, an order to pay a penalty to the court, or, in some circumstances, an order directing the violator to pay his or her opponent's attorneys' fees.[62] But sanctions "must be limited to what suffices to deter repetition of the conduct or deter comparable conduct by others similarly situated."[63]

Here, Derrick D. King included AI hallucinations in the Plaintiff's Response to the Motion to Dismiss, as enumerated above.[64] At the show cause hearing on August 21, 2025, Derrick D. King testified as follows:

THE COURT: This Document 11, the one that's been referred to here as a "Response," . . . it was drafted by you, correct?

MR. KING: In portion, your Honor, . . . my client helped, **[*23]** we helped each other solve issues and thoughts, I was working on the factual concerns . . . and work she provided to me I took it and looked at it --

THE COURT: Is your client an attorney?

MR. KING: No, not at all your Honor, just was

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the Local Rules of the District Court, the Administrative Procedures for CM/ECF, and the standing and general orders govern practice in the bankruptcy court.").

[27] *S.D. Tex. Gen. Order 2025-04* (May 7, 2025).

[28] Fed. R. Bankr. P. 9011(b)(2).

61 See Fed. R. Bankr. P. 9011(c)(1).
62 Id. at (c)(4)(A).
63 Id.
64 See supra, III.B.

essentially helping me with the theories of the case and then when I went forward with it. I just didn't go all the way through.

THE COURT: The law in these 32 cases that you cited, how did you come about it, putting those cases and citations in your pleading? . . . How was that developed?

MR. KING: The work that my client and I were working on, she provided what she thought was correct, and I accepted it and didn't necessarily think anything of it, so, I went with it, and --

THE COURT: Did you check any of these cases?

MR. KING: I did your Honor, I checked some of them, and that's what I'm saying to the court, there's no excuse, I'm owning it but the problem was that I wasn't using Westlaw at the time . . . .[65]

THE COURT: I don't understand how you came up with some of these cases . . . were they generated through some kind of AI platform?

MR. KING: Not on my behalf your honor . . .

THE COURT: Well, have you tried to figure out how they were created, have you asked **[*24]** your client, do I need to put your client on the stand?

MR. KING: I don't know how she came up with some of the concepts . . . I don't know what happened or how it happened, I failed, and I acknowledge that, but I don't, I didn't do any AI work . . .

THE COURT: That still doesn't answer my question.

MR. KING: She may have used AI, your Honor, I'm not saying that she didn't, I-I don't know . . .[66]

The Court then called Ms. Kheir to the stand, who testified as follows:

THE COURT: Did you assist Mr. King in preparation of this document, the one that we're referring to here? Document 11?

MS. KHEIR: Yes, your Honor.

THE COURT: Ok. And what kind of legal training do you have?

MS. KHEIR: I went to Rice University, and as a paralegal.

THE COURT: Do you have a certificate?

MS. KHEIR: I do . . .

The COURT: How did you come up with these cases, did you give Mr. King these cases?

MS. KHEIR: I did, I did give him some . . .

THE COURT: Ok, so did you use some form of generative AI?

MS. KHEIR: Yes, from my professor --

THE COURT: You did?

MS. KHEIR: Yes, mmhmm.

THE COURT: Did you verify any of these cases?

MS. KHEIR: I didn't have access to Westlaw or Lexis at the time . . . and I just want to say that I apologize **[*25]** to the court, because I feel like it generated from me . . . I made a mistake.[67]

Thus, Plaintiff admitted giving Derrick D. King cases created by generative AI, and Derrick D. King failed to ensure that the cases were real and that the case quotations were accurate before he signed the Response to the Motion to Dismiss and filed it with this Court.[68] Therefore, Derrick D. King filed a signed pleading asserting legal contentions that were not "warranted by existing law," as required by *Bankruptcy Rule 9011(b)(2)* and Southern District of Texas General Order 2025-04 and is therefore subject to appropriate sanctions.

For the reasons stated above, the Court finds that Derrick D. King violated Southern District of Texas General Order 2025-04 and *Bankruptcy Rule 9011* and is ordered to (1) reimburse Counsel for Auction.Com, Inc., for its reasonable and necessary attorney's fees and costs associated with this matter. Counsel for Auction.Com, Inc. is invited to file a fee application for its reasonable and necessary fees associated with this matter no later than November 17, 2025; (2) register and obtain six hours of continuing education from the State Bar of Texas on the use of generative AI in the courts; (3) provide a copy of this Court's **[*26]** order to his client, and (4) file a certificate of compliance with the Clerk of Court which must be accomplished no later than December 31, 2025. Mr. King will also be referred to Chief United States District Judge Randy Crane and

65 Show Cause Hr'g Recording, at 10:35:32-36:52, August 21, 2025.
66 Id. at 10:38:30-39:38.
67 Id. at 10:45:20-47:52.
68 ECF No. 11.

the State Bar of Texas Chief Disciplinary Counsel for possible disciplinary action.

IV. Conclusion

An order consistent with this Memorandum Opinion will be entered on the docket simultaneously herewith.

SIGNED November 4, 2025

/s/ Eduardo V. Rodriguez

Eduardo V. Rodriguez

Chief United States Bankruptcy Judge

ORDER

Resolving ECF No. 16

On July 3, 2025, the Court issued its "Order To Show Cause Setting In-Person Hearing."[1] On August 21, 2025, the Court held a hearing allowing Deondra Joyce Kheir's counsel Derrick D. King to show cause as to why he should not be sanctioned for citing to non-existent caselaw generated by AI hallucinations in the "Plaintiff's Response In Opposition To Defendant Auction.Com, LLC's Motion To Dismiss"[2] that he filed on June 11, 2025. For the reasons enumerated in the accompanying Memorandum Opinion, it is therefore:

ORDERED: that

1. Derrick D. King must complete six (6.0) hours of continuing legal education approved by the State Bar of Texas on the use of generative **[*27]** AI in the courts and file a certificate of compliance with the Clerk of Court no later than **December 31, 2025**.

2. Auction.com's request for reasonable attorneys' fees and costs associated with this matter is **GRANTED**.

3. Auction.Com is granted until **November 17, 2025**, to file an application for the attorney's fees and costs it incurred to (1) prepare and file its "Reply In Support Of Its Motion To Dismiss Plaintiff's Complaint"[3] which was its reply to the "Plaintiff's Response In Opposition To Defendant Auction.Com, LLC's Motion To Dismiss"[4] filed by Derrick D. King on June 11, 2025, and; (2) to prepare for and attend the show cause hearing held on August 21, 2025.

4. Derrick D. King will have until **November 31, 2025**, to file an objection to Auction.Com's application for attorney's fees.

5. Derrick D. King must provide his client with a copy of this Order.

6. The Clerk of Court is directed to provide a copy of this Court's Memorandum Opinion and Order referring Mr. Derrick D. King to Chief United States District Judge Randy Crane and the State Bar of Texas Chief Disciplinary Counsel for possible disciplinary action.

7. This Court retains exclusive jurisdiction with respect to all matters arising **[*28]** from or related to the implementation, interpretation, or enforcement of this Order.

SIGNED November 4, 2025

/s/ Eduardo V. Rodriguez

Eduardo V. Rodriguez

Chief United States Bankruptcy Judge

1 ECF No. 16.
2 ECF No. 11.
3 ECF No. 15.
4 ECF No. 11.

Table1 (Return to related document text)

No.	Quotes and Cases Cited By Plaintiff	Actual Findings
1	"Bad faith is more than negligence; it includes dishonest purpose, moral obliquity, and conscious wrongdoing." *Brasher v.* Stewart, 687 S.W.2d 733, 736 (Tex. App. Dallas 1985, no writ).[29]	**Non-Existent Case**. *Brasher v. Stewart* does not exist as cited. The volume number, reporter abbreviation, and first page of the case result in ***[*10]*** *Sabine Pilot Serv., Inc. v. Hauck*, 687 S.W.2d 733, 736 (Tex. 1985). The quoted text does not appear in *Sabine*.
2	"A homeowner does have standing to challenge an assignment on grounds that would render it void." *Reinagel v. Deutsche Bank* Nat'l Tr. Co., 735 F.3d 220, 225 (5th Cir. 2013).[30]	**Misrepresentation of Authority**. The quoted text does not appear in *Reinagel*. The case actually states, "[T]he obligor *may* defend 'on any ground which renders the assignment void,'" but "they have no right to enforce its terms unless they are its intended third-party beneficiaries." *Reinagel v.* Deutsche Bank Nat'l Tr. Co., 735 F.3d 220, 225, 228 (5th Cir. 2013) (emphasis in original).
3	"Void assignments are legally ineffective and confer no rights on the assignee." *Morlock, L.L.C. v. Nationstar Mortgage*, L.L.C., 447 S.W.3d 42, 45 (Tex. App. Houston [14th Dist.] 2014).[31]	**Misrepresentation of Authority**. The quoted text does not appear in *Morlock*. The *Morlock* court actually analyzed the legal issue pertaining to a non-borrower's standing to remove an alleged cloud on its title to the property. *Morlock*, *L.L.C. v. Nationstar Mortg., L.L.C., 447 S.W.3d 42, 43*, 45 (Tex. App. Houston [14th Dist.] 2014).
4	"[A] trustee who actively participates in the wrongful foreclosure **[*11]** process can be liable despite the protections	**Misrepresentation of Authority**. The quoted text does not appear in *Miller*. The *Miller* court did not interpret *Section 51.007(f) of the Texas* Property Code or address any issues involving a

29 ECF No. 11, at 2.
30 ECF No. 11, at 2.
31 ECF No. 11, at 3.

No.	Quotes and Cases Cited By Plaintiff	Actual Findings
	of § 51.007(f)." *Miller v. Homecomings Financial*, 832 (S.D. Tex. 2012).[32]	substitute trustee's duties or protections. *Miller v.* Homecomings Fin., LLC, 881 F. Supp. 2d 825, 832 (S.D. Tex. 2012).
5	"To prove a civil conspiracy, a plaintiff must show: (1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds; (4) one or more unlawful, overt acts; and (5) damages as the proximate result." *Juhl v. Airington*, 936 S.W.2d 640, 644 (Tex.1996).[33]	**Misrepresentation of Authority**. The quoted text does not appear as original text from the *Juhl* court. While the case lists the common elements of a civil conspiracy claim, it appears that a majority of the text quoted by Plaintiff in the Response appears to be from a case cited by the *Juhl* court. *See* Massey v. Armco Steel Co., 652 S.W.2d 932, 934 (Tex. 1983) ("The essential elements are: (1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result.").
6	"[S]trict compliance with the notice and procedural requirements of the Texas **[*12]** Property Code is mandatory for a valid nonjudicial foreclosure." *Slaughter v.* Qualls, 139 Tex. 340, 162 S.W.2d 671, 675 (Tex. 1942).[34]	**Misrepresentation of Authority**. The quoted text does not appear in *Slaughter*. Notably, the Texas Property Code was not enacted until 1983 by Acts 1983, 68th Leg., p. 3525, ch. 576, § 1, eff. Jan. 1, 1984. The Texas Supreme Court in 1942 could not have interpreted the Texas Property Code because it did not exist until it was enacted in 1983-41 years later.
7	"The appointment of a substitute trustee must occur before any foreclosure action. An appointment recorded after the sale is ineffective to confer	**Misrepresentation of Authority**. The quoted text does not appear in *Flagstar*. The *Flagstar* court did not address any issues involving a substitute trustee's appointment or authority. The referenced pin cite generally

32 ECF No. 11, at 4.
33 ECF No. 11, at 4.
34 ECF No. 11, at 5.

No.	Quotes and Cases Cited By Plaintiff	Actual Findings
		addresses a party's
	authority retroactively."	fiduciary duty based on an agency theory. *Flagstar*
	Flagstar Bank, FSB v. Walker,	Bank, FSB v. Walker, 451 S.W.3d 490, 503 (Tex.
		App.—Dallas 2014, no pet.).
	451 S.W.3d 490, 503 (Tex. App. - Dallas 2014).[35]	
8	"[W]here the appointment of a substitute trustee is not	**Misrepresentation of Authority**. The quoted text does not appear in *Reardean*. The
	properly executed or is	*Reardean* court did not address any issues involving
	performed by someone	the invalidity of a foreclosure sale based on an
	without authority, the	improper or unauthorized appointment. The referenced **[*13]**
	foreclosure sale is invalid."	pin cite generally addresses the rejected split-the-note
	Reardean v. CitiMortgage,	theory.
	Inc., No. A-11-CA-420-SS, 2011 WL 3268307, at *4 (W.D. Tex. July 25, 2011).[36]	
9	"Texas law requires strict compliance with the deed of	**Misrepresentation of Authority**. The quoted text does not appear in *Reardean*. The
	trust, and authority to appoint a	*Reardean* court did not address any issues involving the
	substitute trustee must be	invalidity of a foreclosure sale based on an improper or
	properly delegated by someone	unauthorized appointment. The referenced pin cite
	with the power to do so."	generally addresses the rejected split-the-note theory.
	Reardean v. CitiMortgage, Inc., No. A-11-CA-420-SS, 2011 WL 3268307, at *4 (W.D. Tex. July 25, 2011).[37]	
10	"A person's title is not self-proving. A misrepresentation	**Misrepresentation of Authority**. The quoted text does not appear in *Morlock*.. The
	of authority renders the	*Morlock* court did not address any issues involving the
	document void." *Morlock*,	misrepresentation of authority. The referenced pin cite
	L.L.C. v. Bank of N.Y. Mellon	generally addresses a mortgagee's right to foreclose on
	Trust Co., N.A., 448 S.W.3d	a property, rejecting the contention that a mortgagee
	514, 518 (Tex. App. Houston	must possess or **[*14]** produce a

35 ECF No. 11, at 5.
36 ECF No. 11, at 5.
37 ECF No. 11, at 5.

No.	Quotes and Cases Cited By Plaintiff	Actual Findings
		note prior to conducting a
	[1st Dist.] 2014, pet. denied).[38]	nonjudicial foreclosure sale. *Morlock*, *L.L.C. v. Bank of New York, 448 S.W.3d 514, 518* (Tex. App.—Houston [1st Dist.] 2014, pet. denied).
11	"A foreclosure conducted by an improperly appointed substitute trustee is void ab initio." *Miller v. Homecomings Fin., LLC, 881 F. Supp. 2d 825, 832* (S.D. Tex. 2012).[39]	**Misrepresentation of Authority**. The quoted text does not appear in *Miller*. The *Miller* court did not interpret *Section 51.007(f) of the Texas* Property Code or address any issues involving a substitute trustee's duties or protections. *Miller v. Homecomings Fin., LLC, 881 F. Supp. 2d 825, 832* (S.D. Tex. 2012).
12	"The appointment of a substitute trustee must be completed before the trustee acts. A sale by a trustee without proper authority is without force or effect." *Flagstar Bank, FSB v. Walker*, *451 S.W.3d 490, 503* (Tex. App. - Dallas 2014).[40]	**Misrepresentation of Authority**. The quoted text does not appear in *Flagstar*. The *Flagstar* court did not address any issues involving a substitute trustee's appointment or authority. The referenced pin cite generally addresses a party's fiduciary duty to the other based on an agency theory. *Flagstar Bank, FSB v. Walker, 451 S.W.3d 490, 503* (Tex. App.—Dallas 2014, no pet.).
13	"Authority to foreclose must exist before the act of foreclosure. A post hoc justification cannot cure an unauthorized act." *James v.*	**Misrepresentation of Authority**. The quoted text does not appear in *James*. . The *James* court did not interpret Section 51.007(f) of the Texas Property Code or address any issues regarding the authority to foreclose. *James v.*

Table1 (*Return to related document text*)

Table2 (*Return to related document text*)

38 ECF No. 11, at 5.
39 ECF No. 11, at 5-6.
40 ECF No. 11, at 6.

	Wells Fargo Bank, N.A., 533 F. App'x 444, 446 (5th Cir. 2013).[41]	*Wells Fargo Bank*, *N.A., 533 F. App'x 444, 446-47 (5th Cir. 2013)*. Rather, the referenced pin cite holds that a plaintiff cannot state a claim for wrongful foreclose because the plaintiffs failed to plead that they had lost possession of the property.
14	"The law will not presume authority when documents are defective, ambiguous, or post-dated." *Morales v. Chase Home Fin., LLC, 667 F. Supp.* 2d 678, 682 (S.D. Tex. 2009).[42]	**Non-Existent Case**. *Morales v. Chase* does not exist as cited. The volume number, reporter abbreviation, and first page of the case result in *United States v. McCracken*, 667 F. Supp. 2d 675, 678 (W.D. Va. 2009). The quoted text does not appear in *Morales*.
15	"An unexplained delay in recording the deed undermines the credibility and legality of the foreclosure." *Richardson v. Wells Fargo Bank, N.A.*, 873 F. Supp. 2d 800, 810 (N.D. Tex. 2012).[43]	**Misrepresentation of Authority**. The quoted text does not appear in *Richardson*. The *Richardson* court did not evaluate issues pertaining to an unexplained delay in recording a deed. *Richardson v.* Wells Fargo Bank, N.A., 873 F. Supp. 2d 800, 810 (N.D. Tex. 2012), *aff'd*, 538 Fd. App'x 391 (5th Cir. 2013). Rather, the referenced **[*15]** pin cite evaluates the issue relating to a lender's waiver of its right to accelerate a mortgage and foreclose on a debt. Id.

Table2 (*Return to related document text*)

Table3 (*Return to related document text*)

16	"The delayed recording of foreclosure instruments raises the presumption that the transaction was procedurally irregular." *DTND Sierra Invs.*,	**Non-Existent Case**. *DTND Sierra v. BNY Mellon* does not exist as cited. A search of the case information results in *People v.* Dehko, No. 305041, 2013 WL 1165216, at *1 (Mich. Ct. App. Mar. 21, 2013) (per

41 ECF No. 11, at 6.
42 ECF No. 11, at 6.
43 ECF No. 11, at 6.

	LLC v. Bank of N.Y. Mellon	curiam). The quoted text does not appear in Dehko.

Table3 (Return to related document text)

Table4 (Return to related document text)

	Trust. Co., N.A., 2013 WL 1165216, at *6 (W.D. Tex. Mar. 20, 2013).[44]	
17	"When the stated consideration in a foreclosure deed is contradicted by the lender's own financial records, a court may infer lack of actual sale or bad faith." *Henning v. One West Bank FSB, 405 S.W.3d* 950, 957 (Tex. App. Houston [14th Dist.] 2013, no pet.).[45]	**Misrepresentation of Authority**. The quoted text does not appear in *Henning*. The *Henning* court did not evaluate issues pertaining to defects in the consideration. *Henning v. One West Bank FSB, 405 S.W.3d 950, 957 (Tex. App.—Dallas 2013,* no pet.). Rather, the referenced pin cite generally addresses the standards for a motion for summary judgment in state court and one party's arguments raised in its state-court motion for summary judgment.
18	"Inconsistent consideration and accounting creates a triable issue as to the legitimacy of the foreclosure transaction." *Gossett v. Fed. Home Loan Mortg. Corp.*, *2013 WL 204448, at *4* (E.D. Tex. Jan. 17, 2013).[46]	**Non-Existent Case**. *Gossett* does **[*16]** not exist as cited. A search of the case name produces *Gossett v. Fed. Home Loan Mortg. Corp., 919 F. Supp. 2d 852 (S.D. Tex. 2013)*, and the quoted text does not appear in this case.
19	"Testimony that fails to substantiate a material transaction under oath undermines the credibility of the foreclosure sale and is	**Misrepresentation of Authority**. The quoted text does not appear in *Bittinger*. The *Bittinger* court did not evaluate issues pertaining to the sufficiency of evidence to support the consideration connected to a foreclosure sale. *Bittinger v. Wells*

44 ECF No. 11, at 6.
45 ECF No. 11, at 6.
46 ECF No. 11, at 6.

	probative of sham consideration." *Bittinger v. Wells Fargo Bank NA*, 744 F. Supp. 2d 619, 627 (S.D. Tex. 2010).[47]	*Fargo Bank NA, 744 F. Supp. 2d 619, 627 (S.D. Tex.* 2010). Rather, the referenced pin cite discusses the requirements for a qualified written request under the Real Estate Settlement Procedures Act. *Id.*
20	"Equity abhors a forfeiture. When foreclosure is founded upon fraud, misrepresentation, or procedural default, the sale cannot stand." *Bonilla v. Roberson, 918 S.W.2d 17, 21* (Tex. App. Corpus Christi 1996, no writ).[48]	**Misrepresentation of Authority**. The quoted text does not appear in *Bonilla*. The *Bonilla* court did not evaluate the request to invalidate a foreclosure sale. *Bonilla v. Roberson, 918 S.W.2d 17*, 21 (Tex. App.—Corpus Christi-Edinburg 1996, no writ). Rather, the referenced pin cite assesses **[*17]** the validity of a foreclosure proceedings instituted by a mortgagee following a borrower's default of the mortgage agreement.
21	"Only a trustee or substitute trustee lawfully appointed under the deed of trust may	**Misrepresentation of Authority**. The quoted text does not appear in *Martin*.. The *Martin* court did not evaluate the appointment of a substitute

Table4 (*Return to related document text***)**

47 ECF No. 11, at 7.
48 ECF No. 11, at 7.

Table5 (*Return to related document text*)

	conduct a foreclosure sale." *See Martin v. New Century Mortg. Co., 377 S.W.3d 79, 88* (Tex. App.—Houston [1st Dist.] 2012, no pet.).[49]	trustee to conduct a foreclosure sale. *Martin v. New Century Mortg. Co., 377 S.W.3d 79, 88 (Tex. App.—* Houston [1st Dist.] 2012, no pet.). Rather, the referenced pin cite assesses the validity of a foreclosure proceedings instituted by a mortgagee following a borrower's default of the mortgage agreement. **Misrepresentation of Authority**.
22	"The power of sale under a deed of Trust must be strictly followed. Otherwise, that sale is void." *Slaughter v. Qualls*, *139 Tex. 340, 162 S.W.2d 671, 675* (1942).[50]	The quoted text does not appear in *Slaughter*. Notably, the Texas Property Code was not enacted until 1983 by Acts 1983, 68th Leg., p. 3525, ch. 576, § 1, eff. Jan. 1, 1984. The Texas Supreme Court in 1942 could not have interpreted the Texas Property Code because it did not exist until it was enacted in 1983-41 years later. **Misrepresentation [*18] of Authority**.
23	"Where the appointment of a substitute trustee is unauthorized, any sale made by that trustee is likewise void." *Miller v. Homecomings Fin., LLC*, 881 F. Supp. 2d 825, 832 (S.D. Tex. 2012).[51]	The quoted text does not appear in *Miller*. The *Miller* court did not interpret *Section 51.007(f) of the Texas* Property Code or address any issues involving the appointment of substitute trustees. *Miller v. Homecomings Fin., LLC, 881 F. Supp. 2d 825, 832* (S.D. Tex. 2012).
24	"Bad faith is more than negligence; it includes dishonest purpose, moral obliquity, and conscious wrongdoing." *Brasher v. Stewart, 687 S.W.2d 733, 736* (Tex. App. Dallas 1985, no writ).[52]	**Non-Existent Case**. *Brasher v. Stewart* does not exist as cited. The volume number, reporter abbreviation, and first page of the case result in *Sabine Pilot Serv., Inc. v. Hauck*, 687 S.W.2d 733, 736 (Tex. 1985). The quoted text does not appear in *Sabine*.

49 ECF No. 11, at 7.
50 ECF No. 11, at 8.
51 ECF No. 11, at 8.

25	"A delay in recording, especially when coupled with irregularities, raises a strong inference of impropriety." *Richardson v. Wells Fargo Bank, N.A.*, 873 F. Supp. 2d 800, 810 (N.D. Tex. **[*19]** 2012).[53]	**Misrepresentation of Authority**. The quoted text does not appear in *Richardson*. The *Richardson* court did not evaluate issues pertaining to an unexplained delay in recording a deed. *Richardson v. Wells Fargo Bank, N.A.*, 873 F. Supp. 2d 800, 810 (N.D. Tex. 2012), *aff'd*, 538 F. App'x 391 (5th Cir. 2013). Rather, the referenced pin cite evaluates the issue relating to a lender's waiver of its right to accelerate a mortgage and foreclose on a debt. *Id.*
26	"Publication of a document asserting an interest in land, when knowingly invalid, constitutes slander of title." *Williams v. Jennings*, 755 S.W.2d 874, 879 (Tex. App. Houston [14th Dist.] 1988).[54]	**Misrepresentation of Authority**. While the case does, in fact, assess a slander-of-title claim, the quoted text does not appear in *Williams*. *Williams v. Jennings, 755 S.W.2d 874, 879 (Tex. App.—* Houston [14th Dist.] 1988, writ denied).
27	"The court may infer a meeting of the minds from concerted action." *Schlumberger Well Surveying Corp. v. Nortex Oil & Gas Corp., 435 S.W.2d 854*, 857 (Tex. 1968).[55]	**Misrepresentation of Authority**. While the case does, in fact, assess a civil conspiracy claim, the quoted text does not appear in *Williams*. *Schlumberger Well Surveying Corp. v. Nortex Oil & Gas Corp., 435 S.W.2d 854, 855* (Tex. 1968).
28	"A homeowner does have standing to challenge an assignment on grounds that would render it void." *Reinagel v. Deutsche Bank Nat'l Tr. Co.*, 735 F.3d 220, 225 (5th Cir. 2013).[56]	**Misrepresentation of Authority**. The quoted text does not appear in *Reinagel*. The case actually states, "the obligor *may* defend 'on any ground which renders the assignment void,'" but "they have no right to enforce its terms unless they are **[*20]** its intended third-party beneficiaries." *Reinagel v. Deutsche Bank Nat'l Tr. Co., 735 F.3d 220, 225, 228* (5th Cir. 2013) (emphasis in original).

52 ECF No. 11, at 9.
53 ECF No. 11, at 9.
54 ECF No. 11, at 9.
55 ECF No. 11, at 9.
56 ECF No. 11, at 10.

29	"Void assignments are legally ineffective and confer no rights on the assignee." *Morlock, L.L.C. v. Nationstar Mortgage*, L.L.C., 447 S.W.3d 42, 45 (Tex. App. Houston [14th Dist.] 2014).[57]	**Misrepresentation of Authority**. The quoted text does not appear in *Morlock*. The *Morlock* court actually analyzed the legal issue pertaining to a non-borrower's standing to remove an alleged cloud on its title to the property. *Morlock*, L.L.C. v. Nationstar Mortg., L.L.C., 447 S.W.3d 42, 43, 45 (Tex. App. Houston [14th Dist.] 2014).
30	"A trustee who actively participates in a wrongful foreclosure, especially through misrepresentations or irregularities, may be held liable despite the statutory immunity otherwise afforded under Tex. Prop. Code § 51.007(f)." *Miller v. Homecomings Fin., LLC*, 881 F. Supp. 2d 825, 832 (S.D. Tex. 2012).[58]	**Misrepresentation of Authority**. The quoted text does not appear in *Miller*. The *Miller* court did not interpret Section 51.007(f) of the Texas Property Code or address any issues involving a substitute trustee's statutory immunity. *Miller v. Homecomings Fin., LLC, 881 F. Supp. 2d 825, 832* (S.D. Tex. 2012).
31	"When documents recorded in the public record reflect inconsistent consideration, and parties are unable to substantiate the consideration, it raises a fact issue as to whether the sale was legitimate." *Gossett v. Fed. Home Loan Mortg. Corp.*, 2013 WL 204448, at *4 (E.D. Tex. Jan. 17, 2013).[59]	**Non-Existent Case**. *Gossett* does not exist as cited. A search of the case name produces *Gossett v. Fed. Home Loan Mortg.* ***[*21]*** Corp., 919 F. Supp. 2d 852 (S.D. Tex. 2013), and the quoted text does not appear in this case.

57 ECF No. 11, at 10.
58 ECF No. 11, at 11.

32	"Equity will not enforce a foreclosure that is tainted with concealment, irregularity, or fraud." *Bonilla v. Roberson*, 918 S.W.2d 17, 21 (Tex. App. Corpus Christi 1996, no writ).[60]	**Misrepresentation of Authority**. The quoted text does not appear in Bonilla. The Bonilla court did not evaluate fraud or related allegations regarding the validity of a sale. *Bonilla v. Roberson*, 918 S.W.2d 17, 21 (Tex. App.—Corpus Christi-Edinburg 1996, no writ). Rather, the referenced pin cite assesses the validity of a foreclosure proceeding instituted by a mortgagee following a borrower's default of the mortgage agreement.

Table5 (*Return to related document text*)

End of Document

59 ECF No. 11, at 11.
60 ECF No. 11, at 11.

Attachment 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

IN RE: USE OF GENERATIVE ARTIFICIAL INTELLIGENCE IN COURT FILINGS	§ § §	GENERAL ORDER 2025-04

Rule 11 of the Federal Rules of Civil Procedure requires that an attorney or self-represented litigant certifies their claims, defenses, and other legal contentions are warranted by existing law and the factual contentions have evidentiary support. Attorneys and self-represented litigants are cautioned against submitting to the Court any pleading, written motion, or other paper drafted using generative artificial intelligence (*e.g.*, ChatGPT, Harvey.AI, generative AI services) without checking the submission for accuracy as certain technologies may produce factually or legally inaccurate content and should never replace the lawyer's independent legal judgment.

