

CIRCUIT SPLITS: MOST LIKELY YOU'LL GO YOUR WAY (AND I'LL GO MINE)

State Bar of Michigan
Debtor/Creditor Rights Committee¹

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² None of the speakers express any opinion regarding the decisions issues herein. These materials are by no means comprehensive. Practitioners are encouraged to review the actual decisions in order to thoroughly understand the issues and holdings.

I. Supreme Court to Address Whether A Time Limit Exists for Setting Aside a Void Judgment

The United States Supreme Court recently granted a writ of certiorari in *In re Vista-Pro Automotive, LLC*.³ The case is notable not only for its creation of a circuit split, but for its holding, which departs from those of the 1st, 3rd, 5th, 7th, 8th, 9th, 10th, 11th and D.C. Circuit Courts. The question before the Sixth Circuit was whether the “reasonable time” requirement of Rule 60(c)(1) of the Federal Rules of Civil Procedure applied where a final judgment was void for lack of personal jurisdiction. The Sixth Circuit, in a decision that has ramifications far beyond bankruptcy practice, held that the “reasonable time” requirement did apply to void judgments and affirmed the district court’s denial of a motion to set aside a void judgment as it was not brought within a reasonable time frame.

A. Background

Rule 60, made applicable to bankruptcy proceedings by Rule 9024 of the Federal Rules of Bankruptcy Procedure, establishes five grounds on which a party may seek relief from a final judgment or order.⁴ One enumerated ground on which relief may be granted is that “the judgment is void.”⁵

Rule 60(c)(1) governs the time for filing a motion under Rule 60(b). Motions seeking relief from a final judgment or order must be brought “within a reasonable time – and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.”⁶

Creditors of Vista-Pro commenced an involuntary chapter 7 case in November of 2014. The matter was subsequently converted to chapter 11. In February of 2015, Vista-Pro commenced an adversary proceeding against Coney Island, seeking to collect approximately \$50,000 in unpaid invoices. The summons and complaint were sent to the corporate address of Coney Island but without any corporate officer’s or other individual’s name on the mailing. After Coney Island failed to respond to the complaint, Vista-Pro moved for default judgment (again, using the same address for service) which the court granted in May of 2015.

Thereafter, the case was reconverted into a chapter 7 liquidation and a trustee was appointed. In April of 2016 the trustee sent a demand letter to Coney Island to obtain satisfaction of the default judgment. The trustee continued its attempts to collect on the judgment over the next several years, but it was not until October of 2021 that Coney Island moved in the Southern District of New York to vacate the default judgment. That court denied the motion, instructing Coney Island to seek relief from the Middle District of Tennessee court, where the bankruptcy case had been filed. Coney Island did so, moving under Rule 60(b)(4) to vacate the May 2015 default judgment.

³ *Vista-Pro Automotive, LLC v. Coney Island Auto Parts Unlimited, Inc. (In re Vista-Pro Auto., LLC)*, 109 F.4th 438 (6th Cir. 2024).

⁴ Fed. R. Civ. P. 60(b).

⁵ Fed. R. Civ. P. 60(b)(4).

⁶ Fed. R. Civ. P. 60(c)(1).

In support of its motion, Coney Island argued that Vista-Pro’s service of the summons and complaint failed to comport with the requirements of Bankruptcy Rule 7004(b)(3) and, therefore, the default judgment was void.

The Tennessee bankruptcy court ultimately denied the Rule 60(b)(4) motion on the basis that it was not made within a “reasonable” time as required by Rule 60(c). The court observed that Coney Island had actual notice of the default judgment no later than April 2016 and concluded that their years long delay in bringing the motion to vacate was unreasonable. The district court affirmed on appeal and Coney Island appealed to the Sixth Circuit Court of Appeals.

B. The Majority Opinion

Judges Larsen and Boggs, writing for the majority, affirmed the lower court’s denial of the motion to vacate the default judgment holding that the “reasonable time” requirement set forth in Rule 60(c) applies even to judgments which are void. While acknowledging that this holding appeared “to be out of step with the majority view” the majority did provide several reasons why their decision had merit.⁷

First, the majority emphasized what they believed to be binding precedent set by the Sixth Circuit in *United States v. Dailide*.⁸ In that case, the Sixth Circuit denied a motion to vacate under Rule 60(b)(4) because the motion, premised on Dailide’s assertion that the court lacked subject matter jurisdiction to revoke his citizenship four years after entry of the judgment “was untimely and lack[ed] merit.”⁹ The dissent disputes that *Dailide* is binding, asserting that the holding was based on the appeal’s lack of merit rather than the timeliness issue.¹⁰ Nevertheless, the majority determined it was “bound by *Dailide*’s holding that Rule 60(b)(4) motions are subject to a reasonable-time limitation.”¹¹

Second, the majority highlighted that their reading of Rule 60(c)(1) was the “only reading that is faithful to the text ... which by its plain terms imposes a reasonable-time requirement on *each* of the enumerated grounds in Rule 60(b).”¹² The majority also noted that the drafters were deliberate in framing the Rule’s limitations and knew how to establish different standards for the various grounds, citing to the one year time period to bring motions under Rule 60(b)(1)-(3) and observing the drafter’s silence on a different time limitation for (b)(4) motions.¹³

Third, the majority observed that applying a reasonable time limitation to Rule 60(b)(4) motions comports with basic equitable principles because, without such limitation, a party may

⁷ *In re Vista-Pro Auto., LLC*, 109 F.4th at 444.