Any attorney or self-represented litigant who signs a pleading, written motion, or other paper submitted to the Court will be held responsible for the contents of that filing under Rule 11, regardless of whether generative artificial intelligence drafted any portion of that filing. *See* Fed. R. Civ. P. 11(c) (providing for imposition of an "appropriate sanction"—including nonmonetary directives, a penalty payable to the court, or payment to the opposing party of attorney's fees and expenses directly resulting from the violation—if, after notice and a reasonable opportunity to respond, the Court determines that Rule 11(b) has been violated).

Signed this 7th day of May 2025.

RANDY CRANE
CHIEF JUDGE

Chapter 13
Case Law Update

H. Gray Burks IV
Staff Attorney
Yvonne V. Valdez Chapter 13 Trustee

3rd Annual Southern District Texas Consumer
Bankruptcy Conference January 15, 2026

May a credit union terminate a checking account and revoke credit union services when its secured claim is crammed down in a Chapter 13 Plan resulting in a loss?

1. No – constitutes a stay violation under 362(a)(3) and/or 362 (a)(6).

2. Yes – Notification of an account closing is informational only, advising the debtor of credit union policy and procedure. The notice is not coercive.

3. Fact specific – timing, purpose, and effect are dispositive of whether the automatic stay is violated.

Ch. 13 (1)

United States Bankruptcy Court
For the Southern District of Texas
Corpus Christi Division

In re: Solis, Alonzo	§	**Case No.**	**25-20186**
Solis, Herlinda	§		
	§		
Debtor(s)	§	**Chapter**	**13**

NOTICE OF STATUS HEARING

PLEASE TAKE NOTICE that a status hearing on the matter listed below has been set for a hearing in the U.S. Bankruptcy Court 1133 North Shoreline Blvd, 2nd Floor Corpus Christi, TX 78401 on September 17, 2025 at 10AM to consider and act upon the following:

Status Hearing on Whether Rally Credit Union's Policy of Closing Debtor Accounts Upon a Loss Constitutes a Coercive Act in Violation of the Automatic Stay.

Respectfully submitted,
The Law Office of Joel Gonzalez, PLLC

09/09/2025
Dated

/s/ Joel Gonzalez
Joel Gonzalez
State Bar No. 24053233
Federal I.D. No. 632677
700 Everhart Rd., Ste. G1
Corpus Christi, Texas 78411
Telephone No. 361-887-6363
email: joel@jglegalgroup.com

Case No: 25-20186
Debtor(s): Solis, Alonzo; Solis, Herlinda

Form No. 13-1
Effective July 15, 2025

* $698.00 p/mos x 41 mos. = $28,618

(iii) Each secured claim is in a separate class.

☑ **C. Claims with No Default to be Paid Directly by Debtor.** The claims held by the following secured creditors will be paid by the Debtor(s) (and not paid through the Trustee) in accordance with the pre-petition contracts between the Debtor(s) and the holder of the claim secured by a security interest:

Name of Holder Collateral for Claim	Claim	Collateral Value on Petition Date	Contract Interest Rate	Monthly Payment	Date Last Payment Is Due
Kleberg Federal National Bank Collateral for Claim 2024 Ford Bronco Sport VIN: 3FMCR9867RRE25751	$37,325.00	$32,988.00	7.04%	$618.00	07/22/2031
* **Rally Credit Union.** Collateral for Claim 2019 Cadillac XT4 VIN: 1GYFZCR45KF176527	$27,160.58	$15,210.00	4.99%	$698.00	11/13/2028

10. Modification of Stay and Lien Retention. The automatic stay is modified to allow holders of secured claims to send the Debtor(s): (i) monthly statements; (ii) escrow statements; (iii) payment change notices and fees, expenses and charges notices pursuant to FED. R. BANKR. P. 3002.1(b) and (c); and (iv) such other routine and customary notices as are sent to borrowers who are not in default. The preceding sentence does not authorize the sending of any (i) demand letters; (ii) demands for payment; (iii) notices of actual or pending default; or (iv) other notices routinely sent to borrowers as a consequence of a default. Each holder of an allowed secured claim provided for by this Plan shall retain its lien until the earlier of (i) the payment of the underlying debt as determined under non-bankruptcy law; or (ii) the completion of all payments provided by this Plan. The holder of a claim secured by a valid lien may enforce its lien only if the stay is modified under 11 U.S.C. § 362 to allow such enforcement.

11. Maintenance of Taxes and Insurance. The Debtor(s) must pay all ad valorem property taxes on property that is retained under this Plan, with payment made in accordance with applicable non-bankruptcy law not later than the last date on which such taxes may be paid without penalty. The Debtor(s) must maintain insurance on all property that serves to secure a claim and that is retained under this Plan, in amounts not less than as required by any underlying loan documents. This Paragraph 11 does not apply to the extent that taxes and insurance are escrowed. Any holder of a secured claim may request proof of compliance in writing, and the Debtor(s) must promptly provide proof of compliance with this Paragraph. If the Debtor(s) fail to provide such proof within 14 days of receipt of a written request, the holder of the debt secured by a lien on the property may purchase such insurance or pay such taxes in accordance with its rights under applicable non- bankruptcy law.

12. Secured Claims Satisfied by Transfer of Real Property in Satisfaction of Secured Claim.

A. The secured claims set forth in this table will be satisfied by the transfer of title to the real property from the Debtor(s) to the transferee identified below. List the street address, city and state for each property:

Case No: 25-20186
Debtor(s): Solis, Alonzo; Solis, Herlinda

Form No. 13-1
Effective July 15, 2025

* $318.72 p/mos x 60 mos = $19,123.32

Name of Holder of Secured Claim Collateral for Claim	Amount of Claim	Plan Interest Rate	Collateral Value	Monthly Payment	Starting Month #	Ending Month #	Total
* **Rally Credit Union.** Collateral for Claim 2019 Cadillac XT4 VIN: 1GYFZCR45KF176527			$15,210.00				
Cure Claim							
Monthly Payment							
Total Debt Claim-3	$27,160.58	8.50%		Pro-Rata	1	60	$19,123.32

(i) The amount of secured claim to be paid under this Plan is the lesser of the amount listed above as the "Collateral Value" and the allowed amount of the claim. If a timely proof of claim is filed, the amount of the claim will be determined through the claims allowance process. Otherwise, the amount scheduled in this Plan will control. If the Court orders a different amount than is shown above as "Collateral Value," this Plan shall be deemed amended to reflect that Collateral Value without the requirement of the filing of an amended Plan.

(ii) Payment of the amounts required in this paragraph constitutes a cure of all pre- confirmation defaults of the Debtor(s)' obligations to the holder of the secured claim. If the monthly payment in this Plan is less than the amount of the adequate protection payment ordered in this case, the actual payment will be the amount of the monthly adequate protection payment.

(iii) Each secured claim is in a separate class.

☑ **C. Claims with No Default to be Paid Directly by Debtor.** The claims held by the following secured creditors will be paid by the Debtor(s) (and not paid through the Trustee) in accordance with the pre-petition contracts between the Debtor(s) and the holder of the claim secured by a security interest:

Name of Holder Collateral for Claim	Claim	Collateral Value on Petition Date	Contract Interest Rate	Monthly Payment	Date Last Payment is Due
Kleberg Federal National Bank Collateral for Claim 2024 Ford Bronco Sport VIN: 3FMCR9867RRE25751	$36,840.58	$32,988.00	7.04%	$618.00	07/22/2031

May a secured creditor receive a value for collateral in a plan based on ongoing use by and benefit to the Debtor or is retail replacement value (considering the age and condition of the property) the exclusive means for valuation of personal property in Chapter 7 and 13?

1. Use and benefit value

2. Replacement Value Only

Ch 13 (2)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

IN RE:	§	
	§	**CASE NO: 25-20245**
CARL RAY COURVILLE,	§	
	§	
Debtor.	§	
	§	
	§	**CHAPTER 13**

DECLARATORY JUDGMENT

On November 19, 2025, the Court held a hearing on Mosaic Underlying Loan Trust's motion for continuance of confirmation hearing. ECF No. 47. The Court granted a continuance to settle one narrow issue: whether 11 U.S.C. § 506(a)(2) provides the exclusive means to value secured personal property in a Chapter 13 case. ECF No. 47.

Section 506(a)(2) provides:

> If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

Carl Ray Courville asserts that replacement value under § 506(a)(2) is proper to evaluate his 23 solar panels. Mosaic contends that alternative methods of valuing the solar panels are appropriate and consistent with § 506(a)(2).

Mosaic refers to four cases in support of its position. *See In re Mayland*, No. 06-10283, 2006 WL 1476927 (Bankr. M.D.N.C. May 26,

2006) (Waldrep, J.); *Taffi v. United States (In re Taffi),* 96 F.3d 1190 (9th Cir. 1996); *In re Sunnyside Hous. L.P.*, 859 F.3d 637 (9th Cir. 2017); *In re Tribune Co.*, 464 B.R. 126 (Bankr. D. Del. 2011).

Taffi is inapplicable because it was decided before § 506(a)(2) of BAPCPA was enacted in 2005. *Sunnyside* and *Tribune* are likewise inapplicable because both concern cramdown in chapter 11. Section 506(a)(2) is limited by its terms to consumer cases under chapter 7 or 13.

Mayland reaffirms Mr. Courville's position. Although the *Mayland* court stated that before the adoption of BAPCPA, there was a valuation distinction between chapter 7 and chapter 13 cases, that distinction was eliminated by the enactment of BAPCPA:

> New Section 506(a)(2) makes clear that it is applicable in both Chapter 7 cases and Chapter 13 cases. Thus, it effectively overrules those cases that found that a liquidation standard was the proper valuation standard for redemption purposes in a Chapter 7 case. **Replacement value is now the standard for valuing claims for redemption purposes in Chapter 7 cases as well as Chapter 13 cases.**

Mayland, 2006 WL 1476927, at *3 (emphasis added).

Because replacement value is the universal standard for § 506(a)(2) purposes in consumer chapter 7 and chapter 13 cases, Mosaic cannot seek discovery for alternative methods of valuing the solar panels.

SIGNED 12/11/2025

Marvin Isgur
United States Bankruptcy Judge

- 12 months of production data- If Debtor has an online monitoring system.
- Online username/password
- 12 months of utility bills
- 3-line electrical diagram- this is within the Permission to Operate that Debtor received either from technician or utility company
- Initial solar proposal emailed to homeowner
- Most recent utility bill.

maintains an audit trail that allows the filing attorney to obtain the identification of the signer's computer or other electronic device from the commercial provider; and (b) complies with the requirements of the United States ESIGN Act.

(c) The notice of electronic filing that is automatically generated by the Court's electronic filing system constitutes service of the document on those registered as filing users of the system.

(d) Depositions, interrogatories, answers to interrogatories, requests for production or inspection, responses to those requests, and other discovery material may not be filed. When a discovery document is needed in a pretrial proceeding, those portions that are needed may be attached as an exhibit to the relevant pleading. When this material is needed at trial, it may be introduced under the Federal Rules of Evidence.

Local Rule 5011-1. Withdrawal of Reference.

A motion to withdraw a case, contested matter, or adversary proceeding to the district court must be filed with the clerk. Unless the district court orders otherwise, the matter will first be presented to the bankruptcy judge for recommendation.

Local Rule 6007-1. Surrender of Collateral in Chapter 13 Cases.

(a) If a chapter 13 plan[3] requires the surrender of collateral that is subject to a debtor's possession or control, this Rule governs the implementation of the surrender, unless the Court orders otherwise.

(b) Debtors and holders of security interests may enter into written agreements (including agreements made by email) providing for the orderly surrender of collateral under a confirmed plan. No agreement may impose personal liability on a debtor or limit a debtor's discharge. If a written agreement is made, the Court will enforce it according to its terms unless the agreement contravenes applicable law. The balance of this Rule governs the method of surrender under a confirmed plan when there is not a written agreement.

(c) The procedures for the surrender of collateral made pursuant to Paragraph 7 of the plan must commence not later than 7 days following entry of the order approving the plan.

(d) The procedures for the surrender of collateral made pursuant to Paragraph 18 of a confirmed plan must commence no earlier than 21 days nor later than 28 days after a Surrender Notice is filed.

[3] This rule applies equally to modified plans.

(e) This subsection applies to the surrender of real property and for which no written agreement has been made under BLR 6007-1(b).

(1) The Debtor(s) must send a letter, substantially in the form set forth on the Court's website, offering immediate possession of the real property to each holder of a security interest on the real property that is listed as a secured creditor on the Debtor's Schedule D or that has filed a proof of claim asserting a secured claim in the real property to be surrendered.

(2) The letter must be sent by prepaid United States Mail to (i) the last known address of the security interest holder; and if a proof of claim has been filed, to the address for notices set forth on the proof of claim; or (ii) if the security interest holder has appeared through counsel in the case, to the counsel who has appeared.

(3) If there is more than one security interest holder and a dispute arises between the security interest holders as to the disposition of the property, the security interest holders must promptly notify the Debtor(s). In the event of such a dispute, the Debtor(s) must vacate the property within 14 days of receipt of the notice.

(4) If a security interest holder requests possession of the property, the Debtor(s) must fully cooperate in vacating the premises. This includes, without limitation, complying with a written request from the security interest holder to deliver all keys, garage door openers, alarm codes, and other information that will allow the security interest holder unfettered access to the property in a prepaid package supplied by the holder of the security interest holder. The premises must be vacated not later than the date set forth in writing by the security interest holder, which date may not be sooner than 14 days following delivery of the request. Any request must be (i) sent by email to the Debtor's counsel (if any), and (ii) served on the Debtor in accordance with FED. R. BANKR. P. 7004. Subject to FED. R. BANKR. P. 9006(f), delivery of the request will be deemed to occur when the requirements of the preceding sentence have been satisfied.

(5) The procedures set forth in subparagraphs (iii) and (iv) of this subparagraph may be implemented by a holder of a security interest immediately following the 7-day period set forth in subparagraph (c) of this Rule and without waiting for the sending or receipt of the letter required by subparagraph (e)(1) of this Rule.

(6) If a document is required to be sent under this Rule to the United States or its agencies, the document must additionally be sent (i) to the United States Attorney at 1000 Louisiana Street, Suite 2300, Houston,

Texas 77002 (attention: Civil Process Clerk); or (ii) in accordance with Bankruptcy Rule 7004.

(f) This subsection applies to the surrender of a vehicle that is permitted to operate on public roads and for which no written agreement has been made under BLR 6007-1(b).

(1) The holder of a security interest must file a Delivery Notice. The Delivery Notice must instruct the Debtor(s) (i) to deliver the vehicle to a specific location; and (ii) as to the disposition of the keys to the vehicle at the time of delivery. The Delivery Notice must be served by United States mail on the Debtor(s) at their address as listed on the docket sheet. The Debtor(s) must deliver the vehicle within 14 days of the filing of the Delivery Notice.

(2) The specific location in the Delivery Notice must be within 25 driving miles of the Debtor(s)' home, as listed on the docket sheet.

(A) If the specific location is a public street address, the Debtor(s) must park the vehicle on the designated public street and within 2 city blocks of the address. No public street address may be designated by the security interest holder unless free parking is available on the public street. When the Debtor(s) park the vehicle, the Debtor(s) must photograph the exterior and interior of the vehicle. The exterior must be photographed such that the location is visible from the photograph. The car must be locked.

(B) After the vehicle is parked in accordance with this Rule, the security interest holder will have the sole risk of loss as to the vehicle and will be responsible for the payment of any traffic fines or other penalties arising out of compliance with the instructions in the Delivery Notice.

(C) If the specified location is not an address on a public street, the location must be available for delivery of the vehicle and staffed with at least one person (i) not less than 4 days per week; (ii) at least one weekend day each week; (iii) by 7:00 a.m. on at least one day each week; and (iv) until at least 7:00 p.m. on at least one day each week. Upon delivery:

(1) the staff person at the delivery location must execute and deliver a receipt to the Debtor(s), which receipt will reflect that the vehicle was delivered. The receipt will not be an acknowledgement that the vehicle was received in any particular condition.

(2) the Debtor(s) and the staff person at the delivery location must each take pictures of the interior and exterior of the vehicle. The pictures will be taken after delivery, but prior to the execution of the receipt.

(D) If the holder of the security interest has not been provided with a current certificate of insurance, the vehicle is not operable, or the vehicle is not in the Debtor(s)' possession or control, the holder of the security interest may repossess the vehicle in accordance with applicable non-bankruptcy law. Additionally, the Debtor(s) must:

(1) Within 7 days of the filing of a Delivery Notice, notify the security interest holder in writing of the circumstances that preclude the Debtor(s) from delivering the vehicle. The notification must inform the security interest holder of the location of the vehicle if known. Notices to the security interest holder must be sent to (i) the last known address of the security interest holder; and if a proof of claim has been filed, to the address for notices set forth on the proof of claim; or (ii) if the security interest holder has appeared through counsel in the case, to the counsel who has appeared;

(2) Fully cooperate in allowing the security interest holder to retrieve the vehicle, including agreeing to meet the security interest holder at a specific date and time to allow the retrieval of the vehicle; and,

(3) Not drive a vehicle that is uninsured.

(g) The surrender of any other property is governed by this Rule and by applicable non-bankruptcy law. The holder of a security interest must make reasonable efforts to take possession of the surrendered property before the expiration of 28 days following (i) the confirmation of a plan that provides for the surrender or collateral under paragraph 7 of a confirmed plan; or (ii) the filing of a Surrender Notice under paragraph 18 of a confirmed plan.

(h) If the Debtor(s) fail to comply with the provisions of this Rule, the holder of the security interest may seek (i) to compel compliance by the Debtor(s); and (ii) to recover from the Debtor(s) the holder's reasonable costs and attorney's fees as an administrative expense to be paid under the confirmed plan; provided, there shall be no liability for the failure to take photographs as required by this Rule. The failure to take photographs as required by his Rule may result in an adverse evidentiary inference.

(i) If a holder of a security interest, secured by personal property, fails to comply with the provisions of this Rule, the Debtor(s) may (i) seek to compel compliance by the holder; and (ii) impose a monthly storage fee, secured by a first priority lien on the holder's collateral, equal to 0.5% of the fair market value of the collateral for every day that the collateral is held by the Debtor(s) after the expiration of 28 days following (i) the confirmation of a plan that provides for the surrender or collateral under paragraph 7 of a confirmed plan; or (ii) the filing of a Surrender Notice under paragraph 18 of a confirmed plan. If the holder retrieves the collateral after the 28-day period, the security interest lien holder must pay cash to the Debtor(s) in the amount of all accrued storage fees. The Debtor(s)' rights created by the lien under this subparagraph may be enforced through the Bankruptcy Court or any other court of competent jurisdiction.

(j) Subject to subparagraph (f) of this Rule, the Debtors may use any collateral pending the retrieval by the lien holder.

(k) If a writing is required by this Rule, the writing may include an email communication, a facsimile signature, or a paper document.

(l) This Rule applies only in Chapter 13 cases.

Local Rule 6007-2. Abandonment of Property in Chapter 7 Cases.

Upon the filing by the chapter 7 trustee of a Notice of Proposed Abandonment and Report of No Distribution, the clerk shall promptly send the Notice to all persons listed on the CM/ECF list of creditors. If no objection is filed within 14 days of the sending of the notice by the clerk, property scheduled by the Debtor(s) is abandoned without further Court order.

Local Rule 7007-1. Motions in Adversary Proceedings.

Motion practice in adversary proceedings is governed by BLR 9013-1.

Local Rule 7008-1. Statement Regarding Consent to Entry of Orders or Judgment in Core Proceeding.

In an adversary proceeding before a bankruptcy judge, in addition to statements required by Rule 7008(a) of the Federal Rules of Bankruptcy Procedure, if the complaint, counterclaim, cross-claim, or third-party complaint contains a statement that the proceeding or any part of it is core, it shall contain a statement that the pleader does or does not consent to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

When personal property is surrendered in Chapter 13, does enforcement of the Local Rule 6007-1 daily storage fee of 0.5% of value require a notice, a motion, or an adversary proceeding?

1. What's Local Rule 6007-1?

2. Motion with "after notice and hearing" 21 day default notice.

3. Adversary Proceeding with summons and service per Rule 7004.

Ch 13 (3)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
	§	**CASE NO: 22-70171**
JOSE ORTEGA	§	
and	§	
MARICELA ORTEGA,	§	
	§	
Debtors.	§	
	§	
	§	**CHAPTER 13**

ORDER STRIKING
Resolving ECF No. 43

Pending before the Court is "Debtor's Amended Motion To Compel Goodleap To Pay Storage Fees Pursuant To Local Rule 6007-1(I) And Declare Goodleap's Claim Set Off And Satisfied Pursuant To Bankruptcy Rule 5009"[1] (the "***Motion***") filed by Jose Ortega and Maricela Ortega ("*Debtors*") filed on August 11, 2025. The Motion seeks an award of $225,885.86 for storage fees and a declaration that a fixture lien asserted by a creditor is released.[2] Federal Rule of Bankruptcy Procedure 7001 requires that a proceeding to recover money or property, or to determine the validity, priority, or extent of a lien or other interest in property must be brought as an adversary proceeding rather than through a debtor's bankruptcy case. Thus, this Court finds that Debtors' Motion is procedurally improper and should be struck. It is therefore:

ORDERED that the Motion[3] is hereby **STRUCK** from the record.

SIGNED August 19, 2025

Eduardo V. Rodriguez
Chief United States Bankruptcy Judge

[1] ECF No. 43.
[2] *Id.*
[3] *Id.*

Does a Chapter 13 debtor have an absolute right to request an extension to file tax returns for 120 days after the first scheduled meeting of creditor?

1. Yes.

2. No.

3. Wait, that's a rule?

Ch 13 (4)

In re Dunlap

United States Bankruptcy Court for the Eastern District of Missouri, Eastern Division

May 5, 2025, Decided

Case No. 24-44112-659 Chapter 13

Reporter
669 B.R. 817 *; 2025 Bankr. LEXIS 1081 **; 74 Bankr. Ct. Dec. 147; 2025 LX 95041; 2025 WL 1297273

In re: ALFRIDA K. DUNLAP, Debtor.

Counsel: [**1] For Alfrida K Dunlap, Debtor: Marie Guerrier Allen, St. Louis, MO.

Judges: KATHY A. SURRATT-STATES, United States Bankruptcy Judge.

Opinion by: KATHY A. SURRATT-STATES

Opinion

[*818] ORDER

The matter before the Court is Motion of the United States of America, on Behalf of the Internal Revenue Service, to Dismiss Chapter 13 Case; Objection to Motion to Dismiss Filed by United States of America on Behalf of the Internal Revenue Service; Amended Objection to Motion to Dismiss Filed by United States of America on Behalf of the Internal Revenue Service; and Supplemental Brief in Favor of the United States of America's Motion to Dismiss (Doc. 29). Upon consideration of the record as a whole, the Court makes the following **FINDINGS OF FACT**:

Debtor Alfrida K. Dunlap (hereinafter "Debtor") filed her Voluntary Petition under Chapter 13 on November 7, 2024. Doc. 22 ¶ 1 at 1. On November 22, 2024, the Internal Revenue Service (hereinafter "IRS") filed a proof of claim in the amount of $8,063.89, consisting entirely of unsecured priority claims. Doc. 22 ¶ 2 at 2. The proof of claim filed by the IRS detailed estimated liabilities for tax year 2023, because Debtor had not yet filed an income tax return for that year. *Id.*; *See also* Doc. 38 **[**2]** at 3.

On January 21, 2025, the United States filed Motion of the United States of America, on Behalf of the Internal Revenue Service, to Dismiss Chapter 13 Case (hereinafter "Motion to Dismiss") pursuant to *11 U.S.C. § 1307(e)*. Doc. 22 ¶ 9 at 3; *see also* Doc. 38 at 3. The IRS argues that Debtor failed to file her 2023 income tax return by the day before the *Section 341(a)* Meeting of Creditors (hereinafter "Meeting of Creditors") was first set. The Meeting of Creditors was first scheduled for December 11, 2024. *Id.* ¶ 3. Debtor filed her 2023 federal income tax return on January 31, 2025, after the day before the Meeting of Creditors was first scheduled to occur. Doc. 38 at 2.

On February 5, 2025, Debtor filed Objection to Motion to Dismiss Filed by the United States on Behalf of the Internal Revenue Service (hereinafter "Objection"). In the Objection, Debtor argues that despite several attempts to file her 2023 tax return beginning in October 2024, Debtor was unable to timely file pursuant to *Section 1308(a)*. Doc. 33 ¶ 3. According to Debtor, the failure to file was primarily due to issues encountered with securing the necessary Identity Protection PIN (hereinafter "IP PIN") from the IRS, as well as unforeseeable circumstances that **[**3]** Debtor experienced following the decline in the health of Debtor's mother. *Id.* During the hearing on Motion to Dismiss, the Court requested that Debtor file a supplemental response to the Motion to Dismiss. On March 4, 2024, Debtor filed Amended Objection to Motion to Dismiss Filed by United States of America on Behalf of the Internal Revenue Service (hereinafter "Amended Objection") in which Debtor rebutted **[*819]** several of the allegations put forth by the IRS in its Motion to Dismiss. Doc. 38 at 3. At the hearing, the Court also granted the IRS time to file any supplemental support of the Motion to Dismiss. On March 11, 2025, the IRS filed Supplemental Brief in Favor of the United

States of America's Motion to Dismiss (Doc. 29) (hereinafter "Supplemental Brief").

JURISDICTION

This Court has jurisdiction over the parties and subject matter of this proceeding under *28 U.S.C. §§ 151*, 157, and 1334 (2024). This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) (2024). Venue is proper in this district under *28 U.S.C. §§ 1408* and *1409(a) (2024)*.

CONCLUSIONS OF LAW

The issue before the Court is whether the Motion to Dismiss should be granted pursuant to *11 U.S.C. § 1307*.

Compliance with Statutory Framework

The Motion to Dismiss involves the interrelation between *Section 1307* and *Section 1308 of the Bankruptcy Code*, the former which details **[**4]** the conversion of cases from Chapter 13 to Chapter 7 of the Bankruptcy Code and the latter which provides guidance for filing prepetition tax returns. The Court's decision on whether to grant the Motion to Dismiss is largely dependent on whether Debtor failed to comply with the statutory regulations set forth by the Bankruptcy Code and whether there are any exceptions under which Debtor's failure, if existent, is justified.

Filing of Prepetition Tax Returns

Section 1308 of the Bankruptcy Code provides that "if a debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition." *11 U.S.C. § 1308(a)*. The Bankruptcy Code further provides that a failure to file the returns by the day before the date on which the Meeting of Creditors is first scheduled to be held allows a Chapter 13 Trustee to hold the Meeting of Creditors open for a reasonable period to allow a debtor to file the necessary returns and comply with the statute. *11 U.S.C. § 1308(b)*. For past-due tax returns however, any extension provided to a debtor by the Chapter 13 Trustee cannot be extended more than 120 days **[**5]** following the first scheduled Meeting of the Creditors, unless a debtor—after notice, a hearing, and order—can meet the exception to the rule under *11 U.S.C. § 1308(b)(2)*. *11 U.S.C. § 1308(b)(1)(A)* - *(b)(2)*.

As noted, the IRS alleges that Debtor failed to file her 2023 tax returns by the day before the date on which the Meeting of Creditors was first scheduled pursuant to *11 U.S.C. § 341* on December 11, 2024. Doc. 38 at 4. Debtor did not file her 2023 tax return until January 31, 2025. The text of *11 U.S.C. § 1308(a)* required Debtor to file all state and federal tax returns that were due from December 10, 2024, extending back to December 10, 2019. Debtor's failure to file her returns by December 10, 2024, constituted a violation of the deadline provided by *11 U.S.C. § 1308(a)*.

However, Congress was likely aware of the issues faced by taxpayers when filing tax returns. As such, the Bankruptcy Code provides the Chapter 13 Trustee with the ability to hold open the Meeting of Creditors until the debtor has submitted all required tax returns. In the case at hand, however the Chapter 13 Trustee did not hold open the Meeting of Creditors due to Debtor's failure to request that the Meeting of Creditor be held open. Despite the ability for the Chapter 13 Trustee to hold **[*820]** open the Meeting of Creditors, **[**6]** the Bankruptcy Code requires debtors to first request the Chapter 13 Trustee to hold open the Meeting of Creditors. *In re Perry, 389 B.R. 62, 64 (Bankr. N.D. Ohio 2008)*. Without a request from Debtor, the Chapter 13 Trustee was unable to hold open the Meeting of Creditors, thereby disallowing Debtor any additional time to file the 2023 tax return.

In response, Debtor rebuts noting that she made at least five attempts to file her tax return beginning in October 2024. Doc. 33 ¶¶ 3, 4 at 1, 3. Debtor also notes having experienced several major life events that resulted in a change of circumstances, including her mother's diagnosis with pneumonia, kidney failure, and heart failure, as well as her eventual passing. *Id.* ¶¶ 3, 6. Having faced numerous rejections in filing her tax return, Debtor's Counsel recommended that she inquire directly with the IRS regarding the rejection of her 2023 tax year filing. *Id.* ¶ 4. Debtor was informed upon consulting with the IRS that the IRS had recently instituted a requirement that Debtor secure an IP PIN,

which Debtor was later unable to secure for herself. *Id.* ¶ 3 at 1. While Debtor eventually secured an IP PIN, Debtor was informed that it was no longer valid. *Id.* Counsel for Debtor notes that Debtor's **[**7]** inability to secure a valid IP PIN for herself and her dependent prohibited Debtor from claiming her dependent mother on her taxes, a right to which she was legally entitled. *Id.* ¶ 9 at 3.