⁸ *United States v. Dailide*, 316 F.3d 611, 614 (6th Cir. 2003).

⁹ *Id.* at 442 (quoting *Dailide*, 316 F.3d at 619).

¹⁰ Although, notably, neither the majority nor the dissent references the parenthetical in *Dailide* that “subject matter jurisdiction can be challenged at any time.”

¹¹ *Id.*

¹² *Id.* at 444 (emphasis in original).

¹³ *Id.*

“consciously sleep[] on its rights in order to cause prejudice to the judgment holder, undermine the finality of long-forgotten judgments, or upset reliance interests.”¹⁴

Finally, the Court noted that nothing about its interpretation of Rule 60 requires unfairness to a party who is subject to a void judgment because the reasonable-time limitation “anticipates a fact specific inquiry that can account for a variety of circumstances, including a party’s innocent delay in learning of a void judgment against it or in learning why the judgment is void.”¹⁵ Therefore, “any notice concerns that arise in the context of void judgments can be properly accounted for in the reasonable-time calculation.”¹⁶

C. The Dissent

Judges McKeague issued a forceful dissent. First, he outlined his belief that the Sixth Circuit case law cited by the majority, including *Dailide*, was not binding precedent because “we are not bound by language in a judicial opinion that – though presented as an alternative, independent holding – fails to apply the rule it purports to lay out.”¹⁷ Instead, he argued, the Court should follow the precedent set forth in *Antoine v. Atlas Turner*, a decision published eight years prior to *Dailide* which held that “if an underlying judgment is void, it would be a per se abuse of discretion for a district court to deny a motion to vacate that judgment.”¹⁸ However, as the majority notes, *Antoine* did not consider the timeliness of the motion before it.

The dissent also highlighted the Supreme Court’s ruling in *United States Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010) interpreting it as an instruction from the Supreme Court that Rule 60(b)(4) permits attacking void judgments at any time. However, as the majority points out, *Espinosa*, like *Antoine*, “did not consider whether the motion was timely under Rule 60(c)(1); it simply decided what kinds of defects make a judgment void within the meaning of Rule 60(b)(4).”¹⁹

The dissent suggested that regardless of the precedential landscape, the “unbounded timeliness rule” adopted by the majority is misguided. The dissent highlights the fact that prior to the enactment of Rule 60, there was a “well established rule that void judgments could be vacated at any time” and that the Advisory Committee specifically affirmed numerous times that the construction of Rule 60 was not intended to take away preexisting remedies.²⁰ Moreover, the dissent observes that the word “reasonable” in the text of Rule 60(c)(1) can be taken as further evidence that the Advisory Committee did not intend to upend the traditional rule because “as applied to facially void judgments, a ‘reasonable’ time limit might very well be no time limit at all.”²¹

¹⁴ *Id.* at 445.

¹⁵ *Id.* at 445-446.

¹⁶ *Id.* at 446.

¹⁷ *In re Vista-Pro Auto., LLC*, 109 F.4th at 449 (McKeague, J., dissenting).

¹⁸ *Id.* (citing *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 108 (6th Cir. 1995)).

¹⁹ *Id.* at 443.

²⁰ *Id.* at 452.

²¹ *Id.*

The dissent concludes with the compelling argument that a “void judgment is a legal nullity” and that “to avoid the injustice inherent in enforcement of a legal nullity – Rule 60(c)(1) must not permit courts to deny motions to vacate void judgments solely on timeliness grounds.”²²

II. Does the Supreme Court’s *Purdue* Decision Permit and/or Require Opt-In or Opt-Out Voting for Non-Consensual Third-Party Releases in Chapter 11 Plans?

In *Harrington v. Purdue Pharma, L.P.*,²³ the United States Supreme Court held the Bankruptcy Code²⁴ does not allow chapter 11 plans to include *non-consensual* third-party releases, *i.e.*, releases that discharge claims that non-debtor claimants may have against other non-debtor third parties without the claimants’ consent.²⁵ But the Court did not bar *consensual* third-party releases and left lower courts to assess what constitutes consent. Post-*Purdue*, plans continue to include third-party releases, typically with “opt in” or “opt out” mechanisms.

a) Opinions Requiring an Affirmative Opt-In Mechanism

Across the country, the United States Trustee consistently has argued opt out releases are not consensual because releases are contractual agreements. Under established state contract law principles, silence does not constitute acceptance or establish a meeting of the minds. Thus, a third-party release only may be approved if a party must expressly manifest consent to a release by opting in. Some courts have agreed with this view, in whole or in part.