Despite the IP PIN's invalidity, Debtor notes that she submitted a copy of her 2023 tax return to the Chapter 13 Trustee and the IRS on November 12, 2024, which was later rejected by the IRS, and then again on January 31, 2025, which the IRS finally accepted on February 5, 2025. *Id.* ¶ 3 at 1-2. Counsel for Debtor notes that prior to attempting to file her return for tax year 2023, Debtor had never been prompted to secure an IP PIN in order to file her taxes nor had the IRS ever communicated this requirement to Debtor. *Id.* ¶ 8. Debtor argues that her extenuating circumstances, including her mother's illness and various attempts to submit the tax return to the IRS are sufficient to show a concerted effort to comply with the statute. Debtor further argues that the play of events is indicative of circumstances beyond her control in preventing her from filing her 2023 tax return.

Debtor validly asserts that she faced extenuating circumstances which caused a hindrance in filing her tax return. However, considering **[**8]** guidance provided by the Bankruptcy Code, Debtor's argument is somewhat misplaced. *Section 1308 of the Bankruptcy Code* provides:

> After notice and a hearing, and order entered before the tolling of any applicable filing period determined under *paragraph (1)*, if the debtor demonstrates by a preponderance of the evidence that the failure to file a return as required under *paragraph (1)* is attributable to circumstances beyond the control of the debtor, the court may extend the filing period established by the trustee under *paragraph (1)* for—*(A)* a period of not more than 30 days for returns described in *paragraph (1)(A)*; and *(B)* a period not to extend after the applicable extended due date for a return described in *paragraph (1)(B)*.

11 U.S.C. § 1308(b)(2)(A)-(B). Debtor correctly recognizes that the burden rests on debtors to prove the existence of extenuating circumstances. However, the Bankruptcy Code only allows a debtor to prove extenuating circumstances after he or she has requested the Chapter 13 Trustee to hold open the Meeting of Creditors for the submission of outstanding tax returns. Once the Chapter 13 Trustee holds open **[*821]** the Meeting of Creditors for a designated period not to exceed 120 days, the debtor can then raise the issue of extenuating circumstances to request another extension.

Here, Debtor first should **[**9]** have requested the Chapter 13 Trustee to hold the Meeting of Creditors open. Had the Chapter 13 Trustee granted Debtor's request, Debtor would have had the opportunity to request another extension as a result of extenuating circumstances following proper notice, a hearing, and an order entered before the end of the first extension granted by the Chapter 13 Trustee. Because Debtor never made an initial request with the Chapter 13 Trustee to hold the Meeting of Creditors open, the Bankruptcy Code does not allow Debtor to now utilize extenuating circumstances as an excuse to why her 2023 tax return was not timely filed. Despite the unprecedented adversities faced by Debt when filing her tax return, Debtor's failure to follow the statutory procedure constitutes a violation of *11 U.S.C. §§ 1308(a)* and *1308(b)(1) - (2)*.

Conversion or Dismissal

The Bankruptcy Code prioritizes the importance of statutory compliance. The provisions of *11 U.S.C. §§ 1308(a)* and *1307(e)* were enacted by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, reflecting the intent of Congress to ensure timely filing of tax returns so that [. . .] agencies could efficiently assess any claims against debtors and penalize delinquent filers. *In re French, 354 B.R. 258, 260-61 (Bankr. E.D. Wisc. 2006)*. As such, *Section 1307(e) of the Bankruptcy Code* requires that bankruptcy courts dismiss a case or convert a Chapter 13 to a **[**10]** Chapter 7 case upon a debtor's failure to file required tax returns. *11 U.S.C. § 1308(a)*; Doc. 38 at 4; *see also Smith v. Spizzirri, 601 U.S. 472, 476, 144 S.Ct. 1173, 1176, 218 L.Ed.2d 494 (2024)*.

Debtor provided evidence to the Court of the hardships she faced when attempting to file her taxes from

October 2024 to early 2025. These include the repeated rejections of her 2023 return, the unexpected hospitalization and passing of her mother, and the inability to secure an IP PIN for herself and her dependent mother, which the IRS claimed to have needed in order to accept Debtor's return for filing. However, it has already been established and is worth reiterating that Debtor's hardships, while extenuating, should have been brought to the Chapter 13 Trustee in a request for the Meeting of Creditors to be held open until Debtor could successfully file her 2023 tax return.

The evidence on record proves Debtor's failure to comply with *11 U.S.C. § 1308*. If permitted to exercise discretion, this Court believes that some form of relief could justifiably be afforded to Debtor because of the extenuating nature of her circumstances. By the same logic however, Counsel for Debtor should have made the necessary request with the Chapter 13 Trustee to hold the Meeting of Creditors open.

However, this is not an issue **[**11]** of discretion for the Court. *Section 1308(b)(1)* allows the Chapter 13 Trustee to hold open the Meeting of Creditors upon a debtor's request. On the contrary, the language of *Section 1307(e)* notes that the Court "shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate" for "failure of the debtor to file a tax return under *section 1308*." *11 U.S.C. § 1307(e)*. Here, the Bankruptcy Code's use of the word "shall" leaves no discretion for this Court. *In re Perry, 389 B.R. 62, 66 (Bankr. N.D. Ohio 2008)*. In fact, the Code's verbiage denotes an obligation of this Court that is "impervious" **[*822]** to judicial discretion. *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26, 35, 118 S.Ct. 956, 140 L.Ed.2d 62 (1998)*. The Court cannot construe the statute apart from its unambiguous terms. *Id.* Therefore, due to Debtor's failure to comply with *Section 1308 of the Bankruptcy Code*, this Court has no authority to exercise discretion and provide leniency to Debtor considering the hardships she suffered. Debtor's Chapter 13 case must be converted to a Chapter 7 case or dismissed. Therefore,

IT IS ORDERED THAT the Motion of the United States of America, on Behalf of the Internal Revenue Service, to Dismiss Chapter 13 Case is **GRANTED**, and the Clerk of Court is directed to enter an Order dismissing this case.

/s/ Kathy A. Surratt-States

KATHY A. SURRATT-STATES **[**12]**

United States Bankruptcy Judge

DATED: May 5, 2025

St. Louis, Missouri

End of Document

As a Debtor's attorney, do you pull a title report or check the County Appraisal District to ensure Debtor owns the real property being paid in the Plan?

1. No.

2. Yes, we pull a title report.

3. Yes, we check the County Appraisal District records.

Ch 13 (5)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	**CASE NO. 25-70177-M-13**
	§	
JAVIER SALAS-REGALADO,	§	**CHAPTER 13**
DEBTOR	§	
	§	
YVONNE V. VALDEZ	§	
CHAPTER 13 TRUSTEE,	§	
PLANTIFF	§	
	§	
V.	§	**ADV. PROC. NO. _____**
	§	
MENTOR CAPITAL SOUTH	§	
TEXAS LLC, AND	§	
JUAN G. RAMOS JR,	§	
DEFENDANTS		

CHAPTER 13 TRUSTEE'S COMPLAINT TO AVOID FRAUDULENT TRANSFER OF REAL PROPERTY

Yvonne V. Valdez, Chapter 13 Trustee ("Trustee"), respectfully files this complaint against Defendants to avoid the fraudulent transfer of Debtor's principal residence from Javier Salas-Regalado ("Debtor") and his spouse Reyna E. Alvarez De Salas to Mentor Capital South Texas, LLC ("Mentor") done by and through its agents or employees including Juan G. Ramos, Jr. ("Ramos").

JURISDICTION

1. This action is filed pursuant to 11 U.S.C. § 548 (a)(1)(B), and alternatively pursuant to *Texas Bus. and Com. Code* § 24.06 (fraudulent transfers), and *Texas Bus. & Com. Code* § 27.01 (fraudulent misinterpretation in a real estate transaction), and *Texas Bus. & Com. Code* § 17.46, 17.52 (Texas Deceptive Trade Practices Act).

2. This Court has jurisdiction to hear and determine this action pursuant to 28 U.S.C. § 1334(b) and § 157(b)(2)(A) and (E) and (H). This is a core proceeding. This Court has constitutional authority to enter judgment as to the remedy of avoiding the transfer of Debtor's principal residence, because this is a proceeding involving property of the Debtor

and the requested avoidance is necessary to confirm a Chapter 13 plan in the underlying bankruptcy case. This Court has constitutional authority to either enter judgment or alternatively enter a Recommendation of Findings and Conclusions of Law as to any and all claims for damages which Plaintiff may seek, which arise from or are related to the core fraudulent transfer and fraudulent misrepresentation actions.

3. Trustee brings this cause of action pursuant to and based on the sworn testimony of Debtor and the documents produced pursuant to Trustee's Notice of Agreed Examination under Rule 2004 and Subpoena Duces Tecum. (ECF No. 46).

PARTIES

4. Plaintiff is Yvonne V. Valdez, Chapter 13 Trustee. Plaintiff's address for service and notice is 539 N. Carancahua, Suite 800, Corpus Christi, Texas 78401.

5. Defendant is Mentor Capital South Texas LLC. Defendant may be served through its registered agent as follows: Rodolfo N. Gutierrez, Registered Agent, Mentor Capital South Texas, LLC, 9601 McAllister Fwy, Suite 1125, San Antonio, Texas 78216.

6. Defendant is Juan G. Ramos, Jr. Defendant may be served as follows: Juan G. Ramos, Jr., 312 Kiwi, McAllen, Texas 78504.

PERTINENT FACTS

7. Debtor and his spouse purchased property at 604 Red Bugambilia, Pharr, Texas 78577 as their principal residence on December 26, 2016, subject to a note and deed of trust now held by Lakeview Loan Servicing, LLC ("Lakeview"). Debtor lists this property in Schedule A/B and exempts this property as principal residence/homestead in Schedule C. (ECF No. 39).

8. Debtor defaulted. On December 28, 2023, Lakeview sent Debtor and his spouse a notice of foreclosure set for the sale date on March 5, 2024.

9. Mentor contacted Debtor by phone, stated they saw Debtor's home was posted for foreclosure, and that they could help. Debtor and his spouse met with Juan G. Ramos Jr. ("Ramos"). According to Debtor's Rule 2004 testimony, Ramos explained that he is an attorney (Texas State Bar No. 24094908) and the head of Mentor, and represented to Debtor that through one or more of a variety of programs that were available, he would represent them against the mortgage company and save their home. He explained that there would be no cost to Debtor for his services and that any legal fees would be paid by Mentor.

10. According to Debtor's Rule 2004 testimony, Ramos represented that through Mentor he would stop the foreclosure, and they would keep their home through one or more programs that Mentor could offer. Debtor's testimony described programs which seem to be a loan modification, forbearance or refinance. All of this was verbal.

11. According to Debtor's Rule 2004 testimony, Ramos placed a stack of papers in front of Debtor and his spouse, several of which contained numerous blanks and were all in English. There were numerous documents, all in English, and neither Debtor nor his spouse read or functionally speak English. Ramos stated that these were the documents necessary to start the process of saving their home. Significant to this process is that Ramos pressured Debtor and his spouse to sign and initial in the spots where he indicated and no one translated the documents. According to Debtor's Rule 2004 testimony, he and his wife signed the documents because they trusted Ramos as a licensed attorney, did not understand what was going on, and were in a state of desperation to save their home.

12. According to Debtor's Rule 2004 testimony, and contrary to Ramos' misrepresentations, the papers Ramos set before them included: a statutory limited power of attorney appointing Mentor as their agent and attorney in fact regarding real property transactions and their mortgage account; a change of address for Debtor to Mentor's address at 5305 S. McColl Rd., Edinburg, Texas 78539; a Sellers' Closing Acknowledgement; an

Agreement for Purchase and Sale; and a Special Warranty Deed conveying the property from Debtor and his spouse as Grantors to Mentor Capital South Texas, LLC as Grantee. The Special Warranty Deed signed by Javier Salas-Regalado and Reyna E. Alvarez De Salas is dated January 25, 2024, notarized by Dana Alicia Guerrero on February 13, 2024, and recorded with the Hidalgo County Clerk on February 15, 2024.

13. According to Debtor's Rule 2004 testimony, neither he nor his spouse would ever have knowingly transferred the property to Mentor.

14. According to Debtor's schedules, this transfer resulted in Debtor and Debtor's estate becoming insolvent. (See Schedules, ECF No. 1, pp. 9, 29 & 48).

15. The first mortgage is escrowed for taxes and insurance. Therefore, Lakeview is paying these amounts, which are included in the arrearage of $56,036.00 and the ongoing mortgage payments of $1,830.94. According to Lakeview's payment history attached to Proof of Claim No. 3, filed on September 8, 2025, Mentor has not made any payment on the mortgage. According to Lakeview's counsel, its records reflect that Mentor has never contacted Lakeview regarding the mortgage.

16. According to Debtor's Rule 2004 testimony, neither he nor his spouse ever received any consideration monetarily or otherwise from Mentor or Ramos. They never heard from Mentor or Ramos again after that one meeting. Without knowing that Mentor was holding legal title to his home, Debtor assumed that Ramos and Mentor simply were unable to accomplish anything with the mortgage company.

17. Thereafter, Debtor engaged the law firm of Florencio Lopez to represent him in a state court action to enjoin the foreclosure and negotiate a loan modification. No one ever informed Debtor or his spouse that the property is no longer titled in their name. A temporary restraining order was granted to stop foreclosure, the state court suit was then dismissed, and thereafter the property was re-noticed for foreclosure sale date on July 1,

2025. Debtor engaged Baker and Associates to file a Chapter 13 bankruptcy case on June 30, 2025, to save their home.

18. In administering this case, Trustee verified ownership and determined Debtor does not hold legal title to the home and notified Debtor's attorney. This was the first time that Debtor was informed and realized that the papers he and his spouse signed back in January 2024 were not papers to save their home but to give it away for free to Mentor. This adversary ensues.

19. Debtor's Plan filed November 3, 2025 (ECF No. 66) provides for curing the arrears and maintaining ongoing monthly payments of principal, interest and escrow for taxes and insurance, all pursuant to Lakeview's Proof of Claim No. 3 filed September 8, 2025. That proof of claim lists the total balance due as of June 30, 2025, of $199,103.01. The Hidalgo County Appraisal District values the property for 2025 at $332,143.00. Debtor's Plan could be confirmed except that Debtor is not the legal title owner of the property. Debtor's plan cannot propose to pay Lakeview on its first lien mortgage when he is not the owner of the property. Absent this action being filed, Debtor would be paying down the mortgage for the benefit of Mentor.

CAUSE OF ACTION ONE

20. On the facts established through the testimony of Debtor and documents provided by Debtor, the Special Warranty Deed from Javier Salas-Regalado and Reyna E. Alvarez De Salas as Grantors to Mentor Capital South Texas LLC as Grantee dated January 25, 2024, should be avoided, and declared null and void. 11 U.S.C. § 548 (a)(1)(B); *Texas Bus. & Com. Code* § 24.06.

CAUSE OF ACTION TWO

21. Under *Texas Bus. & Com. Code* § 27.01, the facts established through the testimony of Debtor and documents provided by Debtor give rise to actual, and exemplary damages jointly and severally against Mentor and Juan G. Ramos, Jr.

CAUSE OF ACTION THREE

22. On the facts of this case, Mentor and Ramos have committed deceptive trade practices enumerated under *Texas Bus. & Com. Code* § 17.46(b)(5) and (24). Mentor and Ramos are liable for damages under § 17.50(b) pursuant to § 17.50 (a)(1) and (a)(3). *Texas Bus. & Com. Code* §§ 17.46 and 17.50.

PRAYER AND REQUESTED RELIEF

23. Trustee respectfully requests that this Court: (1) Enter a judgment avoiding and rendering null and void the Special Warranty Deed recorded February 14, 2024 with the Hidalgo County Clerk; and (2) Enter a judgment for attorney fees, costs of court, actual damages and exemplary damages jointly and severally against Mentor Capital South Texas, LLC and Juan G. Ramos, Jr. and (3) Enter Judgment for post-judgment interest; and (4) Grant Trustee such other relief, in equity or law, to which she may show herself or Debtor's Estate justly entitled.

RESPECTFULLY SUBMITTED,

Yvonne V. Valdez, Chapter 13 Trustee

s/ H. Gray Burks IV
Yvonne V. Valdez, Trustee
SBOT 24069019 / Fed. Id. No. 1129795
Rod S. Kemsley, Staff Attorney
SBOT 24027099 / Fed. Id. No. 28320
H. Gray Burks IV, Staff Attorney
SBOT 03418320 / Fed. Id. No 73
539 N. Carancahua, Suite 800
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(361) 883-5786 Telephone
(361) 888-4126 Facsimile

Does a continuing tax refund from a Earned Income Credit or Additional Child Tax Credit constitute projected disposable income in Chapter 13 cases?

1. Yes.

2. No.

Ch 13 (6)

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

IN RE:	§	**CASE NO. 24-10198-B-13**
	§	
EVA ISABEL GARCIA,	§	
	§	
DEBTOR	§	**CHAPTER 13**

CHAPTER 13 TRUSTEE'S BRIEF IN SUPPORT OF OBJECTION TO CONFIRMATION

COMES NOW, Yvonne V. Valdez, Chapter 13 Trustee ("Trustee"), by and through her attorney, and respectfully submits this brief in support of her objection to confirmation of Debtor's Chapter 13 plan filed January 17, 2025 (ECF No. 27) for failure to comply with the net disposable income and good faith requirements for plan confirmation.

1. **Summary of Objection.** Trustee objects to confirmation because Debtor has failed to list her projected tax refunds of $10,444.00 per year for over-withholding, Earned Income Credit, and Additional Child Tax Credit as income in Schedule I for the 36-month commitment period.

2. Based on *Hamilton v. Lanning, Marshall v. Blake,* and *In re Orozco*, tax refunds including over-withholding and tax credits should be applied on a case by case basis under the totality of circumstances analysis of income minus reasonably necessary expenses. [1] This approach satisfies both the projected disposable income and good faith plan requirements. [2]

[1] *Hamilton v. Lanning,* 560 U.S. 505, 130 S.Ct. 2464, 177 L.Ed.2d 23 (2010); *Marshall v. Blake,* 885 F. 3d 1065 (7th Cir. 2018); *In re Orozco,* 613 B.R. 23, 27-28 and 30-31 (Bankr. Or. 2020) (including a thorough and technical analysis of above and below median income, and the different type of tax refunds as they apply to the Current Monthly Income test).

[2] *Marshall v. Blake,* 885 F.3d at 1081-2.

3. **Statement of Facts.** Debtor filed her Chapter 13 petition on November 13, 2024. Her Form 122C-1 Statement of Current Monthly Income listed monthly gross wages of $4,675.80 and current monthly income for the year of $56,109.60. Her Schedule I listed gross wages of $4,319.39 and net monthly income of $3,274.96, and did not include or otherwise disclose any tax refunds or tax credits. Her Schedule J listed expenses of $2,824.00 and monthly net income of $450.96 and did not list or disclose any tax refunds or tax credits. Her Chapter 13 plan proposed 60 monthly payments of $500.00, with an estimated distribution of $1,627.09 or 9.49 percent available for distribution on general unsecured claims. (ECF No. 1, 2 & 4).

4. Debtor did not list or disclose any tax refund received for 2023, or anticipated refund for 2024 or projected refunds for the plan applicable commitment period. However, Trustee received and reviewed Debtor's tax returns for 2022 and 2023, which revealed for 2022 a refund of $9,929.00 and for 2023 a refund of $10,444.00. The 2023 tax refund consists of withholding of $2,246.00 plus an Earned Income Credit of $5,011.00, plus an Additional Child Tax Credit of $3,187.00, totaling a refund of $10,444.00.

5. On January 3 and January 6, 2025, the trustee's office notified Debtor's attorney's office that Trustee could not recommend confirmation and would file an objection unless the schedules and plan were amended to disclose, list and account for the projected tax refund for 2024 and projected tax refunds for the remainder of the plan applicable commitment period. In apparent response, on January 17, 2025, Debtor filed an amended Schedule I which did not list the tax refund as projected income. (ECF No. 26).

6. Debtor also filed an amended Schedule J which did not list any amended expenses, but disclosed that: "The Estimated 2024 income tax refund $ 10,444.00 less the exempt Earned

Income Credit and Child Tax Credit - $ 8,198.00 = 2, 246.00 will be used for clothing and savings for emergencies throughout the year." (ECF No. 26, p. 25, line 24).

7. Debtor also filed an amended Schedule B which included a similar disclosure for "tax refunds owed to you." (ECF No. 26, p. 6, line 28). Debtor also filed an amended plan, which did not increase the monthly plan payments to the Trustee, but amended the treatment of a secured creditor, and used that difference to increase the distribution to unsecured creditors to $2,386.10 or 14.5 percent. (ECF No. 27).

8. Accordingly, Trustee filed an objection to confirmation and motion to dismiss on grounds that the plan does not meet the disposable income test of Section 1325(b) and has not been proposed in good faith as required by Section 1325(a)(3) because Debtor is not contributing all projected disposable income for the applicable commitment period in the plan.

9. **Nature of the Refunds: The Tax Credits Constitute Non- Exempt Income and are Property of the Chapter 13 Estate.** It cannot be disputed that Earned Income Credits and Additional Child Tax Credits constitute income for purposes of a debtor's projected disposable income in chapter 13 bankruptcy.[3] The nature of these two tax credits are derived from the Internal Revenue Code and the fact that they are not excepted or exempted from income for purposes of the means test is established by both the Bankruptcy Code and Social Security Administration Regulations.

10. "Except as otherwise provided in this subtitle, gross income means all income from whatever source derived ... ."[4] "The EIC is a tax credit for certain people who work and have

[3] *Marshall v. Blake*, 885 F.3d 1065, 1074-5 (7th Cir. 2018).

[4] 26 U.S.C. § 61(a).

earned income under $66,819.00." [5] "In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the credit percentage of so much of the taxpayer's earned income for the taxable year as does not exceed the earned income amount."[6]

11. Similarly, the additional Child Tax Credit provides qualified taxpayers with a credit of $2,000.00 per child.[7]

12. These tax credits are determined and earned at the end of each 12-month tax year.[8]

13. **These Tax Credits are not Exempted from Current Monthly Income.** The Social Security Administration regulations clarify that earned income credits and child tax credits are both refunds under the Internal Revenue Code and constitute income for purposes of determining Social Security benefits. [9] Although these tax credits are excluded for purposes of means testing under certain federal statutes that provide public assistance benefits, Congress did not exclude them from means testing under the Bankruptcy Code.[10] In the Bankruptcy Code, Congress specifically excepted child specific income sources from disposable income, but not tax credits. [11] Accordingly, tax credits must be included as income when calculating projected disposable income.[12]

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[5] *IRS Publ.* 596 (2024).

[6] 26 U.S.C. § 32.

[7] 26 U.S.C. § 24; *IRS Publ. 972* (expired as of 2021); IRS Schedule 8812.

[8] 26 U.S.C. § 32 (e)(EIC); 26 U.S.C. § 24 (CTC).

[9] 20 C.F.R. § 416.1110(c).

[10] 26 U.S.C. § 32(l).

[11] 11 U.S.C. § 1325(b). See also 11 U.S.C § 10A(B) (additional exclusions).

[12] *Marshall v Blake,* 885 F.3d at 1075.

14. Tax credits are neither exempt from collection under the federal exemptions in Bankruptcy Code Section 522 nor under Chapter 42 of the Texas Property Code. [13] A child tax credit does not constitute "local public assistance" within the meaning of Section 522(d)(10). [14]

15. **Application of Earned Income Credits and Child Tax Credits to Section 1325(b) Projected Disposable Income and Section 1325(a)(3) Good Faith Proposal of a Plan.** The question becomes, how do we apply this income in a manner which satisfies the protections in Section 1325(b) for unsecured creditors and the good faith requirement, so that a plan may be confirmed over the objection of the trustee or an unsecured creditor. The starting point is *Hamilton v. Lanning.* [15] Focusing on the word "projected" in Section 1325(b), the Supreme Court, in an 8 - 1 majority opinion, rejected a "mechanical approach" to determining current monthly income strictly on Form 122C-2 and adopted a "forward-looking approach."

> Consistent with the text of § 1325 and pre-BAPCPA practice, we hold that when a bankruptcy court calculates a debtor's projected disposable income, the court may account for changes in the debtor's income or expenses that are known or virtually certain at the time of confirmation.[16]

16. The *Lanning* Court's reasoning is instructive on how a bankruptcy court should apply tax refund overpayments and credits in Chapter 13 cases.

> In cases in which a debtor's disposable income during the 6-month look back period is either substantially lower or higher than the debtor's disposable income during the plan period, the mechanical approach would produce senseless results that we do not think Congress intended. In cases which the debtor's disposable income is higher during the plan period, the mechanical approach would deny creditors

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[13] 11 U.S.C. § 522 (d); Texas Prop Code §§ 42.002 and 42.0021. Contrast Florida state exemptions which opt-out of federal exemptions and provide an exemption for Earned Income Credits. *In re Gardiner*, 2016 Bankr. LEXIS 4763 (Bankr. M.D. Fla. 2016).

[14] *Gardiner*, 2016 Bankr. LEXIS 4763 at *5.

[15] *Hamilton v. Lanning,* 560 U.S. 505, 130 S.Ct. 2464, 177 L.Ed.2d 23 (2010).

[16] *Hamilton v. Lanning,* 130 S.Ct. at 2478.

> payments that the debtor could easily make. And where, as in the present case, the debtor's disposable income during the plan period is substantially lower, the mechanical approach would deny the protection of Chapter 13 to debtors who meet the chapter's main eligibility requirements.[17]

17. It is critical to recognize the twin purpose of the current monthly income formula: determining the applicable commitment period (Official Form 122C-1); and for above median income debtors only, determining the base or starting point for monthly disposable income. For below- median debtors, the Current Monthly Income formula ("CMI formula") does not establish a net disposable income. Rather, that is left to Official Forms I and J. [18] The Supreme Court has explained that: "Because the means test does not apply to Chapter 13 debtors whose incomes are below the median, those debtors must prove on a case-by-case basis that each claim expense is reasonably necessary." [19]

18. Many courts have historically approved artificial thresholds or caps based on fixed percentages, amounts, or periods for determining the amount of a post-petition tax refund which a debtor may effectively exempt from projected disposable income without utilizing Schedules I and J. [20] This does not seem compatible with the flexible, case-by-case approach of *Lanning*.[21] Additionally, in the Fifth Circuit, the standard for determining expenses for disposable income has

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[17] *Hamilton v. Lanning,* 130 S.Ct. at 2475.

[18] *Orozco,* 613 B.R. at 28 ("The best indication of expenses that are reasonable and anticipated to be expended is Schedule J").

[19] *Ransom v FIA Card Servs., N.A., 562 U.S. 61, 66 n.5, 131 S.Ct. 716, 178 L.Ed. 2d 603 (2010).*

[20] *See E.g., In re Wense,* 2013 Bankr. LEXIS 1408 (Bankr. Utah 2013). The Fifth Circuit has restricted, if not outright rejected formulaic dispositions of post-petition tax refunds which do not allow for expenses which are reasonably necessary for the maintenance and support of the debtors or their dependents. *Diaz v. Viegelahn,* 972 F.3d 713, 718 (5th Cir. 2020)(The parties did not dispute that the post-petition refund was income, and the issue before the Court was the disposition of the post-petition tax refund was proper under the formula in the W. D. Texas Bankruptcy Local Plan Form or required a reasonably necessary expense determination).

[21] *Marshall v. Blake,* 885 F.3d at 1079-1082.

always been those expenses "reasonably necessary for the maintenance and support of the debtors and their dependents." [22]

19. The definition of "CMI" in Section 101 (10A) (B) includes an amount received "on a regular basis" (not just a monthly basis) for the household expenses of the debtor. [23] Schedules I and J offer debtors and their attorneys flexibility on a case- by- case basis, and must be used to fully disclose and apply tax refunds which are known or virtually certain as of the confirmation hearing. [24] Tax refunds may be listed in Official Form 106I (Schedule I) lines 11 or 13, and foreseeable, reasonably necessary expenses may be listed in Official Form 106J (Schedule J) lines 21 or 24.

20. Keeping the two functions of the CMI test separate is critical to understanding the effect of *Lanning* on yearly tax refunds. All types of income received by the Debtor more than six months prior to the bankruptcy petition date do not constitute income for purposes of determining the Applicable Commitment Period using Official Form 122C-1. [25] Irrespective of below or above median status, the *Lanning* adjustment for known or virtually certain sources of income, set off by known or virtually certain reasonably necessary expenses kicks in with equal effect, on schedules I and J during the applicable commitment period. [26]

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[22] *Diaz v. Viegelahn,* 972 F.3d at 718. Good faith proposal of a plan is generally determined on a totality of circumstances standard. *See Generally, Sikes v Crager (In re Crager),* 691 F.3d 671 (5th Cir. 2012); *In re Chaffing,* 816 F.2d 1070 (5th Cir. 1987).

[23] *Marshall v. Blake,* 885 F. 3d at 1079-1081 n.16.

[24] *Hamilton v. Lanning,* 130 S.Ct. at 2478; *Marshall v Blake,* 885 F.3d at 1078-1081; *In re Young,* 2021 Bankr. LEXIS 284, 11- 13 (Bankr. N.D. Tx. 2021)(collecting various methods which different courts use for the disposition of post-petition tax refunds).