The court upheld the United States Trustee’s objection to a plan with an opt out third-party release in *In re Tonawanda Coke Corp.*²⁶ The release would have applied to claims against several non-debtor parties, but the creditors would not receive additional consideration for granting such a release. The court rejected the release because, under New York law, a creditor granting a release without receiving consideration must do so in writing. The court also more generally found the opt out release insufficient—stating “[a]bsent a writing expressly agreeing to a release of non-debtors, creditors have not given consent as required by the Supreme Court in *Harrington v. Purdue Pharma*”—because “[c]onsent and failure to object are not synonymous.”²⁷

In *In re Smallhold, Inc.*, Judge Goldblatt explained that, prior to the Supreme Court’s *Purdue* opinion, he had approved opt out third party releases under a “default” theory; *i.e.*, creditors validly served with a plan must speak up if they object, and not doing so is a “default” that allows

²² *Id.* at 453.

²³ *Harrington v. Purdue Pharma, L.P.*, 603 U.S. 204 (2024).

²⁴ The Bankruptcy Code is set forth in 11 U.S.C. §§ 101 *et seq.* Specific chapters of the Bankruptcy Code are identified herein as “chapter ____” and specific sections of the Bankruptcy Code are identified herein as “section ____.”

²⁵ *But see In re Odebrecht Engenharia e Construção S.A. - Em Recuperação Jud.*, 669 B.R. 457 (Bankr. S.D.N.Y. 2025) (recognition order containing non-consensual third party releases in chapter 15); *In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R.*, 670 B.R. 150 (Bankr. D. Del. 2025) (same); *see also In re Boy Scouts of Am.*, 137 F.4th 126 (impermissible non-consensual third party releases affirmed as statutorily moot under section 363(m)).

²⁶ *In re Tonawanda Coke Corp.*, 662 B.R. 220 (Bankr. W.D.N.Y. 2024).

²⁷ *Id.* at 223 (quoting *In re Arch Hospitality, Inc.*, 530 B.R. 588, 591 (Bankr. W.D.N.Y. 2015)).

relief to be granted.²⁸ Judge Goldblatt reasoned that, post-*Purdue*, “a third-party release is no longer an ordinary plan provision that can properly be entered by ‘default’ in the absence of an objection.”²⁹ Moreover, “in the absence of the default theory of ‘consent,’ no other justification for treating the failure to ‘opt out’ as ‘consent’ to the release can withstand analytic scrutiny.”³⁰ Judge Goldblatt thus held creditors who were not entitled to vote on the plan could not be bound by its release. But creditors who affirmatively voted on the plan could be deemed to consent to the release if they did not opt out on their ballot: “the affirmative act of voting, coupled with clear and conspicuous disclosure and instructions about the consequences of the vote and a simple mechanism for opting out, is a sufficient expression of consent to bind the creditor to the release under ordinary contract principles.”³¹

b) Opinions Permitting an Opt-Out Mechanism

Most courts that have released post-*Purdue* opinions have held that, while every plan and release must be reviewed on a case-by-case basis, opt out third-party releases may be deemed consensual when (1) the release is conspicuous and clear in the disclosure statement, plan, ballots, and/or other required forms, (2) the opt out mechanism is simple and well explained, and (3) claimants receive proper notice and due process. Stated differently, inaction can signify consent as a party properly served with a plan has an obligation to protect its own rights.

The court found an opt out release was consensual in *In re Robertshaw US Holding Corp.*³² There, the court explained that the Fifth Circuit never has permitted non-consensual releases, but courts within the circuit long have held opt out releases can be consensual—and the *Purdue* decision did not overrule that authority. The court held the plan’s release was consensual because (a) affected parties received constitutional due process (detailed notice about the plan, the plan objection deadline, and the voting deadline, and the ballots afforded an opportunity to opt out); (b) the release’s language was specific and put releasing parties on notice of the types of claims released; and (c) the release was an integral part of the plan and a condition of settlements in the plan.

Another court approved of opt out releases for claims held by survivors of sexual abuse in *In re Roman Catholic Diocese of Syracuse*.³³ An optional form sent with the ballots allowed creditors to opt out of the releases but, if they failed to opt out or to return a ballot, they were deemed to consent. While the court called for a “very conservative approach” to evaluating opt-out releases and stated any concerns about a release “should be addressed on a case-by-case basis given the particular circumstances,” it held opt out releases may be approved “in cases in which creditors and interest holders have been provided with a clear and prominent explanation of the opt out procedure.”³⁴ The court found unique circumstances supported the opt out mechanism

²⁸ *In re Smallhold, Inc.*, 665 B.R. 704, 708-09 (Bankr. D. Del. 2024).

²⁹ *Id.* at 709.

³⁰ *Id.*

³¹ *Id.* at 710. Notably, the *Smallhold* plan stated parties who did not return a ballot would not be bound by the release.

³² *In re Robertshaw US Holding Corp.*, 662 B.R. 300 (Bankr. S.D. Tex. 2024).

³³ *In re Roman Catholic Diocese of Syracuse*, 667 B.R. 628 (Bankr. N.D.N.Y. 2024).

³⁴ *Id.* at 632 (citation omitted).

here, including (a) the unsecured creditors' committee's significant involvement in formulating (and later supporting) the plan with its releases, (b) the releasing parties would receive \$50M in additional consideration from the released parties, which may have been withdrawn if an opt-in procedure was required, and (c) the survivors' attorneys "represented to the Court the failure of individual survivors to vote is not because they are opposed to the Plan and releases, but for many survivors, the emotionally difficult nature of the case means that they simply do not wish to engage with the case, and prefer to rely on their lawyers."³⁵ The court required revisions to the disclosure statement and solicitation materials to ensure clear and sufficient notice of the opt out option and to limit who would be released.

In *In re Lavie Care Centers, LLC*,³⁶ the court concluded an opt out release was consensual under the circumstances. The debtors operated skilled nursing facilities and faced significant prepetition state court tort litigation. The debtors filed a plan—facilitated by a mediation involving the unsecured creditors' committee and the debtors' largest landlord and secured lender—that included a broad third-party release; without the "significant consideration" of the parties to be released, "the Plan would not be possible, and unsecured creditors (and even certain of the secured creditors) would most likely get nothing from any other possible resolution of these cases."³⁷ The court rejected the United States Trustee's view that releases should be evaluated based on state contract law principles. It found consent to the release was given by parties who (a) voted in favor of the plan, based on the plan's express terms; (b) voted to reject the plan but did not opt out from the release, (c) returned a ballot abstaining from voting on the plan, but not opting out from the release, and (d) did not respond after receiving the voting/opt out package, as "creditors are obligated to pay attention to, and read, their mail, and [the] failure to do so has consequences."³⁸ As to the last (and largest) group of creditors, however, the court held they faced a rebuttable presumption of consent and would receive a post-confirmation opportunity to prove their circumstances warranted relief from the release (*e.g.*, because they were in acute care or deployed overseas during the voting period)).

Most recently, a court approved opt out releases over the United States Trustee's objection in *In re Spirit Airlines, Inc.*³⁹ The court explained authority in the Second Circuit and in that district held opt out releases could be deemed consensual. Applying that authority, the court upheld the proposed releases as consensual because (a) their terms were clear, unambiguous, and prominently presented in the plan solicitation materials, (b) it was known from the beginning of the case that the plan would include third-party releases, and proposed release form had not changed (thus reducing confusion), (c) the releasing parties had strong economic incentives to monitor the case as they likely would receive a full or substantial recovery under the Plan, (d) the vast majority of creditors manifested their consent by either signing a restructuring support agreement (which provided for approval of the releases) or voting for the plan without opting out, and (e) 190 opt-out ballots were received, showing creditors understood the voting process.

Cases Requiring an Affirmative Opt-In for a Consensual Release

³⁵ *Id.* at 635.

³⁶ *In re Lavie Care Centers, LLC*, 2024 WL 4988600 (Bankr. N.D. Ga. Dec. 5, 2024).

³⁷ *Id.* at *12-13.

³⁸ *Id.* at *36-37.

³⁹ *In re Spirit Airlines, Inc.*, 668 B.R. 689 (Bankr. S.D.N.Y. Mar. 7, 2025).

- *In re Tonawanda Coke Corp.*, 662 B.R. 220 (Bankr. W.D.N.Y. Aug. 27, 2024)
- *In re Smallhold, Inc.*, 665 B.R. 704 (Bankr. D. Del. Sept. 25, 2024)

Cases Permitting an Opt-Out for a Consensual Release

- *In re Robertshaw US Holding Corp.*, 662 B.R. 300 (Bankr. S.D. Tex. 2024)
- *In re Roman Cath. Diocese of Syracuse*, 667 B.R. 628 (Bankr. N.D.N.Y. 2024)
- *In re Lavie Care Ctrs., LLC*, No. 24-55507, 2024 WL 4988600, 2024 Bankr. LEXIS 2900 (Bankr. N.D. Ga. Dec. 5, 2024)
- *In re Spirit Airlines, Inc.*, 668 B.R. 689 (Bankr. S.D.N.Y. 2025)
- *In re GOL Linhas Aéreas Inteligentes S.A.*, No. 24-10118, 2025 WL 1466055, 2025 Bankr. LEXIS 1250 (Bankr. S.D.N.Y. May 22, 2025)
- *In re Tehum Care Servs., Inc.*, No. 23-90086, __ B.R. __, 2025 WL 2256212, 2025 Bankr. LEXIS 1888 (Bankr. S.D. Tex. Aug. 7, 2025)

III. Does Silence Constitute Acceptance for Purposes of Voting on a Subchapter V Plan?

Section 1191(a) generally provides that the court shall confirm a plan in a subchapter V case only if all the requirements of section 1129(a) are met. Section 1129(a)(8) requires that, with respect to each class of claims or interests, either: (i) the class accepted the plan, or (ii) the class is not impaired under the plan. If an impaired class does not accept the plan, the plan must be confirmed without consent (colloquially known as a “cramdown”) pursuant to section 1191(b).