[25] *In re Balcom,* 2021 Bankr. LEXIS 3076 (Bankr. Id. 2021); *Orozco,* 613 B.R at 32.

[26] *Marshall v. Blake,* 885 F.3d at 1080-1081.

21. **Conclusion.** Debtor's legal conclusion stated in box 24 of her Schedule J that her earned income credit and child tax credit totaling $8,198.00 per year are exempt from income is incorrect. Her reservation of $2,246.00 "for clothing and savings for emergencies throughout the year" in box 24 of her Schedule J is improper. Pursuant to Official Form 106J, clothing expense must be listed in Schedule J line 9, for which Debtor has allocated $150 per month, totaling $9,000.00 during the Plan term. Pursuant to the Southern District of Texas Local Bankruptcy Plan Form, savings funds must be listed in Schedule J line 21 and plan paragraph 20, for which Debtor has allocated $50.00 per month, totaling $3,000.00 during the plan term. Debtor has failed to list all of her income in her Schedule I and therefore has failed to correctly calculate "monthly net income" in her Schedule J. As a result, Debtor's plan has not satisfied the "projected disposable income" test of Section 1325(b) and has not been proposed in "good faith" as required by section 1325(a)(3).

THEREFORE, Trustee respectfully prays that this Court:

(A) Deny confirmation of Debtor's Plan filed January 17, 2025, without prejudice to amendment within 14 days to include all her projected net disposable income including her projected tax refunds for 2024, 2025 and 2026; and

(B) Order that Debtor shall file an amended Schedule I to list all her income, adjusted to eliminate over-withholding, and corrected to add projected tax credits for Earned Income Credit and projected tax credits for Additional Child Tax Credit; and

(C) Order that Debtor may amend Schedule J to add any omitted projected reasonably necessary expenses; and

(D) Grant Trustee such further relief in equity or at law to which she may show herself justly entitled.

Respectfully Submitted,

Yvonne V. Valdez, Chapter 13 Trustee

/s/ H. Gray Burks IV
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing Trustee's Reply Brief was sent to all parties as listed below on February 13, 2025, either electronically or via U.S. First Class Mail postage pre-paid, at the addresses indicated below.

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/s/ H. Gray Burks IV
H. Gray Burks IV, Staff Attorney

How must student loan claims be provided for in Chapter 13 Plans after *In re Durand-Day* (5th Cir 4/21/25)?

1. Unchanged.

2. Pay in full over 60 months in cases in which Debtor is:
    a. AMI on means test;
    b. Paying less than full net disposable income;
    c. Paying less than 100% on unsecured claims including student loan claims;
    d. Trustee or unsecured creditor objects.

Bassel v. Durand-Day (In re Durand-Day)

United States Court of Appeals for the Fifth Circuit

April 21, 2025, Filed

No. 23-10956

Reporter

134 F.4th 846 *; 2025 U.S. App. LEXIS 9447 **; 2025 LX 62712; 74 Bankr. Ct. Dec. 122; 2025 WL 1155118

IN THE MATTER OF VICTORIA FLORITA DURAND-DAY; LAVONDA LATRECE EVANS, Debtors, PAM BASSEL, Standing Chapter 13 Trustee, Appellant, versus VICTORIA FLORITA DURAND-DAY; LAVONDA LATRECE EVANS, Appellees.

Subsequent History: Rehearing denied by, En banc *Evans v. Durand-Day (In re Durand-Day), 2025 U.S. App. LEXIS 12128 (May 19, 2025)*

Prior History: [**1] Appeal from the United States District Court for the Northern District of Texas. USDC Nos. 4:22-CV-994, 4:22-CV-997.

Bassel v. Durand-Day, 688 F. Supp. 3d 379, 2023 U.S. Dist. LEXIS 145084 (N.D. Tex., Aug. 18, 2023)
In re Evans, 2022 Bankr. LEXIS 3034, 2022 WL 14938726 (Bankr. N.D. Tex., Oct. 26, 2022)

Counsel: For Pam Bassel, Standing Chapter 13 Trustee, Appellant: Ethan Scott Cartwright, Office of the Standing Chapter 13 Trustee, Hurst, TX.

For Victoria Florita Durand-Day, Lavonda Latrece Evans, Appellees: Eric Allen Maskell, Allmand Law Firm, P.L.L.C., Hurst, TX.

Judges: Before RICHMAN, OLDHAM, and RAMIREZ, Circuit Judges. PRISCILLA RICHMAN, Circuit Judge, dissenting.

Opinion by: IRMA CARRILLO RAMIREZ

Opinion

[*848] IRMA CARRILLO RAMIREZ, *Circuit Judge*:

A bankruptcy trustee objected to the treatment of ***student-loan*** debt under two proposed Chapter 13 plans. The bankruptcy court overruled the objections and confirmed the plans, and the district court affirmed the decision. Because the plans do not satisfy *11 U.S.C. § 1325(b)(1)*, the Bankruptcy Code precludes their confirmation. Accordingly, we VACATE the confirmation of the plans and REMAND for further proceedings.

I

This appeal stems from a pair of Chapter 13 proceedings, one initiated by Victoria Florita Durand-Day, and the other by Lavonda Latrece Evans (collectively, Debtors).

A

Durand-Day filed for Chapter 13 bankruptcy on January 17, 2022. Her monthly disposable income, as defined by [**2] *11 U.S.C. § 1325(b)(2)*, is $2,329.94. This income level qualifies Durand-Day as an above-median-income debtor under *§ 1325(b)(4)*, meaning her "applicable commitment period"[1] is five years. Therefore, the amount of money she was projected to earn during her Chapter 13 plan (known as the unsecured creditors' pool, *see, e.g., In re King, 460 B.R. 708, 710 & n.4 (Bankr. N.D. Tex. 2011)*) was $139,796.40—which results from multiplying her monthly disposable income by the applicable commitment period.

In her petition, Durand-Day listed $113,560.65 in nonpriority unsecured claims. *See § 1322(a)(2)* (defining a claim as "nonpriority" when it is "not entitled to priority under" *§ 507*); KEITH M. LUNDIN, LUNDIN ON CHAPTER 13, § 86.3, at ¶ 1, LundinOnChapter13.com (last accessed April 8, 2025) (defining a claim as "unsecured" when there is "no security or collateral for a debt and no right of setoff"). Her list included two student loans totaling $54,195.00, but her plan listed only $71,580.65 in scheduled unsecured claims. **[*849]** She separately listed one of her student loans, an obligation of $41,980.00, representing that it was "in deferment" and would be paid directly to the lender rather than through the Chapter 13 trustee, Pam Bassel (the Trustee). Durand-Day's plan does not specify whether any payments [**3] will be made on the $41,980.00 obligation during the life of her plan.

B

Evans filed for Chapter 13 bankruptcy on March 25, 2022. Her monthly disposable income under *§ 1325(b)(2)* is $1,726.07. Like Durand-Day, she is an above-median-income debtor whose applicable commitment period is five years. Multiplying Evans's monthly disposable income by the applicable commitment period yielded an unsecured creditors' pool of $103,564.20.

In her petition, Evans listed $106,402.00 in nonpriority unsecured claims, which included twelve student loans totaling $73,927.00. Her plan listed only $32,475.00 in scheduled unsecured claims, however. She separately scheduled each of her student loans, representing that they were "in forbearance"[2] and would be paid directly

[1] The "applicable commitment period" is a term of art that functions within *§ 1325(b)*'s calculations. Courts dispute how the "applicable commitment period" should be understood to function. *See* W. HOMER DRAKE, JR., ET AL., CHAPTER 13 PRACTICE & PROCEDURE § 8:66 (June 2024 Update). Because it is unnecessary to the outcome, we do not address this dispute.

[2] The distinction between deferment and forbearance is irrelevant for

to the lenders rather than through the Trustee. Evans's plan also does not specify whether any payments would be made on the $73,927.00 in ***student-loan*** obligations during the life of her plan.

C

The Trustee objected under § 1325(b)(1) to Durand-Day's and Evans's plans (collectively, the Plans) on May 11, 2022, and June 22, 2022, respectively. She contended that even though Debtors were projected to earn enough disposable income during the applicable commitment period **[**4]** to pay all allowed, unsecured claims, the Plans did not commit to do so. Durand-Day and Evans both argued that their paused student loans had been treated under § 1322(b)(5) and did not need to be paid in full during the life of the Plans.

Addressing both cases simultaneously, the bankruptcy court observed that "§ 1322(b)(5) neither limits nor specifically requires that all payments 'under the plan' be made during the 'applicable commitment period' of the plan." It concluded that although Debtors' ***student-loan*** obligations would not be paid in full during the Plans, § 1325(b)(1)(A) was nevertheless satisfied because those obligations would be paid in full "according to their contractual terms as permitted under § 1322(b)(5)." The bankruptcy court accordingly confirmed the Plans, and the Trustee appealed the decision to the district court under *28 U.S.C. § 158(a)*.

On appeal, the district court consolidated Debtors' cases. Reviewing the issue *de novo*, the district court held that even if the payments toward Debtors' ***student-loan*** obligations continued beyond the end of the Plans, those payments were still "under the [Plans]" per § 1325(b)(1)(A). Bassel v. Durand-Day, 688 F. Supp. 3d 379, 382-83 (N.D. Tex. 2023). It affirmed the bankruptcy court's decision and entered final judgment in Debtors' favor on August 18, 2023. The Trustee subsequently **[**5]** appealed the district court's order.

II

"Although this case has been reviewed on appeal by the district court, at this stage we engage in a review of the bankruptcy court's findings just as we would in an appeal coming from a trial in the district court." Killebrew v. Brewer (In re Killebrew), 888 F.2d 1516, 1519 (5th Cir. 1989); see Hawk v. Engelhart (In re Hawk), 871 F.3d 287, 290 (5th Cir. 2017) **[*850]** ("As a 'second review court,' 'our review is properly focused on the actions of the bankruptcy court.'" (brackets omitted) (quoting Off. Comm. of Unsecured Creditors v. Moeller (In re AGE Refin., Inc.), 801 F.3d 530, 538 (5th Cir. 2015))). Accordingly, we review the bankruptcy court's findings of fact for clear error and consider the legal conclusions of both the bankruptcy court and the district court *de novo*. Mendoza v. Temple-Inland Mortg. Co. (In re Mendoza), 111 F.3d 1264, 1266 (5th Cir. 1997).

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our purposes.

III

A

"Chapter 13 of the Bankruptcy Code provides a reorganization remedy for consumer debtors and proprietors with relatively small debts." *Johnson v. Home State Bank, 501 U.S. 78, 82, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (1991)*; *see Bastani v. Wells Fargo Bank, N.A., 960 F.3d 976, 977 (7th Cir. 2020)* ("Chapter 13 is designed for people who can pay most if not all of their debts."). Unlike Chapter 7's liquidating approach, Chapter 13 allows certain debtors to "obtain adjustment of their indebtedness through a flexible repayment plan approved by a bankruptcy court." *Nobelman v. Am. Sav. Bank, 508 U.S. 324, 327, 113 S. Ct. 2106, 124 L. Ed. 2d 228 (1993)*; *see Truman v. Meza (In re Meza), 467 F.3d 874, 877 (5th Cir. 2006)*. Qualifying debt may be discharged after Chapter 13 debtors successfully complete their court-approved payment plans. *Marrama v. Citizens Bank of Mass., 549 U.S. 365, 367, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007)*.

Chapter 13 debtors have "a significant amount of flexibility" in formulating their plans. *Foster v. Heitkamp (In re Foster), 670 F.2d 478, 492 (5th Cir. 1982)*; *see § 1322(b)(11)* ("[A Chapter 13] plan **[**6]** may . . . include any other appropriate provision not inconsistent with this title."). If a debtor proposes a plan that satisfies *§ 1325(a)*'s requirements, the bankruptcy court "shall confirm" it. *Diaz v. Viegelahn (In re Diaz), 972 F.3d 713, 717 (5th Cir. 2020)*.

If the Chapter 13 "trustee or the holder of an allowed[3] unsecured claim objects to the confirmation of [a] plan," however, then a bankruptcy court "may not approve the plan unless, as of the effective date of the plan":

> (A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or
>
> (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

§ 1325(b)(1)(A)-(B); *Hamilton v. Lanning, 560 U.S. 505, 508-09, 130 S. Ct. 2464, 177 L. Ed. 2d 23 (2010)*. In other words, "if the trustee or the holder of an allowed unsecured claim objects to confirmation of the plan, the plan may not be confirmed unless the debtor proposes to pay into the plan all of the debtor's 'disposable income' for a specified period or until all allowed unsecured claims are paid in full, whichever is earlier." *8 Collier on Bankruptcy ¶ 1325.11[1]* (16th ed.), LexisNexis (database updated April 2025).

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[3] "[A]n 'allowed claim' is a valid claim that is properly payable." Drake et al., *supra*, § 18:1; *see BVS Constr., Inc. v. Prosperity Bank, 18 F.4th 169, 176-77 (5th Cir. 2021)* ("In a bankruptcy proceeding, once a creditor files a proof of claim, the bankruptcy court looks to *11 U.S.C. § 502* to determine whether the claim is allowed.").

[*851] [**7] Here, when the Trustee objected to the Plans, Debtors elected to satisfy § 1325(b)(1)(A). When a debtor elects to satisfy § 1325(b)(1)(A), the debtor must ensure that, as of the plan's effective date, "the value of the property to be distributed under the plan on account of" the allowed, unsecured claims is "not less than the amount of" those claims. § 1325(b)(1)(A).[4] This means that the trustee's § 1325(b)(1) objection may be overcome if the debtor proposes to pay the *full value* of the allowed, unsecured claims "under the plan." *See* Brown v. Viegelahn (In re Brown), 960 F.3d 711, 718 (5th Cir. 2020); 8 Collier on Bankruptcy, supra, ¶ 1325.11[3]. If the debtor cannot do so, then 100% of the debtor's projected disposable income must go to paying those claims during the "applicable commitment period." *See* 5 Norton, *supra*, § 151:19 ("[I]n the face of an appropriate objection, a plan which does not propose for the debtor to pay all of the debtor's projected income cannot be confirmed, unless it proposes that the debtor pay 100% of allowed unsecured claim.").

B

The parties agree that Debtors' ***student-loan*** obligations are allowed, unsecured claims. They disagree, however, on timing—whether § 1325(b)(1)(A) requires Debtors to finish paying off their ***student-loan*** obligations within the life of the Plans. As noted, the Trustee contends that § 1325(b)(1)(A)'s "under the plan" language requires Debtors to satisfy their ***student-loan*** debt before the Plans end, *i.e.*, within § 1322(d)(1)'s maximum plan length.[5] Debtors contend that § 1325(b)(1)(A) is satisfied because they are required to pay their ***student-loan*** obligations in full "under the [Plans]," just not during the life of the Plans. At its essence, the parties' disagreement centers on the meaning of "under the plan" in § 1325(b)(1).

1

When interpreting acts of Congress, we seek their "ordinary meaning." Niz-Chavez v. Garland, 593 U.S. 155, 169, 141 S. Ct. 1474, 209 L. Ed. 2d 433 (2021). We always begin with the statutory text, Carmichael v. Balke (In re Imperial Petrol. Recovery Corp.), 84 F.4th 264, 271 (5th Cir. 2023) (per curiam), [**8] and the words Congress enacts are "typically construed according to 'their ordinary, contemporary, common meanings,'" Cascabel Cattle Co. v. United States, 955 F.3d 445, 451 (5th Cir. 2020) (brackets omitted) (quoting Kennedy v. Tex. Utils., 179 F.3d 258, 261 (5th Cir. 1999)). If the text of the statute is clear and

[4] One leading treatise suggests that when a Chapter 13 trustee, rather than a holder of an allowed, unsecured claim, objects under § 1325(b)(1), § 1325(b)(1)(A) may not be an available option to debtors to satisfy § 1325(b)(1). *See* WILLIAM L. NORTON III, NORTON BANKRUPTCY LAW & PRACTICE 3D § 151:19 (Apr. 2025 Update). Because the parties do not raise this argument, we do not address it.

[5] If a Chapter 13 plan does not draw an objection under § 1325(b)(1), then the Bankruptcy Code only establishes a maximum plan length. *See* § 1322(d). But if there is an objection under § 1325(b)(1), the Bankruptcy Code also establishes a minimum plan length. *See* § 1325(b)(4); *see also* In re Sisk, 962 F.3d 1133, 1146 (9th Cir. 2020) ("[T]he Code provides for a maximum duration for all plans and a minimum duration for objected-to plans.").

unambiguous, our inquiry ends, and we give effect to the plain language. *See* Carpenters Dist. Council of New Orleans & Vicinity v. Dillard Dep't Stores, Inc., 15 F.3d 1275, 1282-83 (5th Cir. 1994).

The phrase "under the plan" is undefined, so "we give the term its ordinary meaning." Taniguchi v. Kan Pac. **[*852]** Saipan, Ltd., 566 U.S. 560, 566, 132 S. Ct. 1997, 182 L. Ed. 2d 903 (2012). "Under" means "'subject or pursuant to' or 'by reason of the authority of.'" Forrest Gen. Hosp. v. Azar, 926 F.3d 221, 229 (5th Cir. 2019) (quoting Ardestani v. INS, 502 U.S. 129, 135, 112 S. Ct. 515, 116 L. Ed. 2d 496 (1991)). So "the value of the property to be distributed under the plan" must be distributed subject or pursuant to or by reason of the authority of a Chapter 13 plan. *See* § 1325(b)(1)(A). In isolation, both the Trustee's and Debtors' interpretation of "under the plan" are reasonable.

But "statutes 'should not be read as a series of unrelated and isolated provisions,'" Gonzales v. Oregon, 546 U.S. 243, 273, 126 S. Ct. 904, 163 L. Ed. 2d 748 (2006) (quoting Gustafson v. Alloyd Co., 513 U.S. 561, 570, 115 S. Ct. 1061, 131 L. Ed. 2d 1 (1995)), as "[l]anguage . . . cannot be interpreted apart from context," Smith v. United States, 508 U.S. 223, 229, 113 S. Ct. 2050, 124 L. Ed. 2d 138 (1993). *See Argosy Ltd. v. Hennigan, 404 F.2d 14, 20 (5th Cir. 1968)* ("Statutes are contextual as well as textual."). This is especially so here because "the word 'under' is a 'chameleon' that 'must draw its meaning from its context.'" Nat'l Ass'n of Mfrs. v. Dep't of Def., 583 U.S. 109, 124, 138 S. Ct. 617, 199 L. Ed. 2d 501 (2018) (quoting Kucana v. Holder, 558 U.S. 233, 245, 130 S. Ct. 827, 175 L. Ed. 2d 694 (2010)); *see* Wyandotte Cnty. Gas Co. v. Kansas ex rel. Marshall, 231 U.S. 622, 630, 34 S. Ct. 226, 58 L. Ed. 404 (1914) ("[W]e think to divorce the expressions referred to from the context, would be not to interpret and apply, but to distort the statute.").

[9]** 2

We turn to Chapter 13's statutory scheme. *See* United States v. Palomares, 52 F.4th 640, 642-43 (5th Cir. 2022). Within a statute, "the same term usually has the same meaning." Pulsifer v. United States, 601 U.S. 124, 149, 144 S. Ct. 718, 218 L. Ed. 2d 77 (2024). The provision worded most similarly to § 1325(b)(1)(A) is a few subsections away, in § 1325(a)(5)(B)(ii).[6] *Compare* § 1325(a)(5)(B)(ii) ("the value, as of the effective date of the plan, of property to be distributed *under the plan* on account of such claim is not less than the allowed amount of such claim" (emphasis added)), *with* §

[6] Section 1325(a)(5) is the Chapter 13 provision governing the treatment of allowed, secured claims. Section 1325(a)(5)(B) is known as the "'cram down' option." Barragan-Flores v. Evolve Fed. Credit Union (In re Barragan-Flores), 984 F.3d 471, 474 (5th Cir. 2021). Under this provision, the debtor may elect for the holder of an allowed, secured claim to "retain[] the lien securing the claim" so long as the debtor ensures the plan "provides that the value, as of the date of the plan, of property . . . to be distributed *under the plan* to the holder of the claim is not less than the allowed amount of such claim." Drive Fin. Servs., L.P. v. Jordan, 521 F.3d 343, 345 (5th Cir. 2008) (emphasis added).

1325(b)(1)(A) ("as of the effective date of the plan . . . the value of the property to be distributed *under the plan* on account of such claim is not less than the amount of such claim" (emphasis added)). On more than one occasion, the Supreme Court has made clear that "under the plan" in § 1325(a)(5)(B)(ii) means the debtor must finish paying off the value of the allowed, secured claim by the end of the plan. *Accord* Barragan-Flores, 984 F.3d at 474 ("The 'cram down' option allows the debtor to keep the collateral over the objection of the creditor and provide the creditor with payments that, *over the life of the plan*, will total the present value of the collateral." (emphasis added)).

For instance, the Supreme Court explained in *Associates Commercial Corp. v. Rash* that the cram down option permits a **[*853]** debtor to keep property "over the objection of the **[**10]** creditor" so long as the debtor, among other things, "provide[s] the creditor with payments, *over the life of the plan*, that will total the present value of the allowed secured claim, *i.e.*, the present value of the collateral." 520 U.S. 953, 957, 117 S. Ct. 1879, 138 L. Ed. 2d 148 (1997) (emphasis added). In other words, as long as a Chapter 13 debtor pays a secured claim holder the present value of the collateral by the end of the plan, the debtor may retain the collateral. A plurality of the Supreme Court emphasized this interpretation of § 1325(a)(5)(B)(ii) in *Till v. SCS Credit Corp.*, stating that the cram down option "simply requires bankruptcy courts to ensure that the property to be distributed to a particular secured creditor over the life of a bankruptcy plan has a total 'value, as of the effective date of the plan,' that equals or exceeds the value of the creditor's allowed secured claim." 541 U.S. 465, 473-74, 124 S. Ct. 1951, 158 L. Ed. 2d 787 (2004). This understanding of "under the plan" is consistent across Chapter 13.[7] *See, e.g.*, Pierrotti v. U.S. Internal Revenue Serv. (In re Pierrotti), 645 F.3d 277, 280 (5th Cir. 2011) (holding that a claim capable of treatment under § 1322(b)(5) is that which has "a final payment date after the conclusion of a Chapter 13 plan's statutorily mandated term"); In re Brown, 960 F.3d at 716 (stating that § 1328 permits the discharge of debts under Chapter 13 once "a debtor has made all his payments under a plan"); **[**11]** *accord* Kinney v. HSBC Bank USA, N.A. (In re Kinney), 5 F.4th 1136, 1148 (10th Cir. 2021) (Eid, J., concurring in the judgment) ("It was not necessary for Congress to have added an express provision regarding payments made after the five-year period because the language already provides for such a result: a plan expires after five years, and payments cannot be 'under' a plan that has come to an end.").

The statutory scheme as a whole often sheds light on the meaning of specific language because "the same

[7] It is the "'normal rule of statutory construction' that 'identical words used in different parts of the same act are intended to have the same meaning.'" Gustafson, 513 U.S. at 570 (quoting Dep't of Revenue of Or. v. ACF Indus., Inc., 510 U.S. 332, 342, 114 S. Ct. 843, 127 L. Ed. 2d 165 (1994)); *see* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 170-73 (2012).

terminology is used elsewhere in a context that makes its meaning clear." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 371, 108 S. Ct. 626, 98 L. Ed. 2d 740 (1988)*. That is the case here. The provisions of Chapter 13 containing "under the plan" show that the phrase means during the life of the plan. *See Grubbs v. Hous. First Am. Sav. Ass'n, 730 F.2d 236, 239 (5th Cir. 1984)* (en banc) ("The purpose of [C]hapter 13 is to enable an individual, *under court supervision and protection*, to develop and perform *under a plan* for the repayment of his debts over an extended period." (emphasis added) (quoting H.R. Rep. No. 95-595, at 118 (1977))). Therefore, to interpret *§ 1325(b)(1)(A)* "as part of 'a symmetrical and coherent regulatory scheme,'" *JetPay Corp. v. U.S. Internal Revenue Serv., 26 F.4th 239, 242 (5th Cir. 2022)* (quoting *FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133, 120 S. Ct. 1291, 146 L. Ed. 2d 121 (2000)*), as we must, "under the plan" bears this same meaning as elsewhere in Chapter 13. *See Bullard v. Blue Hills Bank, 575 U.S. 496, 498, 135 S. Ct. 1686, 191 L. Ed. 2d 621 (2015)* ("To proceed under Chapter **[**12]** 13, a debtor must propose a plan to use future income to repay a portion *(or in the rare case all)* of his debts over the next three to five years." (emphasis added)).

[*854] 3

"[C]onsideration of BAPCPA's purpose strengthens our reading of" the phrase "under the plan." *See Ransom v. FIA Card Servs., N.A., 562 U.S. 61, 71, 131 S. Ct. 716, 178 L. Ed. 2d 603 (2011)*.

Congress initially enacted *§ 1325(b)* "to require the debtor to make a substantial effort to pay his debts." S. Rep. No. 98-65, at 64 (1983); see *Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 317, 98 Stat. 333, 356*. This requirement was "[t]he *quid pro quo* for [the] benefits" of Chapter 13. S. Rep. No. 98-65, at 21.

Over time, Congress determined that "certain abuses of the bankruptcy process" had come to pass. *In re Hardacre, 338 B.R. 718, 720 (Bankr. N.D. Tex. 2006)*. To address these "perceived abuses of the bankruptcy system," Congress enacted BAPCPA, or the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23. Milavetz, Gallop & Milavetz, P.A. v. United States, 559 U.S. 229, 231-32, 130 S. Ct. 1324, 176 L. Ed. 2d 79 (2010)*; *see McCoy v. Miss. State Tax Comm'n (In re McCoy), 666 F.3d 924, 927 (5th Cir. 2012)*. Among other goals, BAPCPA sought "to ensure that debtors repay creditors the maximum they can afford." H.R. REP. NO. 109-31, pt. 1, at 2 (2005); 151 CONG. REC. S2469 (statement of Sen. Chuck Grassley) ("What we are trying to do is fix a bankruptcy system that has gone awry, where individuals who have the ability to repay their debts don't do so . . . .").

Section 1325(b) operates harmoniously with this purpose. The Chapter 13 trustee, determining that the holders of allowed, unsecured claims are not receiving [**13] sufficient payment, may object to a plan to require the debtor to jump through a final hurdle: either ensure that all allowed, unsecured claims are paid in full by the end of the plan's life or contribute all disposable income received during the plan toward payment of the unsecured creditors. *See § 1325(b)(1)*; LUNDIN, *supra*, § 91.7, at ¶ 9 ("If . . . the debtor is financially unable to pay all unsecured claim holders in full, then the debtor's fallback position is . . . *§ 1325(b)(1)(B)*."). *Section 1325(b)* simply "help[s] ensure that debtors who can pay creditors do pay them," *Ransom, 562 U.S. at 64* (emphasis omitted), and that debtors do so *within a specific period of time, see Kinney, 5 F.4th at 1145-47* (majority opinion) (explaining why "Congress intended to strictly limit the time for payments under Chapter 13 plans"). *See Pliler v. Stearns (In re Pliler), 747 F.3d 260, 265 (4th Cir. 2014)* (holding that the "core purpose" of BAPCPA—ensuring debtors devote what they can to repaying creditors—is "best effectuated when Chapter 13 plans must last for three or five years, depending on the debtors' income, unless all unsecured claims are fully repaid sooner"). Considering *§ 1325(b)(1)(A)*'s terms in light of BAPCPA's purpose cements that "under the plan" means "by the end of the plan."

* * *

Given that *§ 1325(b)(1)(A)*'s use of the phrase "under the plan" means by the end date of a Chapter [**14] 13 plan, the statute requires Debtors to pay in full all allowed, unsecured claims—including their ***student-loan*** obligations—within the life of the Plans.

C

Debtors advance two arguments to the contrary.

1

Debtors first contend that their ***student-loan*** obligations are "under the [*855] Plans" per *§ 1325(b)(1)(A)* because they are "provided for by the Plans" under *§ 1322(b)(5)*. But the "usual presumption" is "that 'differences in language . . . convey differences in meaning.'" *Ysleta Del Sur Pueblo v. Texas, 596 U.S. 685, 698, 142 S. Ct. 1929, 213 L. Ed. 2d 221 (2022)* (quoting *Henson v. Santander Consumer USA Inc., 582 U.S. 79, 86, 137 S. Ct. 1718, 198 L. Ed. 2d 177 (2017)*). Just as we presume that the same words in a statute bear the same meaning, we also presume that "different text carries with it a choice of different meaning." *Hoyt v. Lane Constr. Corp., 927 F.3d 287, 294 (5th Cir. 2019)*; *see United States v. Maria, 186 F.3d 65, 71 (2d Cir. 1999)* ("As a general matter, the use of different words within the same statutory context strongly suggests that different meanings were intended."). Congress used the phrases "provided for by the plan" and "under the plan" throughout Chapter 13, even placing both in the same provision in three different places. *See §§ 1325(a)(5),*

1328(a), *1329(a)*. Debtors offer no justification to deviate from the presumption that different language carries different meaning, and we find none.