In subchapter V, there are significant consequences to having to cramdown. For example, when confirmation is non-consensual, a presumption exists that the subchapter V trustee (and not the debtor) will stay in place to disburse funds to creditors, thereby necessitating additional professional fees. Additionally, instead of being immediate, a discharge is not obtained in a non-consensual case until the completion of all plan payments (after a period of 3-5 years).

Acceptance is not defined in the Bankruptcy Code, and voting is permissive, not mandatory.⁴⁰ Class acceptance is calculated based on the number of holders of allowed claims that have voted to accept the plan.⁴¹ In addition, Rule 3018(c) of the Federal Rules of Bankruptcy Procedure specifies that “an acceptance or rejection shall be in writing....”⁴²

Bankruptcy courts are split regarding whether a subchapter V plan can be consensually confirmed under section 1191(a) if a class of impaired creditors does not vote on the plan. Does silence constitute acceptance? Can a class be disregarded for purposes of counting votes when no one in the class voted. Unfortunately, this is a frequent occurrence in small business bankruptcy cases because certain governmental creditors (such as the Small Business Administration (SBA) and the Internal Revenue Service (IRS)) routinely do not vote on chapter 11 plans.

a) Opinions Holding That a Silent Class Accepts a Plan or Will Not Be Counted

⁴⁰ 11 U.S.C. § 1126(a).

⁴¹ 11 U.S.C. § 1126(c).

⁴² Fed. R. Bankr. P. 3018(c).

The first two opinions to address this issue were both from the Bankruptcy Court for the Southern District of Texas. In *In re Franco's Paving, LLC*,⁴³ no votes were cast from three classes of governmental creditors. The court held that when no one in a class of creditors has voted for or against a subchapter V plan, such silence constitutes consent for purposes of section 1129(a)(8). Focusing on the calculation required by section 1126, the court reasoned that Congress presumed that there would be at least one vote in each class. The court stated:

attempting to do what the laws of mathematics prohibit is an absurd proposition and could not have been intended when Congress enacted the current version of § 1126. By implementing a denominator that includes only votes actually cast in § 1126, it logically follows that Congress presumed that a least one vote was cast.⁴⁴

Moreover, the court explained, the policy of subchapter V is to encourage consensual plans. As such, consent should be found when a creditor chooses not to participate.

The court relied, in part, on an opinion by the Tenth Circuit Court of Appeals in *In re Ruti-Sweetwater, Inc.*⁴⁵ In that case, the court held that, “by failing to cast a ballot, the non-voting creditors had consented to the debtor’s plan and that their inaction amounted to a deemed acceptance.”⁴⁶ The Tenth Circuit reasoned that, prior to 1978, the Bankruptcy Act expressly provide that failure to vote was deemed a rejection of the plan. That provision was removed when the Bankruptcy Code was enacted. Thus, the court concluded, non-voting, non-objecting creditors will be deemed to have implicitly accepted the plan.

In *In re Hot’z Power Wash, Inc.*,⁴⁷ the court held that non-voting, impaired creditor classes will not be counted for purposes of section 1129(a)(8). There, the IRS did not vote. Anticipating this issue, the debtor’s plan stated in bold letters that failure to vote would be deemed acceptance. The court rejected the idea that a non-voting class is deemed to have accepted the plan, noting that Rule 3018(c) contemplates that acceptance or rejection shall be in writing. Thus, failure to vote cannot be deemed to be acceptance or rejection. Nevertheless, the court agreed with the *Franco’s Paving* court and concluded that “the mathematical calculation required by 1126(c) requires that the number of accepting votes be divided by total votes cast in a class.”⁴⁸ When the numerator and denominator are both 0, the result would be “absurd, unsolvable and contrary to what was contemplated by Congress.”⁴⁹ That leaves only one option: when an impaired class of creditors fails to cast a ballot, the class will not be counted.

b) Opinions Requiring Affirmative Acceptance

The three most recent opinions on this subject have gone the other way, concluding that sections 1191(a) and 1129(a)(8) require affirmative acceptance of the plan from all impaired

⁴³ *In re Franco's Paving, LLC*, 654 B.R. 107 (Bankr. S.D. Tex. 2023).

⁴⁴ *Id.* at 109-110.

⁴⁵ *In re Ruti-Sweetwater, Inc.*, 836 F.2d 1263 (10th Cir. 1988).

⁴⁶ *In re Franco's Paving*, 654 B.R. at 110 (citing *Ruti-Sweetwater*, 836 F.2d at 1267-68).

⁴⁷ *In re Hot'z Power Wash, Inc.*, 655 B.R. 107 (Bankr. S.D. Tex. 2023).

⁴⁸ *Id.* at 117.