Furthermore, Debtors' contention that "provided for by the plan" and "under the plan" have the same meaning would de-harmonize Chapter [**15] 13's statutory scheme by rendering some of its provisions "idle and nugatory." *Aspley v. Murphy, 52 F. 570, 574 (5th Cir. 1892)* (quoting THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 58 (1868)). For instance, *§ 1328(a)* sets out when a bankruptcy court may grant a discharge to a Chapter 13 debtor: "as soon as practicable after completion by the debtor of all payments under the plan." Yet according to Debtors' reading—which maintains that payments to their ***student-loan*** creditors are "under the plan" even if they occur after the Plans end—a discharge would not be available until they finish paying off their student loans. By definition, this would take place after *§ 1322(d)(1)*'s five-year maximum plan length. *See § 1322(b)(5)*; *see also* Lundin, *supra*, § 112.5, at ¶ 3 ("*[Section] 1322(d)* prevents debtors from paying claims over a period longer than the plan."). Because we avoid "interpretations which render parts of a statute inoperative or superfluous," *Duke v. Univ. of Tex. at El Paso, 663 F.2d 522, 526 (5th Cir. Dec. 1981)*, we cannot countenance Debtors' reading of "provided for by the plan" and "under the plan."

2

Debtors also contend that the Trustee's reading of *§ 1325(b)(1)* would "completely eviscerate" *§ 1322(b)(5)*. The statutory text does not support this argument. *Section 1325(a)* uses the word "shall": "Except as provided in [**16] *subsection (b)*, the court *shall* confirm a plan" that meets the requirements set out in *subsection(a)*. *11 U.S.C. § 1325(a)* (emphasis added). *Section 1325(b)(1)* "is an exception to that command." *In re Brown, 960 F.3d at 716*. If the trustee objects, "the court *may not* approve the plan" unless the plan meets the requirements set out in *§ 1325(b)(1)*. *See § 1325(b)(1)* (emphasis added). Under the Bankruptcy Code's rules of construction, "'may not' is prohibitive, and not permissive." *§ 102(4)*. In contrast, *§ 1322(b)(5)* uses the word "may". For a Chapter 13 plan to be confirmed, *§ 1325(b)(1)* (if applicable) *must* be satisfied, while *§ 1322(b)(5)* is not necessary for confirmation. *See* GARNER & SCALIA, *supra*, at 112 ("Mandatory words impose a duty; permissive words grant discretion."); *Lopez v. Davis, 531 U.S. 230, 241, 121 S. Ct. 714, 148 L. Ed. 2d 635 (2001)* ("[U]se of a mandatory 'shall' . . . impose[s] discretionless obligations."); *see also Kingdomware [*856] Techs., Inc. v. United States, 579 U.S. 162, 172, 136 S. Ct. 1969, 195 L. Ed. 2d 334 (2016)* ("When a statute distinguishes between 'may' and 'shall,' it is generally clear that 'shall' imposes a mandatory duty."). Given the

differing language in these provisions, no conflict exists—if there is no objection to a plan under § 1325(b)(1), then § 1322(b)(5) may operate normally. But if there is an objection, then § 1325(b)(1) may negate § 1322(b)(5). Otherwise, the interaction between § 1325(b)(1) and § 1322(b)(5) would result in a permissive provision trumping a mandatory one, which runs counter to ordinary meaning and standard interpretive practices. *Cf.* United States v. Veloz-Alonso, 910 F.3d 266, 270 (6th Cir. 2018) ("Reading the BRA's [**17] permissive use of release to supersede the INA's mandatory detention does not follow logically nor would doing so be congruent with our canons of statutory interpretation.").

Moreover, the premise of Debtors' contention is missing key context—§ 1325(b)(1)(A) is not the only way to satisfy § 1325(b)(1). Debtors may also satisfy § 1325(b)(1) by applying all their "projected disposable income to be received in the applicable commitment period . . . to make payments" to the holders of allowed, unsecured claims under the Plans. § 1325(b)(1)(B). And under § 1325(b)(1)(B), Debtors may treat their ***student-loan*** obligations under § 1322(b)(5) as long as they are contributing 100% of their disposable income to paying off all allowed, unsecured claims (including the student loans).

* * *

Bankruptcy courts wield considerable authority, but only within the bounds Congress sets out in the Bankruptcy Code. *See* Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206, 108 S. Ct. 963, 99 L. Ed. 2d 169 (1988); *see also* Law v. Siegel, 571 U.S. 415, 421, 134 S. Ct. 1188, 188 L. Ed. 2d 146 (2014) ("It is hornbook law that § 105(a) 'does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code.'" (quoting 2 Collier on Bankruptcy ¶ 105.01[2], 105-06 (16th ed. 2013)). By enacting § 1325(b)(1) as it did, Congress ensured that the statute determines "the balance between debtors and creditors." United States v. Frontone, 383 F.3d 656, 659 (7th Cir. 2004). "[T]o ensure that debtors repay creditors the maximum they can afford," H.R. REP. [**18] NO. 109-31, pt. 1, at 2, debtors must either ensure that all allowed, unsecured claims are paid in full by the end of the plan's life or contribute all disposable income received during the plan toward payment of the unsecured creditors, § 1325(b)(1). Despite Debtors' legitimate concerns, we are "not at liberty to 'alter the balance struck by the statute.'" Sisk, 962 F.3d at 1145 (quoting Czyzewski v. Jevic Holding Corp., 580 U.S. 451, 471, 137 S. Ct. 973, 197 L. Ed. 2d 398 (2017)); *see* Badaracco v. Comm'r, 464 U.S. 386, 398, 104 S. Ct. 756, 78 L. Ed. 2d 549 (1984) ("Courts are not authorized to rewrite a statute because they might deem its effects susceptible of improvement.").

Because the text of § 1325(b)(1)(A), in context, is plain and unambiguous, the statute's plain meaning must be

effectuated. *Seago v. O'Malley, 91 F.4th 386, 390 (5th Cir. 2024)*.

IV

For these reasons, we VACATE the confirmation of the Plans and REMAND to allow Debtors to file new plans consistent with this decision.

Dissent by: PRISCILLA RICHMAN

Dissent

PRISCILLA RICHMAN, *Circuit Judge*, dissenting:

In this Chapter 13 bankruptcy proceeding, the trustee demanded that repayment **[*857]** of long-term, non-dischargeable ***student loan*** debt be accelerated and repaid years before it is due in order for the debtors' respective bankruptcy plans to be confirmed. The bankruptcy court and the district court overruled the trustee's objections and confirmed both plans. I would affirm. The district court's and bankruptcy court's **[**19]** rulings are supported both by the facts in this case and the applicable statutes. Accordingly, with great respect to the views of the panel's majority, I dissent.

I

Victoria Durand-Day filed for protection under Chapter 13 of the Bankruptcy Code, as did Lavonda Latrece Evans in a separate proceeding. The parties in each of the bankruptcy proceedings stipulated that the debtors had federal ***student loan*** debt that was non-dischargeable under *11 U.S.C. § 523(a)(8)*. The United States Department of Education filed a claim in Durand-Day's case, identifying the loan as a non-dischargeable debt under *§ 523(a)(8)*. Evan's plan reflects that "Fed Loan Serv" filed a claim designated as in a "Special Class." The loans are unsecured.

The plans provide that all unsecured debt other than the student loans will be repaid in full during the sixty-month duration of the bankruptcy plan. The student loans, however, will be fully repaid under the terms of the loans, with interest, beyond that sixty-month period and will be paid directly to the creditors. Each of the debtors has disposable income, after allowing for one-hundred-percent payment of debts during the term of the plan, that could be used to repay the full amounts of the student loans during the sixty-month duration **[**20]** of the plan if that debt is accelerated. However, the bankruptcy and district courts permitted the non-dischargeable students loans to be repaid beyond that sixty-month period. The trustee objected to this, asserting that the debtors must repay the student loans within the sixty-month duration of the plan in order to have the plan approved.

II

The primary issue in this appeal is the meaning of "under the plan" as used in the bankruptcy code provision set forth in 11 U.S.C. § 1325(b)(1)(A). That section provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan . . . the value of the property to be distributed *under the plan* on account of such claim is not less than the amount of such claim.[1]

The trustee contends that repayment of the student loans based on their existing terms would result in payments after the effective date of the plan and after the plan's sixty-month duration ends. Therefore, the trustee reasons, the ***student loan*** repayments would not be "under the plan" since the debt would not be fully repaid *during* the plan. This argument should be rejected. The term "under **[**21]** the plan" as used in § 1325(b)(1)(A) is not limited to *during* the plan. The concept of *during* the plan is encompassed within, but not as broad as, "under" the plan. In other words, non-dischargeable debts can be provided for "under the plan" even though they will not be repaid *during* the plan. The plans approved by the bankruptcy and district courts provide that the student loans themselves remain fully intact and will be repaid directly to the creditors. The "value" of each loan is the amount of principal and interest to be paid over the life of the **[*858]** loans. The ***student loan*** debt itself is "distributed" to each creditor "under the plan" because the plan recognizes that payments will be made directly to the creditor over the life of the long-term loan. Stated another way, the "value of the property" is "distributed under the plan" because "the plan" contemplates that the debt will be repaid with interest in accordance with its terms.

A second bankruptcy code provision, 11 U.S.C. § 1322(b)(5), aids in understanding that bankruptcy plans may recognize that certain long-term debts are not discharged and will be repaid long after other debts are repaid and discharged under "the plan." There, the Bankruptcy Code says that a bankruptcy **[**22]** "plan" may recognize that payments on certain unsecured or secured claims will continue to be "due" "after the date on which the final payment under the plan is due."[2] This provision is sometimes referred to as the long-term debt provision.[3] Its wording is admittedly clumsy. But the most reasonable interpretation of it, and the one I think Congress envisioned, was that a "plan" may recognize that a future payment or payments will continue to be due under long-term, non-dischargeable loans "after the date on which the final payment under the plan is due." The pertinent text of the long-term payment provisions

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[1] 11 U.S.C. § 1325(b)(1)(A) (emphasis added).

[2] *Id.* § 1322(b)(5).

[3] *See, e.g.*, In re Sullivan, 195 B.R. 649, 653 (Bankr. W.D. Tex. 1996).

says:

> (b) Subject to *subsections (a)* and *(c)* of this section, the plan may—
>
> * * *
>
> (2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;
>
> * * *
>
> (5) notwithstanding *paragraph (2)* of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which **[**23]** the final payment under the plan is due;[4]

The reference to "the final payment under the plan" ties in with when the bankruptcy court must grant a discharge. Under *11 U.S.C. § 1328(a)(1)*, "as soon as practicable after completion by the debtor of all payments under the plan," the court "shall grant the debtor a discharge of all debts provided for by the plan . . . except any debt . . . provided for under *section 1322(b)(5)*."[5] Another subsection of *§ 1328* similarly provides that "debt . . . provided for under *section 1322(b)(5)*" is not subject to discharge.[6] So, these provisions contemplate that "the plan" will have a "final payment" date for dischargeable debt, but "the plan" may also recognize that payments will continue to be due under long-term, non-dischargeable debts after the "last payment" for dischargeable debts "under the plan."

Bankruptcy courts have construed *§ 1322(b)(5)* to mean that a plan can recognize that future payments will be due for **[*859]** long-term, non-dischargeable debt even if there was no default on or a cure required as to that debt prior to or during the pendency of the bankruptcy proceedings.[7]

When "the plan" recognizes that an unsecured claim will not be discharged and "the last payment" on that claim will be **[**24]** "due after the date on which the final payment under the plan is due," it is fair to say that the future payments of the long-term, non-discharged debts are contemplated "under the plan" just as much as payments for dischargeable debts are contemplated

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[4] *11 U.S.C. § 1322(b)(2), (5)*.

[5] *Id. § 1328(a)(1)*.

[6] *Id. § 1328(c)(1)* ("A discharge granted under ***subsection (b)*** of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under *section 502* of this title, except any debt—(1) provided for under *section 1322(b)(5)* of this title.").

[7] *See generally In re Nieves, 647 B.R. 809, 829 (B.A.P. 1st Cir. 2023)* (citing and discussing cases); *id. at 830* ("We agree with those courts that have ruled that debtors may treat long-term debt claims under *§ 1322(b)(5)* even in the absence of the need to cure a pre-petition default.").

"under the plan."

Legislative imprecision may explain any apparent inconsistencies in the interpretation of the operative phrase "under the plan" in these two provisions. One preeminent bankruptcy treatise has noted, "As with many of the 1984 amendments to the Code, application of *Code § 1325(b)* is problematic because of the inartful use of words and the incorporation of statutory requirements that are not consistent with other provisions of the 1978 statute."[8] While *§ 1322(b)(5)* was part of the original 1978 enactment of the Bankruptcy Code,[9] *§ 1325(b)(1)(A)* was added to the Code with the 1984 amendment.[10] The language in both provisions has remained the same since their respective enactments.[11] Therefore, Congress's "inartful" phrasing in the 1984 amendment and use of language in a manner "not consistent" with the 1978 statute accounts for any confusion regarding the phrase "under the plan" here.

Both plans at issue in this appeal recognize that the long-term **[**25]** student loans are non-dischargeable debts and that future payments would be required after the final payment of dischargeable debts. The two debtors are above-median-income debtors, so, under the Bankruptcy Code, their plans "may not provide for payments over a period that is longer than 5 years."[12] But as already discussed, *§ 1322(b)(5)* expressly provides that "the plan may" permit payments to be made to maintain non-dischargeable debt that is due beyond this five-year period. As a bankruptcy court has explained,

> [t]he three to five year limitation on plan payments of *[§] 1322(c)* would then have no application because *[§] 1322(b)(5)* permits payments lasting longer than five years. It speaks of maintenance of payments on a claim "on which the last payment is due after the date on which the final payment under the plan is due."[13]

In *In re Nieves*,[14] a bankruptcy appeals panel likewise held that *§ 1322(b)(5)* permits **[*860]** a plan to maintain contractual payments for the remaining term of the debt even though the final payment of the debt is to be paid after the three- or five-year term of a plan.[15] The court did so based on its interpretation of the text of *§*

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[8] 5 William L. Norton III, Norton Bankruptcy Law & Practice 3d § 151:19, Westlaw (database updated Apr. 2025).

[9] An Act to Establish a *Uniform Law on the Subject of Bankruptcies, Pub. L. No. 95-598, § 1322, 92 Stat. 2549, 2648* (codified at *11 U.S.C. § 1322(b)(5)*).

[10] *Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 317, 98 Stat. 333, 356* (codified at *11 U.S.C. § 1325(b)(1)(A)*).

[11] *Compare* An Act to Establish a Uniform Law on the Subject of Bankruptcies, 92 Stat. at 2648, *with 11 U.S.C. § 1322(b)(5)*. *Compare* Bankruptcy Amendments and Federal Judgeship Act of 1984 § 317, *with 11 U.S.C. § 1325(b)(1)(A)*).

[12] *11 U.S.C. § 1322(d)(1)*.

[13] *In re McGregor, 172 B.R. 718, 721 (Bankr. D. Mass. 1994)*.

[14] *647 B.R. 809 (B.A.P. 1st Cir. 2023)*.

[15] *Id. at 830*.

1322(b)(5).[16] The court additionally explained, however, that even though the text could be clearer, the [**26] intent of Congress was clear and that requiring long-term contracts to be accelerated to be paid within a three- to five-year plan limitation would scuttle protections Congress intended to provide to homeowners and other borrowers under long-term contracts:

> While the statute could be clearer on this issue, and it may be that Congress missed a cross-reference, it is abundantly clear that Congress intended *§ 1322(b)(5)* to permit debtors to include in chapter 13 plans provisions to "maintain" contractual payments to holders of claims where the term of a loan extends beyond the plan period. Adopting [the creditor's] interpretation of *§ 1325(a)(5)* would invalidate "cure and maintain" plans routinely confirmed by bankruptcy courts addressing home mortgage claims and would directly contradict the will of Congress clearly expressed in *§ 1322(b)(5)*.[17]

The bankruptcy appeals panel in *Nieves* concluded that "*§ 1325(a)(5)(B)(ii)* must be read such that the present value of the amounts provided to be distributed under the Plan including the payments extending beyond the Plan term is not less than the amount of [the creditor's] allowed secured claim."[18] The text of *§ 1325(a)(5)(B)(ii)* pertains only to secured claims but is otherwise similar, though not identical, to *§ 1325(b)(1)(A)*. [**27] The former provides:

> Except as provided in *subsection (b)*, the court shall confirm a plan if . . . with respect to each allowed secured claim provided for by the plan . . . the value, as of the effective date of the plan, of property to be distributed *under the plan* on account of such claim is not less than the allowed amount of such claim.[19]

Recall that *§ 1325(b)(1)(A)* provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan . . . the value of the property to be distributed *under the plan* on account of such claim is not less than the amount of such claim.[20]

If the rationale of the alternative holding in *Nieves* is applied to the facts presently before us, it should be clear that the value of the ***student loan*** agreement to each creditor is not less than the amount of their claims regarding those loans, since the loans remain intact and

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[16] *See id. at 828-30.*

[17] *Id. at 831.*

[18] *Id.*

[19] *11 U.S.C. § 1325(a)(5)(B)(ii)* (emphasis added).

[20] *Id. § 1325(b)(1)(A)* (emphasis added).

must be fully repaid, with interest, though repayment extends beyond the sixty-month duration of the plans. The plans each recognize that the debtor will make payments to the creditor directly, in accordance with the loan agreement's terms.

* * *

Because **[**28]** I would affirm the district court, I respectfully dissent.

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1. *In re Walker*

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3rd Annual Southern District of Texas Consumer Bankruptcy Conference

Chapter 7

Selected Cases for Discussion

Chris Murray, Panel Trustee

Clem v. Tomlinson (In re Clem)

United States Court of Appeals for the Fifth Circuit

December 23, 2024, Filed

No. 22-11072

Reporter
124 F.4th 341 *; 2024 U.S. App. LEXIS 32526 **; 2024 LX 32638; 74 Bankr. Ct. Dec. 41; 2024 WL 5198585

IN THE MATTER OF STEVEN ANDREW CLEM, Debtor.STEVEN ANDREW CLEM, Appellant, versus LADAINIAN TOMLINSON; LATORSHA TOMLINSON, Appellees.

Prior History: [**1] Appeal from the United States District Court for the Northern District of Texas. USDC No. 3:18-CV-1200.

Clem v. Tomlinson, 2022 U.S. Dist. LEXIS 179617, 2022 WL 4838026 (N.D. Tex., Oct. 1, 2022)

Counsel: For Steven Andrew Clem, Appellant: John Whitney Bowdich, Esq., Appellant, Bowdich & Associates, P.L.L.C., Dallas, TX.

For LaDainian Tomlinson, LaTorsha Tomlinson, Appellees: Jeremy Beau Powell, Esq., Appellee, Law Offices of Van Shaw, Dallas, TX; Evan Lane Shaw, Attorney, Appellee, Law Offices of Van Shaw, Dallas, TX.

Judges: Before ELROD, Chief Judge, and JONES, and BARKSDALE, Circuit Judges.

Opinion by: EDITH H. JONES

Opinion

[*345] EDITH H. JONES, *Circuit Judge*:

Defendant-Debtor Steven Andrew Clem, the former owner of a defunct homebuilding company, appeals a sizeable judgment for nondischargeability of a debt incurred in connection with a failed project. After an arbitration panel found Clem personally liable to Plaintiffs LaDainian and LaTorsha Tomlinson for breach of contract and violations of the Texas Deceptive Trade Practices Act ("DTPA"), Clem filed a Chapter 7 bankruptcy case. In this subsequent adversary proceeding brought by the Tomlinsons, the bankruptcy court determined that because Clem had obtained over $660,000 from them through "false [*346] representation" or "false pretenses," the debt was not dischargeable. [**2] *See* 11 U.S.C. § 523(a)(2)(A). But we conclude that the bankruptcy court erred in failing to apply collateral estoppel to the findings in an underlying arbitration, *see generally In re Amberson*, 73 F.4th 348, 350-51 (5th Cir. 2023), and also erred in its interpretation of a fraud-by-nondisclosure claim. We REVERSE and RENDER judgment for Clem.

I. Background

Clem was chief executive officer of Bella Vita Custom Homes, LLC. In April 2015, the Tomlinsons signed a contract (the "Contract") with Bella Vita to construct a $4.5 million luxury home for them north of Dallas, Texas. The Tomlinsons' home was planned to be 18,000 square feet and would be the largest house that Bella Vita had ever built. The project quickly ran into problems. As one example, the bankruptcy court found that the "Tomlinsons grew frustrated with Bella Vita for its alleged failure to account for usages of the Tomlinsons' 10 [percent] initial deposit and subsequent draw requests." Bella Vita failed to inform the Tomlinsons immediately when it punctured a water line while preparing the foundation and caused extensive flooding on the building pad and adjacent land. A neighbor first advised them about the flooding. Four months after entering into the Contract, and after they had paid Bella Vita over [**3] $650,000, the Tomlinsons terminated the Contract.

There were other problems. The bankruptcy court also found that, during construction, Bella Vita "undertook undisclosed/unapproved construction changes."

> Specifically, Bella Vita made the decision to utilize helical steel piers on the large Home—something atypical and that [Clem] and Bella Vita had no experience using in the past—instead of the concrete piers that were specified in the Contract's original design plans. Bella Vita made this decision after encountering subsurface water when drilling holes for the contemplated concrete piers.

The choice of helical piers violated the Contract, which

provided that any change in the building plans required disclosure and written approval by the Tomlinsons.

The Tomlinsons promptly filed suit against Clem and Bella Vita in state court in Tarrant County, Texas. The state court ordered the parties to arbitrate through the American Arbitration Association. In the arbitration, the Tomlinsons asserted claims against Bella Vita and Clem, including (1) breach of contract/breach of warranty, (2) negligence and malice/gross negligence, (3) negligent misrepresentation, (4) various violations of the DTPA, [**4] (5) fraud and fraud in the inducement or by nondisclosure, (6) fraud in a real estate transaction, (7) unconscionable, knowing, or intentional course of action, and (8) conversion. They also pled other doctrines or remedies, including estoppel, alter ego, and joint enterprise.

A year later, the three-person arbitration panel awarded $744,711 in damages to the Tomlinsons against Bella Vita and Clem jointly and severally. The state court adopted the arbitration award in a final judgment several days later. The arbitration award includes twenty very specific findings of fact and conclusions of law. Relevant here, Finding 16 states that "the actions of Clem and Bella Vita, acting through Clem, violate the provisions of the DTPA and they are a producing cause of economic damage to the Tomlinsons." Finding 17 states that "[t]he actions of Clem and Bella Vita do not constitute a *knowing* violation of the DTPA." (emphasis added).[1] [*347] Further, although in Finding 20, the arbitration panel found that "the evidence supports both a breach of contract cause of action and a DTPA cause of action against Bella Vita," it denied the Tomlinsons' claims for negligence and gross negligence as barred by the Texas [**5] economic loss rule.

Significantly, the arbitration panel also denied the Tomlinsons' claims for "misrepresentation, fraud, [and] fraud in the sale of real estate." The arbitrators noted (Finding 14) that Clem "failed to inform the Tomlinsons that steel helical piers were installed rather than the concrete piers called for by the Contract plans and specifications." And in Finding 15, "Clem represented that a builder's risk policy for the Residence had been purchased when, in fact, the purchase had not been made." But the panel found that the Tomlinsons' misrepresentation and fraud and other such claims "were not sustained by a preponderance of the evidence."

Shortly after the adverse judgment was entered, Clem filed a Chapter 7 bankruptcy case in December 2016, and the Tomlinsons responded with this adversary proceeding claiming non-dischargeability of the entire arbitration judgment owed them under 11 U.S.C. § 523(a)(2)(A). According to the Tomlinsons' First Amended Complaint, Clem made multiple false representations in connection with the Contract on which the Tomlinsons relied to their detriment. Their pleading alleged pre-contract fraud claims. The parties filed cross-motions for summary judgment, which [**6] the bankruptcy court denied.

Trial took place on two days in August and October, 2017. According to the bankruptcy court, a new legal theory "seemed to emerge" over the course of the two days. Under this theory, after entering the Contract, Clem and Bella Vita had concealed material information with regard to installing the helical piers and puncturing the water line, how the initial ten percent deposit (almost $450,000) had been spent, and whether Bella Vita had purchased a Builder's Risk insurance policy for the project. The court raised as an issue whether the Tomlinsons were fraudulently induced to stay in the Contract longer than they otherwise would have done. Based on this "evolution," the Tomlinsons sought leave to file a second amended complaint including the new legal theory, and the bankruptcy court granted the motion over Clem's objections.

On the same day that it approved the amended complaint, the bankruptcy court issued findings of fact and conclusions of law awarding the Tomlinsons $664,590.93 as a nondischargeable debt under Section 523(a)(2)(A).[2] The court held that its factual findings "form[ed] the basis for an ultimate finding of fraud or fraud by nondisclosure." *First*, Clem committed [**7] fraud by nondisclosure during performance of the Contract by failing to inform the Tomlinsons of the switch from concrete piers to helical steel piers and failing to inform them timely about the punctured water line. *Second*, Clem committed fraud by "personally supervis[ing] reports going out to the Tomlinsons . . . that created the false impression that . . . the Tomlinsons' money had been used to acquire a Builder's Risk Policy" when in reality no such policy had been purchased. *Third*, Clem committed fraud by nondisclosure by failing "to provide invoices and other

[1] Knowing violations of the DTPA enable a plaintiff to obtain mental anguish damages. TEX. BUS. & COM. CODE SEC. 17.50(b)(1).

[2] In combination with a previous sanctions award, the total award exceeded $680,000.

documentation to the [Tomlinsons] regarding expenditures on their Home project." The [*348] bankruptcy court concluded that Clem's debt was not dischargeable and entered judgment on January 3, 2018.

Clem quickly moved for reconsideration. The court reopened the record on the two concealment/nondisclosure issues only and set Phase 2 of the trial on those issues. After hearing evidence, the court denied the motion for reconsideration because "[t]he supplemental evidence did not persuade the court to change its earlier findings and conclusions." The court reconfirmed its original judgment.

The district court affirmed the bankruptcy [**8] court in full in a lengthy opinion that found no reversible error on any of the issues appealed by Clem. Clem filed a timely appeal.

II. Analysis

Like the district court, this court reviews the bankruptcy court's findings of facts for clear error. *In re Sims*, 994 F.2d 210, 217 (5th Cir. 1993). Its conclusions of law are reviewed de novo. *In re Keaty*, 397 F.3d 264, 269 (5th Cir. 2005). Issues concerning collateral estoppel are issues of law. *In re Amberson*, 73 F.4th at 350. Clem and the Tomlinsons debate numerous procedural and substantive issues pertaining to the judgment, but we need only review Clem's contentions that the specific grounds of nondischargeability found by the bankruptcy court are barred by collateral estoppel arising from the arbitration proceeding or by Texas law.

A. General Principles

The doctrine of collateral estoppel (issue preclusion) "bars relitigation of any ultimate issue of fact actually litigated and essential to the judgment in a prior suit." *In re Miller*, 156 F.3d 598, 601 (5th Cir. 1998) (quoting *In re Garner*, 56 F.3d 677, 679 (5th Cir. 1995) (citations omitted)). Under Texas law,[3] "[a] party seeking to invoke the doctrine of collateral estoppel must establish" three elements. *In re Miller*, 156 F.3d at 602 (quoting *In re Garner*, 56 F.3d at 680 (citations omitted)). These elements are:

> (1) the facts sought to be litigated in the second action were fully and fairly litigated in the prior action;
>
> (2) those facts were essential [**9] to the judgment in the first action; and
>
> (3) the parties were cast as adversaries in the first action.

Id. "The party asserting issue preclusion bears the burden of proof and hence would have the burden of bringing forward an adequate state-court record." *In re King*, 103 F.3d 17, 19 (5th Cir. 1997) (internal citations omitted).

Like prior court judgments, prior "arbitral decisions may have preclusive effect." *In re Amberson*, 73 F.4th at 350 (applying Texas law and quoting OJSC *Ukrnafta v. Carpatsky Petroleum Corp.*, 957 F.3d 487, 503 (5th Cir. 2020)). Here, like the bankruptcy and district courts, we apply the principles of collateral estoppel to the arbitration ruling, which was confirmed as a judgment in state court.

"The Supreme Court has explicitly stated that collateral estoppel, or issue preclusion, principles apply in bankruptcy dischargeability proceedings." *Id.* (quoting *In re Schwager*, 121 F.3d 177, 181 (5th Cir. 1997) (citing *Grogan v. Garner*, 498 U.S. 279, 285 n.11, 111 S. Ct. 654, 658 n.11, [*349] 112 L. Ed. 2d 755 (1991))). But in such cases, this court holds that collateral estoppel applies only in "limited circumstances." *In re Dennis*, 25 F.3d 274, 278 (5th Cir. 1994). Dischargeability is determined "in bankruptcy court," not "earlier in state court at a time when [dischargeability] concerns 'are not directly in issue and neither party has a full incentive to litigate them.'" *Archer v. Warner*, 538 U.S. 314, 321, 123 S. Ct. 1462, 1467, 155 L. Ed. 2d 454 (2003) (quoting *Brown v. Felsen*, 442 U.S. 127, 134, 99 S. Ct. 2205, 2211, 60 L. Ed. 2d 767 (1979)). For collateral estoppel to apply in this context, the first court must have "made specific, subordinate, factual findings on [**10] the identical dischargeability issue in question—that is, an issue which encompasses the same *prima facie* elements as the bankruptcy issue." *In re Dennis*, 25 F.3d at 278.

Further analysis continues with the Bankruptcy Code, which exempts from discharge a debt for money obtained by "false pretenses, a false representation, or

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[3] "When giving preclusive effect to a state court judgment, this court must apply the issue preclusion rules of that state." *In re Keaty*, 397 F.3d at 270. A Texas Court of Appeals has held that the same principles apply to arbitration awards as to state court judgments. *Casa del Mar Ass'n v. Gossen Livingston Assocs.*, 434 S.W.3d 211, 219 (Tex. App.—Houston [1st Dist.] 2014, pet. denied).

actual fraud, other than a statement respecting the debtor's or an insider's financial condition." 11 U.S.C. § 523(a)(2)(A). To have a debt excepted from discharge under Section 523(a)(2)(A), a creditor must prove that: (1) the debtor made a representation or engaged in other fraudulent conduct; (2) at the time the representation was made, the debtor knew it was false; (3) the debtor made the representation with the intention to deceive the creditor; (4) the creditor justifiably relied on such representation; and (5) the creditor sustained losses as a proximate result of the representation. *Saenz v. Gomez*, 899 F.3d 384, 394 (5th Cir. 2018). These "elements of actual fraud . . . generally correspond with the elements of common law fraud in Texas[.]" *Id.*[4] Dischargeability is determined in bankruptcy law by the preponderance of the evidence. *Grogan*, 498 U.S. at 291, 111 S.Ct. at 661.

Under Texas law, fraud occurs when:

> (1) the defendant misrepresented a material fact; (2) the defendant knew the material representation was false [**11] or made it recklessly without any knowledge of its truth; (3) the defendant made the false material representation with the intent that it should be acted upon by the plaintiff; and (4) the plaintiff justifiably relied on the representation and thereby suffered injury.

United Tchr. Assocs. Ins. Co. v. Union Lab. Life Ins. Co., 414 F.3d 558, 566 (5th Cir. 2005). "The first requirement of this test can be met if the defendant concealed or failed to disclose a material fact when a duty to disclose existed." *Id.*

Fraud by nondisclosure is a subcategory of fraud that requires a plaintiff to prove that:

> (1) the defendant deliberately failed to disclose material facts; (2) the defendant had a duty to disclose such facts to the plaintiff; (3) the plaintiff was ignorant of the facts and did not have an equal opportunity to discover them; (4) the defendant intended the plaintiff to act or refrain from acting based on the nondisclosure; and (5) the plaintiff relied on the non-disclosure, which resulted in injury.

Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC, 572 S.W.3d 213, 219-20 (Tex. 2019) (citations omitted).

[*350] *B. The Bankruptcy Court's View of Collateral Estoppel*

The bankruptcy court conscientiously referenced the general principles of collateral estoppel and Texas substantive law, but it concluded that collateral estoppel did not bar its retrial of the Tomlinsons' [**12] claims under Section 523(a)(2)(A). The court's reasoning largely relies on this court's decision in *In re King*, 103 F.3d at 17, culminating in *King's* admonition that "[t]he fact that a state court labels a judgment 'contract damages' rather than 'fraud damages' does not control the bankruptcy court if the state court's determination did not necessarily include a finding regarding the dischargeability issue (*i.e.*, whether the debt was obtained by false pretenses, a false representation, or actual fraud)." *Id.* at 20.

Several steps precede the bankruptcy court's conclusion. Initially, the court noted "confusi[on]" because the arbitration award did not identify which provisions of the Texas DTPA were combined with Contract violations. The court found no "discernible record" from the arbitration proceedings sufficient to persuade it that the panel "made specific, subordinate, factual findings on the identical dischargeability issue in question." *See In re Dennis*, 25 F.3d at 278. The court declared it could not discern whether "identical" legal issues had led to the finding of non-identified DTPA violations. And the court found "most troubling" its hypothetical speculation that parties to an arbitration may choose to pursue DTPA claims that are easier to prove than fraud, [**13] because of the DTPA's lower intent standards. In sum, the court held that there was "no evidence" that the plaintiffs had fully and fairly litigated common law fraud claims.[5]

We disagree with the bankruptcy court's overly narrow interpretation of the arbitral award. There is no question

[4] If anything, the elements of nondischargeability may be more onerous than those for fraud in Texas, as this court applies Section 523(a)(2)(A) only where a debt has been "obtained by frauds involving 'moral turpitude or intentional wrong, and any misrepresentation must be knowingly and fraudulently made.'" *In re Acosta*, 406 F.3d 367, 372 (5th Cir. 2005) (quoting *In re Martin*, 963 F.2d 809, 813 (5th Cir. 1995)).

[5] As the court put it more colloquially: "Is it fair or appropriate—in a situation like this—to preclude creditors from pursuing Section 523 allegations, in the new venue of bankruptcy court, simply because they may *only* have prevailed on DTPA (and breach of contract) claims in prepetition litigation/arbitration? This court thinks not." (footnote omitted).

that several theories of fraudulent misrepresentation or omission were placed squarely before the three-member panel, and the panel addressed the facts and legal conclusions as to each. The fraud claims still in issue here involve the unapproved replacement of concrete piers with helical piers, in conjunction with the contractor's failure immediately to disclose the underground water main breach, and whether a Builder's Risk insurance policy had been procured by Bella Vita. As outlined earlier, the arbitration panel expressly found Clem did not inform the Tomlinsons about the helical piers (or obtain their approval), and he misrepresented that the insurance policy had been purchased. The arbitration panel found breach of contract in a number of actions by Clem and Bella Vita, several of which are no longer mentioned in this litigation. And in a single declarative sentence, the panel found both a breach [**14] of contract cause of action and a DTPA cause of action. But critically, the arbitrators also concluded that the Tomlinsons' misrepresentation and fraud claims "were not sustained by a preponderance of the evidence." And it found that Clem's actions "do not constitute a knowing violation of the DTPA."

When an issue "that forms the basis for the creditor's theory of nondischargeability has been actually litigated in a prior proceeding, neither the creditor nor the debtor may relitigate those grounds." *RecoverEdge L.P. v. Pentecost*, [*351] 44 F.3d 1284, 1294 (5th Cir. 1995), *abrogated on other grounds by Husky Int'l Elecs., Inc. v. Ritz*, 578 U.S. 355, 136 S. Ct. 1581, 194 L. Ed. 2d 655 (2016). Although other cases may pose challenges in identifying the extent to which issues were "actually litigated" in arbitration proceedings, the structure of this arbitration award satisfies the collateral estoppel standard our court has repeatedly laid out: "specific, subordinate, factual findings on the identical dischargeability issue in question." *See In re Dennis*, 25 F.3d at 278 (cited by *In re King*, 103 F.3d at 19; *In re Keaty*, 397 F.3d at 271). The bankruptcy court erred in holding that more specific DTPA findings were required, when the panel explicitly held there was no "knowing" DTPA violation by Clem. The absence of any "knowing" violation necessarily precludes a finding of recklessness, much less an intentional violation. Consequently, [**15] the bankruptcy court erred in theorizing that issues that were litigated in the arbitration were not identical to the fraud issues underlying the Section 523(a)(2)(A) claim. *Saenz*, 899 F.3d at 394.[6]

Further, "[t]he requirement that an issue be 'actually litigated' for collateral estoppel purposes simply requires that the issue is raised, contested by the parties, submitted for determination by the court, and determined." *In re Keaty*, 397 F.3d at 272 (citing *McLaughlin v. Bradlee*, 803 F.2d 1197, 1201, 256 U.S. App. D.C. 119 (D.C. Cir. 1986); *James Talcott, Inc. v. Allahabad Bank, Ltd.*, 444 F.2d 451, 459-460 (5th Cir. 1971)). The arbitration panel's findings and conclusions covered the necessary issues. As Clem argues, it would be illogical to conclude that the issues pertinent to nondischargeability were not presented to and determined by the arbitrators when precisely such issues were referenced in their award. The bankruptcy court's concern about a lack of full and fair litigation is contrary to the arbitration award, and in any event it proves too much. Even a default judgment's recitations may be issue preclusive in Texas law. *See, e.g., In re Jones*, 655 B.R. 868, 879 (Bankr. S.D. Tex. 2023).

For these reasons, the Tomlinsons are collaterally estopped from relitigating whether Clem's conduct amounted to intentional fraud, false pretenses or misrepresentations under Section 523(a)(2)(A) as to the helical piers and water line break or the failure to obtain Builder's Risk insurance. [**16]

On one remaining issue, however, the arbitration award lacks specific findings. The sole fact that the Tomlinsons' Statement of Claims in the arbitration asserts that Clem and Bella Vita failed to provide fiduciary management of construction funds is insufficient to show that the issue was actually "determined" by the arbitration panel. *In re Keaty*, 397 F.3d at 272. Instead, for collateral estoppel to apply, the party asserting preclusion must show a final determination of the issue on the face of the arbitration award. The award is silent, however, about Clem's failure to account to the Tomlinsons for his disposition of several hundred thousand [*352] dollars from their Initial Deposit under the Contract. Accordingly, we

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[6] *In re King*, relied on by the bankruptcy court and the Tomlinsons, is factually distinguishable because in that case, a state court had refused to render judgment on the creditor's fraud claim after a jury trial. In federal court, therefore, there was no final and binding ruling on an issue of fraud that could preclude relitigation under the nondischargeability provision. As this court stated, "the bare fact that the state court awarded only contract rather than fraud damages does not preclude the bankruptcy court from inquiring into the true nature of that debt." *In re King*, 103 F.3d at 19. Here, in contrast, the arbitration award negates "knowing" DTPA violations as well as the fraud claims. There is no "gap" in the award for the bankruptcy court to fill.

cannot conclude that the bankruptcy court erred in allowing relitigation of this issue that was not collaterally barred by the arbitration proceeding. But that does not end the matter.

C. Fraudulent Misrepresentation While Performing a Contract

Unlike the Tomlinsons' First Amended Complaint in the adversary proceeding, which asserted that Clem knowingly made false misrepresentations to induce the Tomlinsons to enter into the Contract, their Second Amended Complaint alleges that Clem fraudulently induced [**17] them to *stay* in a contract. Clem challenged whether this new theory of fraudulent nondisclosures made to string out the performance of a contract is viable under Texas law. But, accepting this new theory, the bankruptcy court held that Clem fraudulently failed to disclose invoices and documentation necessary to show that the Tomlinsons' up-front payments were used only on their house project. As the bankruptcy court put it, "during the performance of the Contract, the Defendant-Debtor personally participated in concealing how the Tomlinsons' funds had been spent with the intention of inducing his famous clients to stay in the lucrative Contract."

The bankruptcy court could not have been clearer that there was no fraudulent intent *at the time Clem and the Tomlinsons entered into the Contract*. Nor did it deny that the charged conduct breached the Contract. Instead, the bankruptcy court concluded that Clem was under a duty to disclose how the Tomlinsons' funds were being spent because Clem had previously represented that their Initial Deposit had been spent on "soft costs." The Tomlinsons were led to believe the money had actually been expended properly under the Contract. This, the bankruptcy [**18] court concluded, meant that Clem had made "partial disclosure[s] that convey[ed] a false impression."

More specifically, the bankruptcy court found that:

> [A]fter the contract was signed, Bella Vita repeatedly failed to fully account for the Initial [10%] Deposit, *even after repeated requests from Mrs. Tomlinson*. [emphasis added]. Specifically, the court makes note of at least two or three cost-reconciliations that were sent to the Plaintiffs-Creditors, in which there was a failure to fully account for where the Initial Deposit was actually spent (despite previously representing to the Plaintiffs-Creditors in prior draw requests that the entire Initial Deposit had been expended on "soft costs").

The court went on to reason as follows:

> . . . Texas courts have held that there is a duty to disclose "when one makes a partial disclosure and conveys a false impression." Here, such a duty clearly existed in light of the fact that the first two draw requests showed that the Initial Deposit had been completely utilized on "soft costs," creating a false impression that the Initial Deposit had actually been spent on the Plaintiffs-Creditors' home. *Yet, in subsequent reconciliations produced by the [**19] Defendant-Debtor, it became clear that Defendant-Debtor was unable to account for a significant portion of the Initial Deposit. Thus, the Defendant-Debtor was clearly under a duty to disclose to the Plaintiffs-Creditors how he had or had not spent the Initial Deposit*. [emphasis added].

Under these facts, it is impossible to distinguish breach of contract from what the court thought "slipped into the category of fraudulent disclosure." First, as highlighted above, Mrs. Tomlinson repeatedly requested an accounting for the use of the Initial Deposit—an accounting clearly required by the Contract. Therefore, the Tomlinsons knew that the Debtor was not [*353] showing them how he utilized their Initial Deposit. Second, as highlighted above, the Debtor's subsequent reconciliations just as clearly showed his unwillingness or inability to account for the Initial Deposit, again in plain breach of the Contract. That the theories of contract breach and fraudulent nondisclosure are identical is reinforced by the bankruptcy court's finding that damages, equaling the amount of two subsequent draw requests that the Tomlinsons paid before pulling out of the Contract, are based only on the Contract.

Texas law [**20] generally holds that a failure to disclose information does not constitute fraud unless there is a duty to speak. *Insurance Co. of N. Am. v. Morris*, 981 S.W.2d 667, 674 (Tex. 1998). Whether a duty to disclose arises poses a question of law. *Bradford v. Vento*, 48 S.W.3d 749, 755 (Tex. 2001). Such a duty may arise under several limited categories, including, *inter alia*, whether the parties share a confidential or fiduciary relationship, or, pertinent here, where one party voluntarily discloses some but less than all material facts, so that he must disclose the whole truth "lest his partial disclosure convey a false impression." *Lewis v. Bank of Am., N.A.*, 347 F.3d 587, 588 (5th Cir.

2003) (quotation and citations omitted).

The Tomlinsons' relationship with Bella Vita and Clem arose solely from their Contract, and the omissions in question constituted express breaches of contract. Despite its recitation of the general principles surrounding fraudulent nondisclosure, the bankruptcy court's conclusion was not supported by any remotely similar Texas case law. Nor have the Tomlinsons' briefs nor this court's considerable research uncovered fraudulent nondisclosure cases that so comprehensively overlap mere breach of contract actions.[7]

The reason for this dearth of relevant law probably lies in the distinction that the Supreme Court of Texas has drawn between contract [**21] and tort causes of action. *See Formosa Plastics Corp. USA v. Presidio Eng'rs & Contractors, Inc.*, 960 S.W.2d 41, 44-45 (Tex. 1998). In *Southwestern Bell Telephone Co. v. DeLanney*, 809 S.W.2d 493, 494 (Tex. 1991), the state court explained:

> If the defendant's conduct—such as negligently burning down a house—would give rise to liability independent of the fact that a contract exists between the parties, the plaintiff's claim may also sound in tort. Conversely, if the defendant's conduct—such as failing to publish an advertisement—would give rise to liability only because it breaches the parties' agreement, the plaintiff's claim ordinarily sounds only in contract. In determining whether the plaintiff may recover on a tort theory, it is also instructive to examine the nature of the plaintiff's loss. When the only loss or damage is to the subject matter of the contract, the plaintiff's action is ordinarily on the contract.

Applying that law here, the Tomlinsons' claims for accounting deceptions sound in breach of contract but not fraud. As such, they are not nondischargeable under Section 523(a)(2)(A).

Clem's failure to provide accurate and timely accounting of how the Tomlinsons' [*354] money was spent does not give rise to liability independent of the Contract and yielded losses only to two further progress payments, *i.e.*, the subject matter of the underlying Contract. But "the mere failure [**22] to perform a contract is not evidence of fraud." *Formosa Plastics Corp. USA*, 960 S.W.2d at 48. We must disagree with the bankruptcy court's adherence to the theory of fraudulent nondisclosure in this case.

Further support for our conclusion is found in this court's decision in *Union Pacific Resources Group v. Rhone-Poulenc, Inc.*, 247 F.3d 574, 590 (5th Cir. 2001). The defendant contended, citing *DeLanney*, that its alleged omissions related only to the parties' contract and could not be the subject of fraudulent nondisclosure. Rejecting that argument for purposes of summary judgment, *id.* at 591, this court held that the defendant had *voluntarily* undertaken disclosures above and beyond the parties' contractual requirements and thus "assumed an obligation . . . to correct any false impressions conveyed by [its] partial disclosures." *Id.* at 590. Whether *Rhone-Poulenc* applied the law properly to the facts may be debated. *See* 247 F.3d at 591-93 (Garwood, J., dissenting). In any event, there is no evidence here that Clem undertook any extracontractual obligation and thereby submitted to any addition tort-based duty of disclosure. The bankruptcy court's conclusion that Clem's breach of contract amounted to nondischargeable fraudulent nondisclosure must be reversed.

IV. Conclusion

For the foregoing reasons, we REVERSE the bankruptcy court's judgment and RENDER judgment for Clem.

End of Document

[7] Cases cited by the bankruptcy court involve fundamentally different facts or bare statements of the generally applicable principles of Texas fraudulent nondisclosure. *See Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 341 (5th Cir. 2008) (fraudulent inducement to enter a contract); *Lewis*, 347 F.3d at 588 (no justifiable reliance on banker's tax advice); *Hamilton v. Segue Software, Inc.*, 232 F.3d 473, 481 (5th Cir. 2000) (no employer duty to disclose to employee); *Rimade Ltd. v. Hubbard Enters., Inc.*, 388 F.3d 138, 143 (5th Cir. 2004) (affirming verdict in favor of defendant on fraudulent nondisclosure in commercial transaction).

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re Joe Payton Lee,	§	
	§	
Debtor	§	
	§	CIVIL ACTION NO. 4:25-CV-00321
	§	
Joe Payton Lee,	§	BANKRUPTCY CASE NO. 23-31854
Appellant	§	

MEMORANDUM AND OPINION

This case arises from a Chapter 7 bankruptcy proceeding filed in May 2023. Rita Lemons, an unsecured creditor of the debtor, Joe Payton Lee, asked a state court judge to appoint a receiver to help her collect a judgment she had against Lee. Robert Berleth was appointed as substitute receiver and began collection efforts. Lee had an earlier Chapter 13 case that was pending from May 2019 to July 2019. He also had an earlier a Chapter 7 case that was filed in April 2023 and dismissed in May 2023. Two weeks after that dismissal, Lee filed the Chapter 7 bankruptcy from which Berleth's appeal arises.

In November 2024, the bankruptcy trustee filed his final report, which included a disbursement of funds from the sale of Lee's properties. The trustee awarded $264,575.79 to Lemons. Berleth filed a claim for compensation he alleged he was due as the court-appointed receiver. The bankruptcy court ordered the trustee to withhold paying Lemons until the court could determine whether Berleth was owed fees for his work as a receiver and, if so, how much.

Berleth asked the bankruptcy court to grant him a contingent fee of 25% of the debt owed when that the bankruptcy was filed. He asserted that because the trustee's final distribution had an allowed amount of $1,895,768.81, he was entitled to 25% percent of that amount, or

$473,942.20. Berleth argued that but for his work, there would not have been a bankruptcy estate available for distribution.

The bankruptcy court held that Berleth was not entitled to the full amount of fees he sought. First, it was the trustee who liquidated Lee's nonexempt assets, not Berleth. Second, Lee's estate amounted to only $264,575.79. Awarding Berleth the $473,942.20 he sought would exceed the value of the residual estate and leave nothing to be distributed to Lemons, Lee's creditor. The court emphasized that bankruptcy estates should not be administered for the sole purpose of paying administrative claims.

The bankruptcy court instead evaluated the work Berleth had performed using the lodestar approach. First, the bankruptcy court identified multiple instances when Berleth had billed time he spent for clerical work, for unnecessary or duplicative work, or for work during pending bankruptcies for which he had no authorization. The bankruptcy court awarded Berleth $9,499.50 in fees and $4,937.93 in expenses, for total award of $14,437.43. The court also authorized payment to Ms. Lemon in the amount of $250,138.36. Berleth appealed both orders. The bankruptcy court stayed both orders pending this appeal.

Berleth asks this court to award him the amount of his fee application, $473,942. (Docket Entry No. 8 at 1). He argues that he is entitled to a contingency fee under the state court receivership order, or in the alternative, a contingency fee based on the amount of the bankruptcy estate. (*Id.*). Berleth contends that: (1) the bankruptcy court lacked jurisdiction to adjudicate matters concerning the receiver's actions arising solely from the state-court receivership; (2) the bankruptcy court erred by failing to give preclusive effect to the state court's order under the *Rooker-Feldman* doctrine; and (3) the bankruptcy court ignored the contract between Lemons as

the judgment creditor who sought Berleth's appointment, and Berleth, as the state-court receiver. (*Id*. at 2).

A district court reviews a bankruptcy court's ruling on a fee award for abuse of discretion. *See Edwards Family P'ship v. Johnson (In re Cmty. Home Fin. Servs.)*, 990 F.3d 422, 426 (5th Cir. 2021); *Matter of Cmty. Home Fin. Servs., Inc.*, 990 F.3d 422, 426 (5th Cir. 2021).

Citing to *In Re Patrick Cox*, 2017 WL 1058263 (Bankr. S. D. Tex. 2017), Berleth first argues that the bankruptcy court did not have jurisdiction to "interfere with a state court-appointed receiver's actions" because there was no clear relationship between the receivership and the bankruptcy estate. (Docket Entry No. 8). Berleth argues that even if there was such a relationship, the state court that appointed him as receiver had primary jurisdiction over the receivership proceedings and the distribution of the assets he held as the receiver. (*Id*. at 3).

Berleth's reliance on *In Re Patrick Cox* is misplaced. In that case, after the Texas Court of Appeals reversed the debtor's $46 million judgment, the debtor sued the receiver for the $219,236 fee that the receiver had collected for his work. *Cox*, 2017 W.L. 1058263 at *1. The receiver's fee in *In Re Patrick Cox* was a fraction of the residual estate. By contrast, Berleth seeks $473,942.20, a fee far exceeding the $264,575.79 value of the residual estate and effectively returning nothing to the creditor, Rita Lemons. As the bankruptcy court stated, "awarding all the recovered funds to the Receiver would be an abhorrent result." (Docket Entry 16-3 at 91). And, unlike the receiver in *Cox,* Berleth did not liquidate the debtor's assets; there is no basis to award Berleth a contingent fee for the trustee's work. In *Cox,* the issue was whether the state court's appointment of a receiver was outside that court's authority after the judgment against the debtor had been reversed. The court found that the state court had jurisdiction to appoint the receiver. *Cox*, 2017 W.L. 1058263 at *1. In this case, unlike *Cox*, the bankruptcy court had an independent

duty to review Berleth's fee application. *In re Busy Beaver Building Centers*, 19 F.3d 833 (3rd Cir. 1994); *see also In re Nucorp Energy, Inc.*, 764 F.2d 655, 657 n. 1 (9th Cir. 1985); *In re Wilde Horse Enter., Inc.*, 136 B.R. 830, 839-40 (Bankr. C.D. Cal. 1991); 11 U.S.C. § 330(a)(1); Fed. R. Bankr. P. 2016.

The bankruptcy court has exclusive jurisdiction over this proceeding. *See Taylor v. Sternberg*, 293 U.S. 470, 473 (1935) ("[W]ith the filing of the petition in bankruptcy, the power of the state court…ceased; and its order fixing the compensation of the receiver and his counsel was a nullity because made without jurisdiction, such jurisdiction then having passed to the bankruptcy court"). Following *Taylor v. Sternberg*, Berleth's argument that the bankruptcy court lacked jurisdiction to adjudicate the fee issue fails. *Id*.

Berleth also argues that the *Rooker-Feldman* doctrine applies to prevent a federal court from reviewing the state court judgment, including orders issued by a state court-appointed receiver, unless the state court judgment is challenged on federal constitutional grounds. (Docket Entry No. 8 at 4). Berleth contends that because the state court judgment was not challenged on constitutional grounds, the state court has the exclusive authority to determine the compensation of its appointed receiver. (*Id*.). The state court approved a contingency fee of 25% for Berleth. (*Id*. At 5). Berleth argues that the bankruptcy court failed to give preclusive effect to the state court's order and "acted as a state appellate court by collaterally attacking and rewriting the state court's order in clear violation of *Rooker-Feldman*." (*Id*.). But again, *Taylor v. Sternberg* makes void any state court orders issued after the filing of a bankruptcy petition. 293 U.S. 470, 473 (1935). Even if the state court order was not void for lack of jurisdiction, the "*Rooker-Feldman* doctrine is confined to cases brought by state court losers complaining of injuries caused by state court judgments rendered before the federal district court proceedings commenced and inviting

district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Because Berleth was not a losing party in state court, his claim fails. The court does not need to address whether there was finality under the *Rooker-Feldman* doctrine.

Berleth also argues that the bankruptcy court failed to meaningfully consider his alternative proposal of accepting a reduced contingency fee, which he claims would "strike a fair balance between compensating the receiver for his work and maximizing the available funds for distribution to claimants." (Docket Entry No. 8 at 5). The bankruptcy court properly noted that it had "an independent duty to review fee applications." The bankruptcy court used the lodestar method to determine Berleth's compensation, the method that Fifth Circuit and Supreme Court precedent recognize and approve. (*See* Docket No. 16-3 at 91; citing *Shipes v. Trinity Industries*, 987 F.2d 311 (5th Cir. 1993); *In re Lawler*, 807 F.2d 1207, 1211 (5th Cir. 1987); *Pennsylvania v. Delaware Valley Citizens Council for Clean Air*, 483 U.S. 711 (1987); *Hensley v. Eckerhart*, 461 U.S. 424, 433-34 (1983)). Consideration of other proposed methods is unnecessary.

Based on the record and the applicable law, this court dismisses the appeal from the bankruptcy court's order granting in part and denying in part Berleth's fee application. Berleth's "motion for joinder," (Docket Entry No. 56), which asks the court to rule on the bankruptcy appeal based on the present record, is moot, because the appeal is dismissed.

SIGNED on July 28, 2025, at Houston, Texas.

Lee H. Rosenthal
Senior United States District Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

IN RE:	§	
	§	**CASE NO: 24-50036**
FABIAN MASCARENO	§	
and	§	**CHAPTER 7**
NIEVES EVELYN ARIAS,	§	
	§	
Debtors.	§	
	§	
RUBEN ERNESTO VASQUEZ,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	**ADVERSARY NO. 24-5001**
	§	
FABIAN MASCARENO,	§	
	§	
Defendant.	§	

MEMORANDUM ORDER

Before the Court is the dischargeability complaint of Ruben Ernesto Vasquez ("Vasquez") pursuant to 11 USC §523(a)(2). For the reasons so stated, the Court finds that Vasquez has failed in his burden of proof and the debt owed by the defendant, Fabian Mascareno ("Mascareno") to Vasquez should be discharged, and his complaint is in all things denied.

Trial was held on March 20, 2025. This is a "core" proceeding arising only under the Bankruptcy Code.[1] Two witnesses testified, Vasquez and Mascareno, and each give different versions of the same set of facts.

Three individuals were operating a business known as the Gold Spot. Whether the Gold Spot was an LLC or a d/b/a was open to some confusion, but Mascareno, Carlos Del Angel and Eduardo Vasquez -- the plaintiff's brother -- were the principals of Gold Spot. In 2013, they

[1] 28 USC § 157(b)(2).

approached Vasquez about a loan for cash flow in their business. Gold Spot bought gold and silver from the public in Laredo and sold it in San Antonio to what appears to be a gold recycler. Their profit was based on the difference between what they paid to the public and the price they received selling it to the recycler.

A loan of thirty thousand dollars ($30,000.00) was memorialized by a promissory note executed on April 22, 2013, signed by the three principals of Gold Spot, however, Gold Spot was not a maker of the note. The three principals were jointly and severally liable on the debt. The loan called for payments of $790.22 per month at 12% interest for 48 months. Payments were made by Gold Spot until January of 2014, when Gold Spot issued Vasquez an NSF check. Thereafter, the three principals started making individual payments of $263.35, basically, a third of the note payment each month. At some future point, the principals defaulted as full payments were not made on the note. While there was testimony that a principal paid his partial payments in full -- Vasquez's brother -- and two others did not, who paid what is immaterial. Full payments were not made, the loan defaulted, and they were all jointly and severally liable on the note.

Later, Vasquez sued the defendant Mascareno and Carlos Del Angel and received a default judgment for ten thousand, four hundred twenty-nine dollars and two cents ($10,429.02) on March 9, 2017. There was testimony that the current payoff is above thirty thousand dollars ($30,000.00). The current payoff is immaterial to this ruling. Vasquez chose not to sue his brother on the explanation that he had fully paid his *pro rata* share of the note.

Mascareno filed a Chapter 7 bankruptcy almost seven years later, on March 22, 2024, and this adversary case followed. As plead by Vasquez:

> Plaintiff loaned Defendant money based upon oral and written representations made by Defendant concerning the financial condition of the Defendant and the jewelry store which were not true and were materially false. Defendant stated the he needed the loan to continue to operate his jewelry business (although loan was

> made only to them personally and not to the LLC) and that they had the ability to re-pay the loan with the business proceeds and that therefore - they were going to be able to pay timely pursuant to the terms of the contract. In fact, at the time of the loan, they had already decided to close the business and did not or were not going to be able to make payments as promised. Debtor thus provided false financial information to induce Plaintiff to make loan when in fact he knew or should have known that at the time he took out the loan, he was not going to be able to repay it back.