⁴⁹ *Id.* at 118.

classes. First, in *In re MVJ Auto World, Inc.*,⁵⁰ the debtor’s plan contained a class which consisted solely of the SBA, which did not vote. All other classes voted in favor of the plan. The court held that the SBA class simply did not “accept” the plan for purposes of section 1129(a)(8). The court reasoned: “The Bankruptcy Code is neither silent nor absurd.”⁵¹ The Bankruptcy Code envisions nonvoting classes in section 1126(a) when it says that a claimholder “may” vote to accept or reject a plan. It does not say shall.

Similarly, in *In re Florist Atlanta, Inc.*⁵² the court held that a plan with classes of creditors having no votes cannot be consensual. Once again, the SBA did not vote on the plan. Acceptance, the court found, requires affirmative acceptance. Because the SBA class did not accept the plan, the debtor was forced to confirm the plan as a non-consensual plan. Seeking to minimize the consequences of cramdown, the debtor proposed making disbursements itself (instead of having the subchapter V trustee do it). The court accepted that proposal and discharged the trustee.

Next, in *In re Thomas Orthodontics, S.C.*,⁵³ the court held that an impaired class cannot accept a chapter 11 plan by silence. The court reasoned that section 1126 provides that an impaired class has accepted the plan if the plan “has been accepted by creditors ... that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class ... *that have accepted or rejected such plan.*” That is, only the votes actually cast are counted to determine whether the class has accepted. When at least one creditor in a class votes, silent creditors are not deemed to have accepted the plan when counting acceptances and rejections. Silent creditors should not be treated differently when no creditors in a class vote. The court further reasoned:

Section 1126 also includes presumptions that are relevant here. A class of creditors that is not impaired is presumed to have accepted the plan. 11 U.S.C. § 1126(f). And a class of creditors that will receive no distribution is presumed to have rejected the plan. 11 U.S.C. § 1126(g). If Congress intended that a non-voting creditor would be presumed to have accepted the plan, Congress knew how to write that presumption into the statute. Congress did not.⁵⁴

Finally, in *In re Sushi Zushi of Texas, LLC*,⁵⁵ a bankruptcy court in the Western District of Texas held that a nonvoting class is equivalent to a class that rejects the plan, precluding confirmation as a consensual plan. The plan in that case had three impaired voting classes. Two classes of unsecured creditors voted unanimously in favor of the plan. The third class had one creditor, a secured creditor with liens on most of the debtor’s assets. The secured creditor did not oppose confirmation of the plan but declined to vote.

The court stated that it was unpersuaded by opinions finding that a nonvoting class can be ignored:

⁵⁰ *In re MVJ Auto World, Inc.*, 661 B.R. 186 (Bankr. S.D. Fla. 2024).

⁵¹ *Id.* at 189.

⁵² *In re Florist Atlanta, Inc.*, 2024 WL 3714512 (Bankr. N.D. Ga. Aug. 7, 2024).

⁵³ *In re Thomas Orthodontics, S.C.*, 2024 WL 4297032 (Bankr. E.D. Wis. Sept. 25, 2024).

⁵⁴ *Id.* at *7.

⁵⁵ *In re Sushi Zushi of Texas, LLC*, 2025 WL 957792 (Bankr. W.D. Tex. Mar. 28, 2025).

Congressional preference for consensual plans does not require a court to interpret all statutory language in subchapter V in favor of confirmation of consensual plans any more than the Code's goal of a "fresh start" means that a court should interpret statutory language to grant a debtor and its associates a broad, unrestricted discharge regardless of (i) debtor misbehavior, (ii) notice to creditors and (iii) specific exceptions to discharge. It's true that Congress would prefer that a debtor would propose a plan which would encourage creditors to affirmatively vote for it, but nothing in the Code converts a creditor's pacificity or affirmative decision not to vote (as in this case) into an affirmative vote in favor of the plan.⁵⁶

The court disagreed with the "notion that Congress did not contemplate a non-voting class of creditors." That idea, the court said, "is contravened by § 1126 itself, which provides in subsection (a) that creditors *may* accept or reject a plan." By using the word "may" rather than "shall," the court reasoned, "Congress left open a third option – the possibility that creditors could choose not to vote on a plan." Classes that do not vote, the court concluded, should not be disregarded as doing so "itself invites an absurd scenario" in that a debtor could hypothetically confirm a consensual plan without a single ballot being submitted.

Because a class had not accepted the plan, the court held that the plan "cannot be confirmed under § 1191(a)" as a consensual plan. However, the court went on to find that the plan could be confirmed non-consensually under section 1191(b).