The plaintiff Vasquez is a lawyer. Whether by drafting error or negligence, the claims that there were written representations were false. The only claims held by Vasquez were that the principals, including Mascareno, made oral representations that the business of Gold Spot was sound, would continue to operate, and that business proceeds would be used to repay the loan. Vasquez claimed these representations were made by all three principals, and he believed them because he trusted his brother.

Mascareno description of the fact is somewhat different. He admits meeting with Vasquez around ten times prior to the note being signed but he made no oral representations regarding the business other than they needed cash to fund business operations. Irrespective of whom the Court believes, and the Court notes that these conversations occurred over 12 years ago, the complaint of Vasquez fails on other grounds.

Section 523(a)(2)(A) excepts from discharge any debt owed by an individual debtor to the extent obtained by "false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition."

"[T]he standard of proof for the dischargeability exceptions in 11 U.S.C. § 523(a) is the ordinary preponderance-of-the-evidence standard."[2] "Nondischargeability must be established by a preponderance of the evidence."[3]

[2] *Grogan v. Garner*, 498 U.S. 279, 291 (1991).
[3] *Countrywide Home Loans, Inc. v. Cowin (In re Cowin),* 864 F.3d 344, 349 (5th Cir. 2017).

Vasquez, in order to have succeeded at trial, must have proved that the transaction between himself and Mascareno met every element in that subsection of 523. The general requirements require proof of the following five elements:[4]

1. That the debtor made the representations
2. That at the time he knew they were false
3. That he made them with the intention and purpose of deceiving the creditors
4. That the creditor relied on such representations
5. That the creditor sustained the alleged loss and damage as the proximate result of the representations having been made

Irrespective of elements 1, 4 and 5 above, the Court holds that Vasquez has failed in his burden of proof as to elements 2 and 3. There is insufficient evidence to hold that Mascareno, if he made the representations as alleged -- the Court is unsure that he did -- knew the statements he made were false and made with the intent to deceive. Other than conflicting testimony between the two witnesses about oral representations that occurred over 12 years ago, there was no other testimony or documentary evidence regarding falsehood or an intent to deceive. The Court notes that this was a four-party transaction between the plaintiff, defendant, the plaintiff's brother, and Carlos Del Angel and the Court only heard from two of the parties. There is a lack of corroborating testimony, and again, other than a promissory note, no documentary evidence of the representations made either before or at the time the note was executed.

Typically, an "intent to deceive may be inferred from 'reckless disregard for the truth or falsity of a statement combined with the sheer magnitude of the resultant misrepresentation."[5] The relevant "intent to deceive may be inferred from use of a false financial statement."[6] Here, the

[4] *Bates v. Selenberg (In re Selenberg)*, 856 F.3d 393, 398 (5th Cir. 2017).
[5] *In re Acosta*, 406 F.3d 367, 373 (5th Cir. 2005) (quoting *In re Norris*, 70 F.3d 27, 30 n.12 (5th Cir. 1995)), abrogated on other grounds by *Ritz*, 136 S. Ct. at 1581.
[6] *In re Young*, 995 F.2d 547, 549 (5th Cir. 1993).

Court finds nothing in the evidence to support a finding that Vasquez met his burden as to elements 2 and 3. A discussion of the further elements is moot.

The defendant has made a request for an award of attorney's fees in defense of this adversary proceeding. That request is denied. Section 523(d) of title 11 provides that "[i]f a creditor requests a determination of dischargeability of a consumer debt under [§ 523](a)(2) . . . and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust."[7]

The purpose of § 523(d) is to discourage creditors from requesting a determination of dischargeability of a consumer debt under § 523(a)(2) when the debtor has dealt honestly with the creditor. Without such a provision, debtors might settle for owing a reduced sum or reaffirm their debt in order to avoid litigating the nondischargeability action, even when the merits of the creditor's claim are weak.[8] Here, the Court holds that the debt was a business loan, not a consumer debt and as such attorney's fees are not recoverable by the defendant.

Accordingly, the complaint of the plaintiff Ruben Ernesto Vasquez is in all things denied. The request of the defendant Fabian Mascareno for an award of attorney's fees for defense of the adversary proceeding is also denied. The Court will enter a separate take nothing judgment.

SO ORDERED.

SIGNED 03/21/2025

Jeffrey Norman
United States Bankruptcy Judge

[7] 11 U.S.C. § 523(d).
[8] *See* H.R. Rep. No. 95-595, at 130–32 (1977).

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	**CASE NO: 21-30545**
JAGANNATHAN MAHADEVAN,	§	
	§	**CHAPTER 7**
Debtor.	§	
	§	
PREM BIKKINA,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	**ADVERSARY NO. 21-3054**
	§	
JAGANNATHAN MAHADEVAN,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION

This adversary action stems from a bitter hostility between Prem Bikkina ("*Bikkina*") and his former professor, Jagannathan Mahadevan ("*Mahadevan*") leading to Bikkina obtaining a judgement against Mahadevan in California state court for $776,0000.[1] Bikkina now seeks a judgment from this Court declaring that Mahadevan's debt, arising from the California state-court judgment entered on August 1, 2018, in the Alameda Superior Court, is non-dischargeable pursuant to 11 U.S.C. § 523(a)(6).[2] Upon reversing a summary judgement entered in favor of Bikkina, the district court remanded this case to this Court with instructions to determine whether Mahadevan was willful and malicious in defaming Bikkina and inflicting emotional distress on Bikkina under 11 U.S.C. § 523(a)(6).[3]

The Court held a trial starting on April 1, 2024, and concluding on August 22, 2024.[4]

[1] ECF No. 1.
[2] ECF No. 1.
[3] ECF No. 51.
[4] *See* April 1, 2024 Min. Entry; Aug. 22, 2024 Min Entry.

For all the reasons discussed *infra*, Mahadevan was willful and malicious in inflicting emotional distress on Bikkina and was also willful and malicious in defaming Bikkina. Accordingly, Mahadevan's judgement debt owed to Bikkina as set forth in the California state-court judgment entered on August 1, 2018,[5] totaling $776,000, is excepted from discharge as a debt for a willful and malicious injury to another entity or to the property of another entity pursuant to 11 U.S.C. § 523(a)(6).[6]

I. FINDINGS OF FACT

A. Background

Mahadevan was a professor, and Bikkina a graduate student, at the University of Tulsa ("*Tulsa*").[7] Mahadevan became Bikkina's dissertation advisor in 2007.[8] In 2010 Bikkina filed a request with Tulsa to be assigned a new dissertation advisor, which was granted.[9] Bikkina alleges he requested to change dissertation advisors because Mahadevan was delaying Bikkina's progress toward his PhD by changing his research topic multiple times, and had disagreements with Bikkina over technical concepts, which lead to harassment by Mahadevan.[10] Bikkina testified that Mahadevan harassed him, for example, by saying "Prem, I am going to screw you" after a disagreement with Bikkina over a technical research procedure.[11] Mahadevan denies making such comments and asserts that Bikkina left his research group because Bikkina refused to adhere to Mahadevan's instructions to correct research data that was contaminated by Bikkina's faulty research procedure.[12]

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[5] ECF No. 141-2.
[6] ECF No. 141-2 at 5–8.
[7] ECF No. 221 at 10, 14.
[8] ECF No. 221 at 10, 14.
[9] ECF No. 221 at 15, 17, 20.
[10] ECF No. 221 at 16–20.
[11] ECF No. 221 at 98.
[12] ECF Nos. 169-50; 141-7; 169-46.

On January 23, 2010, Mahadevan analyzed the results from scientific tests that he ordered Bikkina to complete under his supervision and wrote a technical article on his analysis and emailed the article to Bikkina.[13] Mahadevan further condensed the article into an "abstract" in the body of the email, and sent it to Bikkina on January 25, 2010.[14] Mahadevan claims that the technical article and the abstract that he emailed to Bikkina are original work and that Mahadevan registered copyright for the contents arising from such original works (the "*Copyrighted Works*").[15]

While a student at Tulsa, Bikkina wrote "Contact Angle Measurements of CO2-water-quartz/calcite systems in the perspective of carbon sequestration." ("*Paper #1*"), which was published in International Journal of Greenhouse Gas Control ("*IJGGC*") in July of 2011.[16] Mahadevan claims that Bikkina committed plagiarism and data falsification by using Mahadevan's Copyrighted Work and contaminated data to write and publish Paper #1 without notice or consent of Mahadevan.[17]

To express his concern of scientific misconduct, in April 24, 2011, while Paper #1 was still being considered for publication, Mahadevan sent an email to Stefan Bachu, an associate editor of the IJGGC, stating that the experimental data used in Paper # 1 was likely invalid due to contamination.[18] On April 28, 2011, Stefan Bachu informed Bikkina of the allegations leveled by Mahadevan that Paper #1 may contain false or contaminated data.[19] Publication of Paper #1 was paused, and Bikkina was asked by IJGGC to respond to Mahadevan's allegations.[20]

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[13] ECF Nos. 169-9; 169-10; 169-11.
[14] ECF No. 169-12.
[15] ECF Nos. 11 at 5; 169-1; 169-2.
[16] ECF Nos. 169-3; 221 at 23.
[17] ECF Nos. 11 at 5-6; 238 at ¶23.
[18] ECF No. 141-7.
[19] ECF No. 141-8.
[20] ECF No. 141-8.

Bikkina admits that while collecting data for Paper #1, he observed marks on one of the samples which was determined to contain Fluorine, but Bikkina did not consider such mark to be significant nor affected other samples and did not believe Paper #1 contained false or contaminated data.[21] Nonetheless, Bikkina allowed Mahadevan to write a paragraph in Paper #1 in which he called out the presence of Fluorine in one of the samples.[22] Bikkina also testified that before leaving Mahadevan's research group, Bikkina offered to credit Mahadevan as a co-author of Paper #1 but Mahadevan declined the offer.[23]

On May 20, 2011, Mahadevan sent an email to a Tulsa administrator stating that he would no longer pursue any allegations of misconduct regarding Paper #1 and that Bikkina was free to publish it as the sole author.[24] However, on June 3, 2011, Mahadevan sent an email to Tulsa administrators claiming he had a right to be a co-author of Paper #1.[25] On June 6, 2011, Roger Blais, the Provost and Vice President for Academic Affairs at Tulsa, sent a letter to Stefan Bachu stating that Tulsa supported the publication of Paper #1 with Bikkina as the sole author.[26]

Paper #1 was resubmitted and published by the IJGGC in July of 2011 with Bikkina as the sole author.[27] The published version of the paper included an additional paragraph, written by Mahadevan, noting the presence of Fluorine in one of the data samples.[28]

On July 22, 2011, Mahadevan filed a complaint against Bikkina under Tulsa's Harassment Policy and Research Misconduct Policy, claiming that Bikkina committed scientific research misconduct through data falsification in Paper #1 and harassed Mahadevan by making false claims

[21] ECF No. 221 at 39-40, 204.
[22] ECF Nos. 221 at 33-35, 36, 40; 169-3 at 12.
[23] ECF No. 221 at 26.
[24] ECF No. 141-11.
[25] ECF No. 141-13 at 1, 2.
[26] ECF No. 141-15.
[27] ECF Nos. 169-3; 221 at 91, 120.
[28] ECF Nos. 169-3 at 12; 221 at 35-36.

about him.[29] In response, Bikkina filed his own complaint with Tulsa in July 27, 2011 in which he alleged that Mahadevan wrongly caused him to change dissertation advisors and interfered with the publication of Paper #1.[30]

While still a PhD student at Tulsa, Bikkina authored a second article entitled "Equilibrated Interfacial Tension Data of the CO2-Water System at High Pressures and Moderate Temperatures" ("*Paper #2*"), which was published in the Journal of Chemical & Engineering Data ("*JCED*") in September, 2011.[31] The authors of Paper #2 also included Bikkina's new dissertation advisor, Ovadia Shoham, and Dr. Ramagopal Uppaluri.[32] Bikkina testified that Mahadevan was never offered co-authorship of Paper #2 because Mahadevan told Bikkina not to acknowledge him in any of his publications.[33]

On November 15, 2011, Bikkina received an email from Dr. Ramagopal Uppaluri, forwarding an email of the same date he received from Mahadevan.[34] The email contained a link to Paper #2, and indicated that Mahadevan believed he was entitled to co-authorship on Paper #2.[35] On November 20, 2011, Bikkina submitted a second complaint to Tulsa via email stating Mahadevan harassed Bikkina by sending the email to Dr. Ramagopal Uppaluri.[36]

On November 21, 2011, Mahadevan submitted a hand-written letter to Tulsa indicating his resignation from Tulsa effective December 31, 2011.[37] Mahadevan admitted he resigned from Tulsa mainly because he was unhappy with the outcome of the misconduct complaints he filed

[29] ECF No. 141-17 at 4–5.
[30] ECF Nos. 141-16; 221 at 97–98, 103–104.
[31] ECF No. 169-4.
[32] ECF Nos. 221 at 114, 119–120; 222 at 159–161; 169-4.
[33] ECF No. 221 at 122.
[34] ECF No. 141-27.
[35] ECF No. 141-27.
[36] ECF No. 141-29.
[37] ECF No. 141-25.

against Bikkina and because he was denied tenure.[38] On December 1, 2011, Roger Blais wrote a letter to Dr. Ramagopal Uppaluri stating Tulsa's position that Bikkina was not obligated to give Mahadevan co-authorship rights to Paper #2.[39]

On March 16, 2012, after he had left Tulsa, Mahadevan filed another complaint against Bikkina to administrators at Tulsa alleging that Bikkina had falsified Paper #1, and plagiarized Paper #1, Paper #2, and a presentation at Conoco Phillips on November 18, 2009.[40] Similarly, Mahadevan sent an email to administrators at Tulsa on April 19, 2013, stating Bikkina plagiarized part of Paper #1, Paper #2 and his PhD dissertation.[41]

On May 28, 2013, Tulsa issued a memorandum which addressed the cross-complaints made by Bikkina and Mahadevan.[42] In the memorandum, Tulsa found no wrong doing by Bikkina and that Mahadevan had repeatedly violated Tulsa's policies on harassment and ethics.[43] Mahadevan reviewed the memorandum and disagreed with its findings.[44] However, Mahadevan does not remember personally writing to any official at Tulsa to express his disagreement with the memorandum until he sued Tulsa for copyright infringement in 2019.[45]

After graduation from Tulsa in 2013, Bikkina began a post-doctorate fellowship at Lawrence Berkeley National Laboratory ("*LBNL*") in California.[46] In August of 2013, Mahadevan gave a presentation at LBNL, which was attended by Bikkina and other scientists at LBNL.[47]

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[38] ECF No. 223 at 41–43, 195.
[39] ECF No. 141-30.
[40] ECF No. 141-36 at 2–8.
[41] ECF No. 141-39
[42] ECF No. 141-40.
[43] ECF No. 141-40 at 10.
[44] ECF No. 224 at 88–89, 101.
[45] ECF No. 224 at 88–89.
[46] ECF No. 221 at 162.
[47] ECF Nos. 224 at 98–99; 221 at 161–165.

During the presentation, Mahadevan made reference to Paper #1 and told the audience the data therein was contaminated.[48]

Mahadevan asserted violation of his copyright, moral rights and misappropriation of intellectual property rights through a cease-and-desist letter served on Bikkina on August 26, 2013.[49]

On October 5, 2013, Mahadevan wrote an email to Meredith Montgomery, then Research and Institutional Integrity Officer at LBNL, in which he reiterated his statements that Bikkina engaged in plagiarism and data falsification.[50] Bikkina and other LBNL officials were copied on the email.[51]

Bikkina brought an action against Mahadevan in the Superior Court of the State of California (the "*California Court*") entitled *Bikkina v. Mahadevan*, Alameda Superior Court, Case No. RG14717654 (the "*State Court Action*").[52] Bikkina's complaint in the State Court Action sought damages for (1) libel *per se*; (2) negligence; (3) intentional infliction of emotional distress; and (4) slander *per se*, all on the grounds that Mahadevan published false statements that Bikkina committed scientific misconduct through plagiarism and data falsification.[53] In the State Court Action, by a special verdict rendered February 9, 2018, the jury found Mahadevan liable for negligence, defamation, and intentional infliction of emotional distress.[54]

The jury found that Mahadevan made the following statements: (a) Bikkina fabricated all or part of Paper #1; (b) Bikkina falsified all or part of Paper #1; (c) Bikkina plagiarized all or part of Paper #1; (d) Bikkina plagiarized all or part of Paper #2; (e) Bikkina plagiarized all or part of

[48] ECF No. 221 at 165.
[49] ECF Nos. 169-31 at 6; 169-30 at 7; 169-23.
[50] ECF Nos. 141-43; 221 at 167–168.
[51] ECF Nos. 141-43; 221 at 167–168.
[52] ECF No. 141-1.
[53] ECF No. 141-1.
[54] ECF No. 141-2.

his PhD dissertation; and (e) Bikkina plagiarized all or part of a presentation at Conoco Phillips on November 18, 2009.[55] The jury found each statement to not be "substantially true."[56] The jury awarded Bikkina $461,000 in damages for "Negligence or Intentional Infliction of Emotional Distress" but did not specify how that amount is allocated between negligence and intentional infliction of emotional distress.[57] The jury awarded an additional $315,000 in damages for defamation.[58] The damages thus totaled $776,000.[59] On August 1, 2018, the California Court memorialized the jury's verdict by entering an amended judgment in favor of Bikkina for $776,000 in damages plus allowable case costs and interest (the "*California Judgment*").[60]

Unable to pay the California Judgment, Mahadevan filed for Chapter 13 bankruptcy on February 15, 2018.[61] On March 19, 2018, former Judge David R. Jones granted Mahadevan's motion to dismiss his Chapter 13 case.[62] On February 10, 2021, Mahadevan filed for Chapter 7 bankruptcy in this Court.[63]

On April 14, 2021, Bikkina initiated the instant adversary proceeding.[64] Bikkina asserts that the California Judgement is nondischargeable under 11 U.S.C. § 523(a)(6) because the debt "derive[d] from 'willful and malicious injury.'"[65] Mahadevan moved for summary judgment, arguing that the California Judgment was dischargeable, as a matter of law.[66] Bikkina cross-moved for summary judgment, arguing that collateral estoppel barred Mahadevan from relitigating

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[55] ECF No. 141-2 at 5.
[56] ECF No. 141-2 at 6.
[57] ECF No. 141-2 at 6–7.
[58] ECF No. 141-2 at 7.
[59] ECF No. 141-2 at 7.
[60] ECF No. 141-2 at 1–2.
[61] Citations to Defendant's previous bankruptcy case no. 18-30675 shall take the form of "Bankr, 18-30675 ECF No. __." Bankr, 18-30675 ECF No. 1.
[62] Bankr, 18-30675 ECF No. 18, 26.
[63] Citations to Defendant's instant bankruptcy case no. 21-30545 shall take the form of "Bankr, 21-30545 ECF No. __." Bankr, 21-30545 ECF No 1.
[64] ECF No. 1.
[65] ECF No 1. at 3.
[66] ECF No. 20.

whether the California Judgment was dischargeable, because the jury in the State Court Action had already determined that Mahadevan's conduct in incurring the debt owed to Bikkina was "willful and malicious."[67] Former Judge David R. Jones held a hearing on the motions and determined that collateral estoppel applied and that the California Judgment against Mahadevan was nondischargeable in Mahadevan's bankruptcy under § 523(a)(6).[68] Former Judge David R. Jones granted summary judgment in favor of Bikkina.[69] Mahadevan appealed.[70]

On appeal, the district court ruled on Mahadevan's argument that the California Judgment was void by the automatic stay, stating that: "[t]he original judgment in the California state action was properly entered under the ministerial principle, and the amended judgment was properly entered after the bankruptcy stay had expired. There is no violation of the stay order."[71] Despite confirming the validity of the California Judgement, the district court reversed the "Judgment On Non-Dischargeability Of Debt Pursuant To 11 U.S.C. § 523(A)(6),"[72] and remanded for further proceedings.[73]

The district court held that Bikkina was not entitled to issue preclusion on the question of Mahadevan's intent because the "evidence that Bikkina has presented to the bankruptcy court—the California state-court jury verdict form, the jury instructions, his complaint, and the final judgment—[were] insufficient to prove Mahadevan's intent" under § 523(a)(6) by a preponderance of the evidence.[74] The district court thus instructed that "[o]n remand, the bankruptcy court must consider this remaining issue of Mahadevan's intent for the purpose of

[67] ECF Nos. 19; 23.
[68] ECF No. 38.
[69] ECF No. 38.
[70] ECF Nos. 41; 42.
[71] ECF No. 51 at 10.
[72] ECF No. 38.
[73] ECF No. 51. at 18.
[74] ECF No. 51 at 17.

applying § 523(a)(6)."[75] Specifically, this Court must determine whether Mahadevan "subjectively intended to cause injury or was substantially certain that injury would follow" from his conduct.[76] The district court further instructed that if the Court finds against Mahadevan on the issue of his intent, "the Bankruptcy Court may need to consider whether Mahadevan's actions were 'sufficiently justified under the circumstances'" to render his conduct not willful and malicious.[77] Finally, if the Court finds that Mahadevan acted willfully and maliciously, the Court must determine what portion of the damages awarded in the California Judgement, totaling $776,000, are attributable to such willful and malicious conduct.[78]

The Court now issues this Memorandum Opinion consistent with the district court's instructions on remand.

II. CREDIBILITY OF THE WITNESSES

It is the Court's duty to assess and weigh the credibility of witnesses.[79] At trial, the Court heard testimony from five witnesses: (a) Mahadevan; (b) Bikkina; (c) Dr. Allan R. Price ("*Dr. Price*"); (d) Dr. Winton Cornell ("*Dr. Cornell*"); and (e) Duc Lee. Each witness responded to questions clearly, completely, and directly.[80] Thus, the Court finds that each witness is credible and gives equal weight to the testimony of each witness.

III. JURISDICTION, VENUE, AND CONSTITUTIONAL AUTHORITY

A. Jurisdiction and Venue

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[75] ECF No. 51 at 17.
[76] ECF No. 51 at 17 (quoting *In re Plyam*, 530 B.R. 456, 470 (B.A.P. 9th Cir. 2015)).
[77] ECF No. 51 at 17 (quoting *In re Vollbracht*, 276 F. App'x 360, 362 (5th Cir. 2007)).
[78] ECF No. 51 at 18.
[79] *O'Connor v. Burg* (*In re Burg*), 641 B.R. 120 (Bankr. S.D. Tex. 2022); *In re Bigler LP*, 458 B.R. 345, 367 (Bankr. S.D. Tex. 2011) (citing *Port Arthur Towing Co. v. John W. Towing, Inc.* (*In re Complaint of Port Arthur Towing Co.*), 42 F.3d 312, 318 (5th Cir. 1995)).
[80] *See, e.g.*, *In re Ali*, 2015 Bankr. LEXIS 2443, 2015 WL 4611343 at *4 (Bankr. W.D. Tex. July 23, 2015) (analyzing the clarity, completeness, and quality of witness responses in order to make credibility determinations).

This Court holds jurisdiction pursuant to 28 U.S.C. § 1334 and exercises its jurisdiction in accordance with Southern District of Texas General Order 2012–6.[81] Section 157 allows a district court to "refer" all bankruptcy and related cases to the bankruptcy court, wherein the latter court will appropriately preside over the matter.[82] This Court determines that pursuant to 28 U.S.C. § 157(b)(2)(I), this proceeding contains core matters as it primarily involves proceedings concerning the dischargeability of particular debts.[83] This proceeding is also core under the general "catch-all" language because such a suit is the type of proceeding that can only arise in the context of a bankruptcy case.[84]

This Court may only hear a case in which venue is proper.[85] 28 U.S.C. § 1409(a) provides that "a proceeding arising under title 11 or arising in or related to a case under title 11 may be commenced in the district court in which such case is pending." Mahadevan's main bankruptcy case is pending in this Court, and therefore, venue of this proceeding is proper.[86]

B. Constitutional Authority to Enter a Final Order

While bankruptcy judges can issue final orders and judgments for core proceedings, absent consent, they can only issue reports and recommendations on non-core matters.[87] The determination as to the dischargeability of particular debts pending before this Court is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Accordingly, this Court concludes that the narrow

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[81] *In re*: *Order of Reference to Bankruptcy Judges*, Gen. Order 2012–6 (S.D. Tex. May 24, 2012).
[82] 28 U.S.C. § 157(a); *see also* In re: Order of Reference to Bankruptcy Judges, Gen. Order 2012-6 (S.D. Tex. May 24, 2012).
[83] *See* 11 U.S.C. § 157(b)(2)(A) & (I).
[84] *See Southmark Corp. v. Coopers & Lybrand (In re Southmark Corp.*), 163 F.3d 925, 930 (5th Cir. 1999) ("[A] proceeding is core under § 157 if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case.") (quoting *Wood v. Wood (In re Wood),* 825 F.2d 90, 97 (5th Cir. 1987)).
[85] 28 U.S.C. § 1408.
[86] Bankr, 21-30545 ECF No. 1.
[87] *See* 28 U.S.C. §§ 157(b)(1), (c)(1). *See also Stern v. Marshall*, 564 U.S. 462, 480 (2011); *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1938–40 (2015).

limitation imposed by *Stern* does not prohibit this Court from entering a final order here.[88] Thus, this Court wields the constitutional authority to enter a final order here.

IV. ANALYSIS

Bikkina asserts that the California Judgement in his favor is nondischargeable under § 523(a)(6) because the judgment debt arose from a willful and malicious injury.[89] On remand, the Court must decide whether Mahadevan acted with subjective intent or with substantial certainty to cause harm, and if so, whether Mahadevan's actions were sufficiently justified.[90] If the Court finds that Mahadevan inflicted willful and malicious injury, the Court must also determine what portion of the damages awarded in the California Judgment is attributable to such willful and malicious conduct.[91]

A. Standard for willful and malicious conduct

Under § 523(a)(6), debts obtained by "willful and malicious injury by the debtor to another entity or to the property of another entity" are not dischargeable in bankruptcy.[92] The Supreme Court has developed guidelines for determining whether a debt arises from a willful and malicious injury under § 523(a)(6).[93] The Supreme Court has held that § 523(a)(6) applies only to "acts done with the actual intent to cause injury" and does not discharge debts arising from negligently or recklessly inflicted injuries.[94]

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[88] *See, e.g.*, *Badami v. Sears (In re AFY, Inc.)*, 461 B.R. 541, 547-48 (8th Cir. BAP 2012) ("Unless and until the Supreme Court visits other provisions of Section 157(b)(2), we take the Supreme Court at its word and hold that the balance of the authority granted to bankruptcy judges by Congress in 28 U.S.C. § 157(b)(2) is constitutional."). *See also Tanguy v. West (In re Davis)*, No. 00-50129, 538 F. App'x 440, 443 (5th Cir. 2013) ("[W]hile it is true that *Stern* invalidated 28 U.S.C. § 157(b)(2)(C) with respect to 'counterclaims by the estate against persons filing claims against the estate,' *Stern* expressly provides that its limited holding applies only in that 'one isolated respect' . . . We decline to extend *Stern's* limited holding herein.") (citing *Stern*, 564 U.S. at 475, 503, 131).
[89] ECF No. 1.
[90] ECF No. 51 at 17.
[91] ECF No. 51 at 17.
[92] 11 U.S.C. § 523(a)(6).
[93] *In re Williams*, 337 F.3d 504, 508 (5th Cir. 2003) (citing *Kawaauhau v. Geiger*, 523 U.S. 57, 59 (1998)).
[94] *Kawaauhau*, 523 U.S. at 59.

The Fifth Circuit has interpreted the Supreme Court's guidance that 523(a)(6) requires actual intent to cause injury to hold that the "[t]he test for willful and malicious injury under Section 523(a)(6), thus, is condensed into a single inquiry of whether there exists 'either an *objective substantial certainty of harm or a subjective motive to cause harm*' on the part of the debtor."[95] "Because debtors generally deny that they had a subjective motive to cause harm, most cases that hold debts to be non-dischargeable do so by determining whether '[the debtor's] actions were at least substantially certain to result in injury.'"[96]

Bikkina bears the burden of proving that Mahadevan acted with subjective intent to cause harm or with substantially certainty of harm by a preponderance of the evidence.[97]

Finally, if the Court finds that Mahadevan acted with substantial certainty of harm or a subjective motive to cause harm, the conduct is still not willful and malicious unless the Court also finds that the acts were not "sufficiently justified under the circumstances."[98]

B. Subjective intent to cause harm

To prove subjective intent to cause harm, a creditor must show that a debtor "intend[ed] 'the consequences of an act,' not merely 'the act itself.'"[99] The mere fact a judgment arose from an intentional tort action does not prove that the injury caused by the tortfeasor is willful.[100] The jury in the State Court Action found that Mahadevan was liable for intentional infliction of emotional distress and defamation by making allegations of scientific misconduct against Bikkina[101] Thus, the Court must now decide whether such allegations were made with a subjective intent to injure Bikkina.

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[95] *In re Williams*, 337 F.3d at 509 (emphasis added).
[96] *In re Vollbracht*, 276 F. App'x 360, 361–62 (5th Cir. 2007).
[97] *Grogan v. Garner*, 498 U.S. 279, 287 (1991).
[98] *In re Vollbracht*, 276 F. App'x at 362.
[99] *Kawaauhau*, 523 U.S. at 61–62.
[100] *Miller v. J.D. Abrams, Inc*. (*In re Miller*), 156 F.3d 598, 604 (5th Cir.1998).
[101] ECF Nos. 141-1; 141-2; 51 at 10.