Cases Holding That Non-Voting Classes Can Be Disregarded

- *In re Franco's Paving, LLC*, 654 B.R. 107 (Bankr. S.D. Tex. 2023)
- *In re Ruti-Sweetwater, Inc.*, 836 F.2d 1263 (10th Cir. 1988)
- *In re Hot'z Power Wash, Inc.*, 655 B.R. 107 (Bankr. S.D. Tex. 2023)

Cases Holding That Acceptance Requires an Affirmative Act

- *In re Sushi Zushi of Tex., LLC*, No. 24-51147 (jointly administered), 2025 WL 957792, 2025 Bankr. LEXIS 787 (Bankr. W.D. Tex. Mar. 28, 2025)
- *In re MVJ Auto World, Inc.*, 661 B.R. 186 (Bankr. S.D. Fla. 2024)
- *In re Florist Atlanta, Inc.*, No. 24-51980, 2024 WL 3714512, 2024 Bankr. LEXIS 1842 (Bankr. N.D. Ga. Aug. 7, 2024)
- *In re Thomas Orthodontics, S.C.*, No. 23-25432, 2024 WL 4297032, 2024 Bankr. LEXIS 2334 (Bankr. E.D. Wis. Sept. 25, 2024)

IV. Whether Debts Owed by a Sub-Chapter V Corporate Debtor May Be Deemed Non-Dischargeable Under 11 U.S.C. § 523(a)

If a debtor's plan is consensual under section 1191(a), section 1141(d) determines whether the debts of a subchapter V debtor are dischargeable.⁵⁷ However, if a plan is of a non-consensual

⁵⁶ *Id.* at *3.

⁵⁷ See 11 U.S.C. § 1181(a) (section 1141(d)(5) inapplicable to consensual plan discharge provisions); see also *Halo Hum. Res., LLC v. Am. Dental of LaGrange, LLC* (*In re Am. Dental of LaGrange, LLC*), No. 24-10485, 2025 WL 384536, 2025 Bankr. LEXIS 189 (Bankr. M.D. Ga. Feb. 3, 2025).

nature (*i.e.*, reliant on cramdown) under section 1191(b), the dischargeability of debts is governed by section 1192.⁵⁸

Section 1192 provides that after the debtor completes the payments due under a confirmed plan, the court “shall grant the debtor a discharge of all debts . . . except any debt . . . *of the kind specified in section 523(a)*”⁵⁹ Section 523(a), in turn, provides that a discharge under section 1192, among others, does not discharge an “individual debtor” from any of the debts listed.⁶⁰

Against this somewhat convoluted, cross-referenced backdrop, courts are split as to whether a debt owed by a corporate subchapter V debtor may be deemed non-dischargeable when a plan is non-consensual.

a) Debts of a Corporate Debtor of the Kind Listed in 11 U.S.C. 523(a) Are Not Dischargeable

Two circuit courts of appeal and several lower courts have applied the plain meaning of the text, explaining that although the preamble to section 523(a) expressly refers to an “individual debtor,” section 1192(2) contains no limitation with respect to the *kind of debtor* identified in section 523(a).⁶¹ Rather, section 1192(2) refers to the *kind of debt* listed in section 523(a). Accordingly, a subchapter V corporate debtor who confirms a non-consensual plan is subject to the non-dischargeable debts set forth in section 523(a).⁶²

As further support for such conclusion, these courts point to a frequently employed canon of construction – a more specific statute should control over a more general statute.⁶³ Therefore, they reason, section 1192 (the more specific) trumps the preamble to section 523(a) (the more general). The courts are also unpersuaded by the cross reference to section 1192 that now appears in section 523(a) through an amendment enacted in 2019. Instead, they conclude that the amendment was merely technical. With that in mind, numerous courts are unpersuaded that the reference to an individual debtor in section 523(a) forecloses section 523(a) from applying to a corporate debtor in subchapter V pursuant to section 1192.⁶⁴

Somewhat relatedly, the courts focus on certain other sections of the Bankruptcy Code that identify individual and corporate debtor discharges.⁶⁵ Section 1192, in contrast, generically refers

⁵⁸ See 11 U.S.C. § 1181(c) (section 1141(d) does not apply to plans confirmed under section 1191(b) unless expressly set forth in section 1192).

⁵⁹ 11 U.S.C. § 1192(2).

⁶⁰ 11 U.S.C. § 523(a)(1)-(20).

⁶¹ See, e.g., *Avion Funding, LLC v. GFS Indus., LLC (In re GFS Indus., LLC)*, 99 F.4th 223 (5th Cir. 2024); *Cantwell Cleary Co. Ins. v. Cleary Packaging, LLC (In re Cleary Packaging LLC)*, 36 F.4th 509 (4th Cir. 2022); see also 11 U.S.C. § 101(41) (defining person to include individuals and corporations).

⁶² See, e.g., *Cleary Packaging LLC*, 36 F.4th at 515.

⁶³ See, e.g., *GFS Indus., LLC*, 99 F.4th at 229.