Bikkina has presented evidence to show that Mahadevan harbored bitter animosity toward Bikkina.[102] Bikkina and Mahadevan had many disagreements about technical concepts while Bikkina was in Mahadevan's research group.[103] Bikkina testified that before he left the research group, Mahadevan warned him: "Prem, I am going to screw you."[104] Numerous cross complaints with Tulsa between the parties and emails between Mahadevan and Tulsa officials indicate that both of them believed that they were being harassed by the other.[105] For example, Mahadevan emailed Winona Tanaka, a Provost at Tulsa, on June 3, 2011, complaining of Bikini's "malicious acts" and "vengeful behavior."[106] Mahadevan also submitted a complaint on July 22, 2011 to Roger Blais, another Provost at Tulsa, alleging that Bikkina was harassing Mahadevan by making damaging remarks about him to other students and Tulsa officials.[107] Bikkina likewise indicated in a complaint sent to the Vice Provost of Tulsa on July 27, 2011 that Mahadevan had harassed and insulted Bikkina, violating Tulsa's harassment policy.[108]

Although the clear animosity between the parties shows potential motive by Mahadevan to injure Bikkina, such motive in itself does not meet Bikkina's burden of proving that Mahadevan acted with intent to cause harm.[109] In this case, Mahadevan testified that he had no intent to harm Bikkina but only made the allegations of scientific misconduct to prevent infringement of his intellectual property rights, and to inform the public and scientific community about contaminated data in Bikkina's published papers.[110] Moreover, Bikkina was not able to present any witnesses at

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[102] *See e.g.*, ECF No. 221 at 98.
[103] ECF Nos. 223 at 135; 221 at 39–40, 204.
[104] *See* ECF Nos. 141-16 at 1; 221 at 17.
[105] ECF Nos. 141-13 at 2; 141-17 at 1; 141-36.
[106] ECF No. 141-13 at 2.
[107] ECF No. 141-17 at 1.
[108] ECF No. 141-16.
[109] *See In re Vollbracht*, 276 F. App'x at 361–62.
[110] June 5, 2024 Courtroom Trial (Jagannathan Mahadevan testifying); Aug. 20, 2024 Courtroom Trial (Jagannathan Mahadevan testifying); ECF No. 11.

trial to corroborate Bikkina's testimony that Mahadevan made incriminating remarks to Bikkina, such as "I am going to screw you."[111]

Accordingly, this Court finds that Bikkina has not met his burden of showing that Mahadevan acted with subjective intent to injure Bikkina by making allegations of scientific misconduct.

C. Substantial certainty of harm

The Fifth Circuit recognizes that since a debtor generally denies having a subjective motive to injure a plaintiff, "[i]ntent to injure may be established by showing that the debtor intentionally took action that necessarily caused, or was substantially certain to cause, the injury."[112] Indeed, actions taken with substantial certainty of harm are "badges of intent" by a debtor.[113] In other words, when "the [d]efendant's actions, which from a reasonable person's standpoint were substantially certain to result in harm, . . . the court ought to infer that the debtor's subjective intent was to inflict a willful and malicious injury on the Plaintiff."[114]

An objective test, such as the substantial certainty of harm test under § 523(a)(6) requires an assessment of all of the relevant facts and circumstances.[115] The Fifth Circuit recognizes that a debtor's knowledge at the time of the act that caused the injury is an important factor in determining whether the injury was substantially certain to result from the debtor's actions.[116] Specifically, the debtor must have knowledge of the particular circumstances present at the time of injury that would

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[111] Aug. 20, 2024 Courtroom Trial (Duc Lee testifying); ECF No. 141-16 at 1.
[112] *Texas v. Walker*, 142 F.3d 813, 823 (5th Cir.1998); *In re Vollbracht*, 276 F. App'x at 361–62 ("Because debtors generally deny that they had a subjective motive to cause harm, most cases that hold debts to be non-dischargeable do so by determining whether '[the debtor's] actions were at least substantially certain to result in injury.'").
[113] *In re Powers*, 421 B.R. 326, 335 (Bankr. W.D. Tex. 2009) ("The court agrees with *Vollbracht* and its reading of the objective prong as a direction to lower courts to attend to 'badges of intent' that may be evidenced by actions having a substantial certainty to result in harm.")
[114] *In re Kahn*, 533 B.R. 576, 588 (Bankr. W.D. Tex. 2015).
[115] *In re D'Amico*, 509 B.R. 550, 558 (S.D. Tex. 2014).
[116] *Id.* at 559.

enable the debtor to be aware of the substantial certainty of harm.[117] The creditor has the burden to prove by a preponderance of the evidence that the debtor possessed the requisite knowledge to make his acts substantially certain to result in injury.[118]

Substantial certainty of harm does not mean "absolute certainty," but it is a higher standard than recklessness.[119] Unlike recklessness, "[s]ubstantial certainty . . . requires more than a realization that there is a strong probability that harm may result."[120] Even a "high probability is less than substantial certainty."[121] Thus, as applied to this case, the Court must decide whether the probability of injury to Bikkina from Mahadevan's allegations, in light of all the relevant facts and circumstances, was so high as to constitute substantial certainty rather than mere recklessness or negligence.[122]

For the defamation judgement arising from the State Court Action to be non-dischargeable under § 523(a)(6), Mahadevan must have acted with substantial certainty that his allegations of scientific misconduct were false, and he must have spread them knowing they would harm Bikkina.[123] Mahadevan has consistently asserted that he believes that Bikkina plagiarized his research.[124] However, Mahadevan was informed several times by different officials at Tulsa that Bikkina committed no wrong doing and that Mahadevan waived his rights to any potential

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[117] *Id.* at 558; *See Walker*, 142 F.3d at 815–16, 824 (reversing district court's grant of judgement as a matter of law on the issue of non-dischargeabiilty under 523(a)(6) with regard to debt arising from breach of contract and conversion claims because a genuine issue of fact remained as to whether the debtor knew that his retention of professional fees was a breach of his contractual obligation to remit the professional fees to the creditor).
[118] *In re D'Amico*, 509 B.R. at 564.
[119] *Id.* at 561.
[120] *Id.* at 562.
[121] *Id.* at 563 (citing *In re Conte*, 33 F.3d 303, 307 (3d Cir. 1994)).
[122] *Id.*
[123] *In re Mahadevan*, 617 F. Supp. 3d 654, 664 (S.D. Tex. 2022); *In re Marshall*, 264 B.R. 609, 630 (C.D. Cal. 2001) ("Libel and defamation claims are nondischargeable under § 523(a)(6) when the statements were made with actual knowledge of their falsity."); *In re Mason*, 1999 WL 58579, at *3 (Bankr. S.D.N.Y. 1999) ("The intentional tort of defamation may constitute 'willful and malicious injury' by the debtor to another entity under § 523(a)(6) of the Bankruptcy Code, as long as the debtor knew the published statements were false.").
[124] *See* ECF No. 11; June 5, 2024 Courtroom Trial (Jagannathan Mahadevan testifying); Aug. 20, 2024 Courtroom Trial (Jagannathan Mahadevan testifying).

authorship rights to Bikkina's work.[125] For example, Tulsa issued a memorandum, which Mahadevan reviewed, stating that Tulsa found no scientific misconduct by Bikkina.[126] Mahadevan himself even sent an email to a Tulsa administrator stating that he would no longer pursue any allegations of misconduct regarding Paper #1 and that the Bikkina was free to publish it as the sole author.[127] Bikkina also credibly testified that he offered to credit Mahadevan as a co-author of Paper #1 but that Mahadevan declined the offer.[128]

Accordingly, the Court finds that by making allegations of plagiarism even after being informed that he no longer had co-authorship rights and representing to Tulsa administrator and to Bikkina that he waived such rights, Mahadevan knew with substantial certainty that his allegations of plagiarism were false.[129]

As to the claims of data falsification, Mahadevan has presented testimony from Dr. Cornell to confirm that one of the research samples included in Paper #1 did indeed contain Fluorine.[130] However, Bikkina included a paragraph, written by Mahadevan, in Paper #1 indicating the presence of Fluorine contamination in one of the research samples.[131] Mahadevan himself originally agreed to withdraw his complaint against Bikkina after he wrote this additional paragraph in Paper #1.[132] Mahadevan continued his allegations of data falsification even after IJGGC, with the approval of Tulsa, published Paper #1 with the additional paragraph.[133]

Accordingly, the Court finds that the Mahadevan knew with substantial certainty that Paper #1 did not contain false or fabricated data when he made the allegations of data falsification. The

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[125] *See e.g*, ECF Nos. 141-30; 141-40.
[126] ECF Nos. 141-40 at 10; 224 at 88–89, 101.
[127] ECF No. 141-11.
[128] ECF No. 221 at 26.
[129] *See* e.g., ECF Nos. 141-11;141-40.
[130] ECF No. 169-47; Aug. 20, 2024 Courtroom Trial (Dr. Winton Cornell testifying).
[131] ECF Nos. 141-15; 169-3; 221 at 33-40.
[132] ECF Nos. 141-15; 169-3; 221 at 33-40; 141-11.
[133] ECF Nos. 141-15; 169-3 at 12; 141-36 at 2–8.

Court further finds that Mahadevan knew that the allegations of plagiarism and data falsification would harm Bikkina when he made them since they affected Bikkina's livelihood as a scientist.[134] Indeed, Mahadevan was a scientist himself who appreciated that the reputation of a scientist depends on his truthfulness and accuracy of his scientific research.[135] Thus, since Mahadevan knew his allegations of scientific misconduct were not substantially true and that such allegations would harm Bikkina when he made them, Mahadevan acted with substantial certainty of harm when he defamed Bikkina.[136]

As to intentional infliction of emotional distress, the jury in the State Court Action found that Mahadevan engaged in outrageous conduct, which caused severe emotional distress to Bikkina.[137] The jury did not expressly indicate what conduct was outrageous.[138] However, Bikkina credibly testified that discovery of allegations of scientific misconduct made him suffer emotional distress.[139] Bikkina's complaint in the State Court Action also makes references to discovery of the same allegations as the basis for intentional infliction of emotional distress.[140]

Accordingly, the Court thus finds, based on the complaint in the State Court Action and evidence presented, that the outrageous conduct was attributed to Mahadevan's repeated allegations of scientific misconduct made to Bikkina's peers and superiors.

California "law limits claims of intentional infliction of emotional distress to egregious conduct *toward Plaintiff* proximately caused by defendant."[141] Here, Mahadevan reached out to

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[134] *See In re Sligh*, No. 21-30915-SGJ7, 2022 WL 1101537, at *5 (Bankr. N.D. Tex. Apr. 12, 2022) ("[F]alse statements that may affect the victim's livelihood . . . are of such a nature and so egregious that both injury and intent may properly be inferred for purposes of section 523(a)(6), as those acts are substantially certain to cause harm.").
[135] ECF No. 223 at 37–38.
[136] *See In re Mahadevan*, 617 F. Supp. 3d 654, 664 (S.D. Tex. 2022).
[137] ECF No. 141-2 at 4.
[138] ECF No. 141-2.
[139] *See e.g.*, ECF No. 221 at 113–18, 143–46, 165.
[140] ECF No. 141-1.
[141] *Christensen v. Superior Ct.*, 54 Cal. 3d 868, 905, 820 P.2d 181, 203–04 (1991) (emphasis in original).

IJGGC asserting that Paper #1 contained falsified data.[142] After that failed to prevent publication, Mahadevan contacted administrators at Tulsa, and Bikkina's co-author in Paper #2 to assert allegations of plagiarism in Paper #2 and data falsification in Paper #1.[143] After Tulsa rejected his allegations that Paper # 1 and Paper # 2 were plagiarized or contained false data, Mahadevan, knowing that Bikkina was attending LBNL, alleged that Paper #1 contained contaminated data at a presentation at LBNL.[144] Mahadevan later sent an email to administers at LBNL and Bikkina, making the same previously rejected allegation of scientific misconduct.[145]

Accordingly, this Court finds that this pattern evidences that Mahadevan directed his conduct towards Bikkina by intentionally spreading the allegations to institutions and individuals who Mahadevan knew had direct influence over Bikkina's career and reputation as a scientist.[146] The Court also finds that Mahadevan knew it was substantially certain that such repeated allegations would cause emotional distress because a reasonable person would know that allegations of scientific misconduct would tarnish Bikkina's reputation for truth and honesty in front of his peers and superiors in his scientific community and cause fear of losing his occupation.[147] As such, Mahadevan acted with substantial certainty of harm when he inflicted emotional distress on Bikkina.

Therefore, the Court finds that Mahadevan acted with knowledge that his actions were substantially certain to injure Bikkina when he defamed and inflicted emotional distress upon Bikkina.

D. Sufficiently justified under the circumstances

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[142] ECF No. 141-7.
[143] ECF Nos. 141-15; 141-17 at 4–5; 141-27.
[144] ECF Nos. 224 at 96–100; 221 at 161–65.
[145] ECF Nos. 141-43; 221 at 167–69.
[146] *See* ECF No. 223 at 37–38.
[147] *See In re Sligh*, No. 21-30915-SGJ7, 2022 WL 1101537, at *5 (Bankr. N.D. Tex. Apr. 12, 2022); *In re Kahn*, 533 B.R. 576, 588 (Bankr. W.D. Tex. 2015).

The "substantially justified" exception is an "expansive affirmative defense."[148] The Fifth Circuit teaches that even if an affirmative defense under state law, such as self-defense in criminal law, is not available, a debtor's actions may still be deemed "sufficiently justified" to render it not "willful and malicious."[149] Whether a debtor's acts were "sufficiently justified" under the circumstances is a question that requires discretion and fact-finding.[150]

Mahadevan has not pled any plausible affirmative defense under applicable state law to justify harming Bikkina by making allegations of scientific misconduct.[151] Thus, the Court must make an examination into the facts and use its discretion to determine whether Mahadevan was sufficiently justified in knowingly inflicting injury upon Bikkina.[152] Mahadevan has repeatedly asserted his belief that his allegations were true, particularly that Bikkina committed copyright infringement.[153] The Court has already found that this belief was clearly misplaced in light of all the evidence supporting the falsity of the allegations.[154]

Moreover, Mahadevan's repetition of his allegations, even after rejected by individuals having authority to evaluate the allegations, was an unreasonable method of protecting his alleged authorship rights.[155] If Mahadevan believed that his copyrighted work was being plagiarized, he could have protected his authorship rights by pursuing legal action against Bikkina.[156] In fact, Mahadevan served a cease and desist letter on Bikkina in August of 2013 asserting copy right infringement; registered copy rights for work that Bikkina allegedly plagiarized in 2019; and sued

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[148] *Wise v. Peterson (In re Peterson)*, 452 B.R. 203, 233 (Bankr. S.D. Tex. 2011) (citing *In re Vollbracht*, 276 F. App'x at 362 n.8).
[149] *In re Vollbracht*, 276 F. App'x at 363 n.8.
[150] *Arguello v. LaFavers*, 448 F. Supp. 3d 655, 666 (S.D. Tex. 2020).
[151] *See* ECF Nos. 11; 32.
[152] *Arguello*, 448 F. Supp. 3d at 666.
[153] June 5, 2024 Courtroom Trial (Jagannathan Mahadevan testifying); ECF Nos. 11; 32.
[154] *See* discussion *supra* Section IV.C.
[155] *See e.g.*, ECF No. 141-40. *See also* discussion *supra* Section IV.C.
[156] *See Mahadevan v. Bikkina*, No. 20-CV-536-GKF-JFJ, 2021 WL 232126, at *6 (N.D. Okla. Jan. 22, 2021); 17 U.S.C. § 501.

Bikkina in July of 2020 in the Northern District of Oklahoma for copyright infringement.[157] However, these legal actions were not initiated until after Mahadevan already made his allegations of plagiarism to individuals at Tulsa and LBNL.[158] Dr. Cornell and Dr. Price testified that Tulsa never conducted a complete investigation into Mahadevan's complaints before concluding that Bikkina committed no wrongdoing.[159] However, Mahadevan does not even remember writing to Tulsa to express his disagreement with the handling of his complaints before repeating allegations of scientific misconduct at an LBNL presentation.[160] Thus, the Court cannot find that Mahadevan's decision to take matters into his own hands, by asserting serious allegations against Bikkina without having a reasonable basis for believing that the allegations were true, rises to the level of sufficient justification contemplated in *Vollbracht*.[161]

Accordingly, the Court finds that Mahadevan was not sufficiently justified under the circumstances when he acted with substantial certainty of harm to defame and inflict emotional distress upon Bikkina.

E. Portion of damages attributable to willful and malicious injury

In the State Court Action, $461,000 in damages was awarded to Bikkina for "Negligence or Intentional infliction of Emotional Distress," and $315,000 was awarded for defamation.[162] Under California law, a plaintiff may seek damages under more than one legal theory, but "each item of damages may be awarded only once, regardless of the number of legal theories alleged."[163]

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[157] ECF Nos. 169-31 at 6; 169-30 at 7; 169-23; 169-1;169-2; 51 at 3; Bankr, 21-30545 ECF No. 13 at 9.
[158] ECF Nos. 169-31 at 6; 169-30 at 7; 169-23; 169-1;169-2; 141-40; 141-43.
[159] Aug. 20, 2024 Courtroom Trial (Dr. Alan Price testifying); Aug. 20, 2024 Courtroom Trial (Dr. Winton Cornell testifying).
[160] ECF No. 224 at 88–89.
[161] *In re Wilhite*, No. 16-10632-JDW, 2017 WL 835764, at *9 (Bankr. N.D. Miss. Mar. 1, 2017) ("Debtor firmly believed that the Creditor had neglected its contractual duties. . . . Her subjective belief . . . was clearly misplaced given the plain language of the Performance Agreement. Such confusion, by itself, does not rise to the level of sufficient justification contemplated in *Vollbracht*.").
[162] ECF No. 141-2 at 6–8.
[163] *In re Zeeb*, BAP No. CC-19-1019, 2019 WL 3778360, at *8 n.4 (B.A.P. 9th Cir. Aug. 9, 2019).

Thus, when the jury in the State Court Action awarded Bikkina $461,000 for "economic damages for past wage loss" and "past noneconomic loss," the jury found that he was entitled to damages for both his negligence claim and his intentional infliction of emotional distress claim.[164] The Court must now decide what portion of that $461,000 is attributed to willful and malicious conduct.[165]

Here, Mahadevan's allegations against Bikkina that he committed plagiarism or data falsification in Paper #1, Paper #2, his PhD dissertation and a Conoco Phillips presentation made Mahadevan liable to Bikkina for defamation.[166] These allegations also made Mahadevan liable for intentional infliction of emotional distress.[167] This Court has found that Mahadevan acted more than negligent or reckless as Mahadevan made these allegations with substantial certainty of harm and that there was no sufficient justification to render Mahadevan's conduct not willful and malicious.[168] The Court also finds, given the severity of the allegations of scientific misconduct made by Mahadevan to third parties, which created an objective substantial certainty of harm to Bikkina, that Mahadevan injured Bikkina in an amount at least equivalent to the judgement amount in the State Court Action.[169]

Accordingly, since Mahadevan was willful and malicious in inflicting emotional distress on Bikkina and was also willful and malicious in defaming Bikkina, Mahadevan's judgement debt owed to Bikkina as set forth in the California Judgement in the amount of $776,000 is excepted from discharge as a debt for a willful and malicious injury to another entity or to the property of another entity pursuant to 11 U.S.C. § 523(a)(6).[170]

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[164] ECF No. 51 at 19.
[165] *See* ECF No. 151 at 17–19.
[166] ECF No. 141-2.
[167] ECF Nos. 141-1; 141-2. *See also* discussion *supra* Section IV.C.
[168] *See* discussion *supra* Section IV.C, IV.D.
[169] *McClendon v. Springfield*, 505 B.R. 786, 792 (E.D. Tex. 2013), aff'd sub nom. *In re McClendon*, 765 F.3d 501 (5th Cir. 2014) ("[T]he Court finds that the bankruptcy court did not err by not individually determining which damages were non-dischargeable because it found that all of the damages were non-dischargeable.").
[170] ECF No. 141-2 at 5–8.

V. CONCLUSION

The Court will enter a judgment consistent with this Memorandum Opinion.

SIGNED February 21, 2025

Eduardo V. Rodriguez
Chief United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	**OUT OF DISTRICT DEBTOR**
ELIZABETH THOMAS,	§	
	§	
Debtor.	§	
	§	
ERNESTO SIMPSON,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	**ADVERSARY NO. 25-3609**
	§	
P.C.F. PROPERTIES IN TX, LLC[1],	§	
	§	
Defendant.	§	

ORDER HOLDING TWO INDIVIDUALS IN CIVIL CONTEMPT
AND DIRECTING THAT THEY BE BROUGHT BEFORE THE COURT

James Anderson and Ernesto Simpon are each held in civil contempt of Court for two related, but independent, reasons. The Court's reasons were stated on the record on August 7, 2025. The following is a supplementation of the reasons for the civil contempt findings.

Civil Contempt No. 1
(Fraud on Court)

On this date, the Court heard extensive evidence with respect to a fraud currently being perpetrated on this Court. The Court finds:

1. The legal owner of the property located at 8202 Terra Valley Lane, Tomball, Texas 77375 is P.C.F. Properties in TX, LLC (the "True Owner"). *See* ECF 7-4.[2]

2. Attorney James Anderson, acting in concert with Elizabeth Thomas and Attorney Alzadia Spires, coordinated the creation of a Colorado LLC named "PCF Properties in Texas LLC" (the "Fraudulent Owner"). Antony Halaris, *Testimony*, Aug. 7, 2025.

3. The purpose of the creation of the Fraudulent Owner was to defraud various courts into issuing orders that would interfere with the True Owner's rights as an owner. Although

[1] The Plaintiff alleges that the proper defendant is a Colorado entity bearing a similar name. The true defendant is the defendant listed in the style of the case. The Court orders that all filings in this case now reflect the name of the true defendant-in-fact, "P.C.F. Properties in TX, LLC."

[2] All of the exhibits filed at ECF No. 7 have been admitted into evidence.

there have been several attempts to interfere with the True Owner's rights (including an illegal break-in at the property), the culmination before this Court was a lawsuit originally filed in state court by James Anderson on behalf of Ernesto Simpon. *See* ECF 7-5. In that lawsuit, Mr. Simpson alleges that he is a tenant at the property who is being wrongfully evicted by the Fraudulent Owner. *Id.*

4. The Fraudulent Owner was represented by attorney Alzadia Spires. Attorney Spires (acting for the Fraudulent Owner) and Attorney Anderson (acting for Simpson) then were able to enter into an "Agreed Temporary Injunction" barring the eviction of Mr. Simpson and giving him full access to the Terra Valley Lane Property. *See* ECF 7-6. The state court signed that order in *Simpson v. PCF Properties in Texas LLC*, No. 1249845 (Harris Co. Ct. at Law No. 2, Tex. Aug. 4, 2025) [hereinafter County Court Case]. *Id.*

5. Their next conduct was to enter into a state law Rule 11 Agreement that provides for certain payments and an Agreed Permanent Injunction. *See* ECF 7-7. The Agreed Final Judgment and Permanent Injunction was signed by Attorney Anderson and Attorney Spires, and entered by the state court. *See* ECF 7-8.

6. A few days later, the Agreed Final Judgment and Permanent Injunction was presented to The Harris County Constable's Office to justify the unlawful entry by Elizabeth Thomas, her son Robert Thomas, and her attorney James Anderson into the property. *See* ECF 7-9 for police report.

7. The True Owner first became aware of the Fraudulent Owner's fraud as a consequence of the break-in. The True Owner sought and obtained a hearing to vacate the various fraudulently obtained documents and to impose sanctions against those perpetrating the fraud. *See* ECF 7-10.

8. On the eve of the hearing to vacate the fraudulently obtained orders and to impose sanctions, the County Court Case was removed to this Court. The removal was by Ernesto Simpson, signed by his attorney James Anderson. *See* ECF Nos. 1-2.

9. Upon removal to this Court, Ernesto Simpson and Attorney James Anderson perpetuated the fraud by making false allegations to this Court. *See* ECF No. 4 (alleging that Simpson holds a valid lease to the property, and was awarded a judgment for quiet title and possession of the property and that the dispute was settled in state court.); ECF No. 8 (alleging that "*Plaintiff Ernesto Simpson as a tenant holds a valid lease agreement for the property located at 8202 Terra Valley Lane, Tomball Tx 77375, (the "Property") and on April 25, 2025, sued Defendant PCF Properties in Texas LLC, whom on April 19, 2023, was awarded judgment for quiet title and possession of same said property for an illegal eviction. On May 8, 2025, the Plaintiff and Defendant reached a settlement agreement (the "Judgment") in the case styled as Ernesto Simpson vs. PCF Properties in Texas LLC, County Court at Law (2) Harris County, Texas case No. 1249845 that was approved by the Court and the case was dismissed*

with prejudice", while never disclosing the use of the fake name by the Fraudulent Owner).

10. After notice and hearing, the Court finds that the foregoing conduct was done in contempt of this Court.

11. The Court reserves the question of whether sanctions or other awards should be made against any person or entity for this fraudulent conduct. To ameliorate any future damages from the "fraud on the Court" civil contempt, Ernesto Simpson and James Anderson must sign and date the document attached as Exhibit "A" and file the signed and dated document with the Court. The "fraud on the Court" civil contempt will not be cured until both signatures have been filed with the Court. If Exhibit "A" is modified in any way before or after it is filed, it will not cure the ongoing "fraud on the Court" civil contempt.

Civil Contempt No. 2
(Failure to Appear)

12. On August 5, 2025, this Court ordered that Ernesto Simpson and James Anderson appear before the Court. ECF No. 6.

13. Mr. Simpson acknowledged receipt of the Order. *See* ECF Nos. 10,15.

14. Mr. Anderson acknowledged receipt of the Order. *See* ECF Nos. 12,16.

15. Although motions to continue the hearing were filed by both Mr. Simpson and Mr. Anderson, the motions were denied. *See* ECF Nos. 11,17.

16. Neither Mr. Anderson nor Mr. Simpson appeared as ordered.

17. Mr. Anderson and Mr. Simpson are in civil contempt of Court for failing to appear.

18. The "failure to appear" civil contempt may be remedied by Ernesto Simpson by appearing in Court at a hearing scheduled through the Court's Case Manager. He must contact the Court's Case manager, by email, to arrange a date and time for his appearance. The Case Manager will schedule a hearing to occur within 3 business days of the date that the Case Manager is contacted by email. Notice of the hearing date and time will be sent to Mr. Simpson by return email. Mr. Simpson must then attend the scheduled hearing in person. Personal attendance is required. Video and audio appearances will not be permitted.

19. The "failure to appear" civil contempt may be remedied by James Anderson by appearing in Court at a hearing scheduled through the Court's Case Manager. He must contact the Court's Case manager, by email, to arrange a date and time for his appearance. The Case Manager will schedule a hearing to occur within 3 business days of the date that the Case Manager is contacted by email. Notice of the hearing date and

time will be sent to Mr. Simpson by return email. Mr. Simpson must then attend the scheduled hearing in person. Personal attendance is required. Video and audio appearances will not be permitted.

Order to United States Marshal

20. The United States Marshal is ordered to bring Ernesto Simpson before the Court with all deliberate speed. He will be released when he has satisfied the conditions of both the "failure to appear" civil contempt and the "fraud on the Court" civil contempt as set forth in paragraphs 11 and 18.

21. The United States Marshal is ordered to bring James Anderson before the Court with all deliberate speed. He will be released when he has satisfied the conditions of both the "failure to appear" civil contempt and the "fraud on the Court" civil contempt as set forth in paragraphs 11 and 19.

SIGNED 08/07/2025

Marvin Isgur
United States Bankruptcy Judge

EXHIBIT "A"

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	**OUT OF DISTRICT DEBTOR**
ELIZABETH THOMAS,	§	
	§	
Debtor.	§	
	§	
ERNESTO SIMPSON,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	**ADVERSARY NO. 25-3609**
	§	
P.C.F. PROPERTIES IN TX, LLC[3],	§	
	§	
Defendant.	§	

MOTION FOR DISMISSAL WITH PREJUDICE AGAINST REFILING

My name is Ernesto Simpson. On August 3, 2025, attorney James Anderson filed the Notice of Removal of this case from the Harris County Courts to this Court. Mr. Anderson was acting on my behalf when he filed that Notice of Removal and the Amended Notice of Removal.

I understand that the entire state Court lawsuit is now pending before this Court.

I have been informed that the Court has vacated the judgments, orders and decrees previously entered by the state court that were admitted as Exhibits 7-6 and 7-8 at a hearing on August 7, 2025. He has also stricken the Rule 11 Agreement that was admitted as Exhibit 7-7.

I now move to dismiss this case, with prejudice against refiling. I understand that the Court has advised that the dismissal of this case may leave me subject to sanctions, civil and criminal penalties.

_____ _____
Ernesto Simpson Date signed

_____ _____
James Anderson Date signed

[3] The Plaintiff alleges that the proper defendant is a Colorado entity bearing a similar name. The true defendant is the defendant listed in the style of the case. The Court orders that all filings in this case now reflect the name of the true defendant-in-fact, "P.C.F. Properties in TX, LLC."