⁶⁴ See, e.g., *id.*

⁶⁵ See, e.g., *id.* at 229–30; 11 U.S.C. §§ 727(a)(1), 1141(d)(2), 1141(d)(5), (6).

to a debtor, not an individual debtor. Lastly, from a statutory construction perspective, section 1228(a) uses language virtually identical to section 1192. Numerous courts have interpreted section 1228(a) to apply to both corporate and individual debtors.⁶⁶

Finally, courts concluding that a corporate subchapter V debtor may be subject to a non-dischargeable debt of the kind set forth in section 523(a) note that the purpose and policy are consistent with such interpretation. They explain that Congress decided to do away with the absolute priority rule in subchapter V thus allowing equity holders to maintain their interests without paying creditors in full.⁶⁷ Subchapter V provides a counter-measure by allowing a corporate debt of the kind listed in section 523(a) to be excepted from discharge.

Notable Decisions:

- *Benshot LLC v. 2 Monkey Trading, LLC (In re 2 Monkey Trading, LLC)*, No. 23-12342, 2025 WL 1892380, 2025 U.S. App. LEXIS 16936 (11th Cir. July 9, 2025)
- *Avion Funding, LLC v. GFS Indus., LLC (In re GFS Indus., LLC)*, 99 F.4th 223 (5th Cir. 2024).
- *Cantwell Cleary Co. Ins. v. Cleary Packaging, LLC (In re Cleary Packaging LLC)*, 36 F.4th 509 (4th Cir. 2022).
- *Chi. & Vicinity Laborers' Dist. Council Pension Plan v. R&W Clark Constr. Inc. (In re R&W Clark Constr. Inc.)*, No. 24-CV-1463, 2024 WL 4789403, 2024 U.S. Dist. LEXIS 207230 (N.D. Ill. Nov. 14, 2024).
- *Marmic Fire & Safety Co. Inc. v. ETG Fire LLC (In re ETG Fire LLC)*, No. 24-13446, 2025 WL 915381, 2025 Bankr. LEXIS 915381 (Bankr. D. Colo. Mar. 20, 2025), *correcting & superseding* 2025 WL 842237, 2025 Bankr. LEXIS 643 (Mar. 17, 2025).
- *Christopher Glass & Aluminum, Inc. v. Premier Glass Servs., LLC (In re Premier Glass Servs., LLC)*, 661 B.R. 939 (Bankr. N.D. Ill. 2024).
- *Duntov Motor Co., LLC v. Tex. Dep't of Motor Vehicles (In re Duntov Motor Co., LLC)*, No. 21-40348, 2021 WL 11960695, 2021 Bankr. LEXIS 3695 (Bankr. N.D. Tex. Aug. 26, 2021).

b) Debts of a Corporate Debtor of the Kind Listed in 11 U.S.C. § 523(a) Are Dischargeable

Conversely, one Bankruptcy Appellate Panel and numerous bankruptcy courts have concluded that section 1192 does not make section 523(a) applicable to subchapter V corporate debtors.⁶⁸ Relying on their own interpretation of the plain meaning of the statutory scheme, these courts reason that section 1192 merely adopts section 523(a) in its entirety, including the preamble's express reference to an individual debtor. According to these courts, the phrase "of the

⁶⁶ See, e.g., *GFS Indus., LLC*, 99 F.4th at 230–31; *Cleary Packaging LLC*, 36 F.4th at 516 (citations omitted).

⁶⁷ See, e.g., *GFS Indus., LLC*, 99 F.4th at 231–32.

⁶⁸ See, e.g., *Lafferty v. Off-Spec Sols., LLC (In re Off-Spec Sols., LLC)*, 651 B.R. 862 (B.A.P. 9th Cir. 2023).

kind specified in section 523(a)” should be construed to mean the list of debts so long as the preamble’s express limit to an individual debtor also applies.⁶⁹

Additionally, Congress amended the preamble to section 523(a) in 2019 to include a cross reference to 1192. These courts thus reason if section 1192 were read to include only the list of the kinds of non-dischargeable debts without also applying the limitation to individual debtors, the amendment would be without meaning and nothing more than surplus.⁷⁰

Turning to another tool of statutory interpretation, these courts are not persuaded by the general/specific canon of construction because the canon should only be applied when two statutes cannot be reconciled.⁷¹ To that end, section 1192 incorporates, in the context of a non-consensual plan, the kinds of debts in section 523(a) while limiting the overall scope of section 523(a) to individual debtors. Relatedly, these courts stress that the general/specific canon should be used not to determine the nature of provisions, but only their scope.⁷² Because their scope is limited to individual debtors, the general/specific canon should not be determinative.

As further support, these courts conclude that since the inception of the Bankruptcy Code, Congress has emphasized that non-dischargeable debts under section 523(a) only apply to an individual debtor.⁷³ The discharge of a corporate debtor is limited by section 1141(d)(6) already. That section makes certain debts non-dischargeable for corporate debtors and is needed because the preamble to section 523(a) makes such kind of debts applicable only to an individual debtor. Accordingly, the reasoning goes, years of bankruptcy law and policy would be contradicted by expanding section 523(a) to a corporate debtor.⁷⁴

Emphasizing other discharge provisions, these courts also note that section 103(a) makes the provisions of chapter 5 applicable to chapter 11, among others.⁷⁵ Therefore, the reference in section 523(a) to section 1192 reiterates that the debts listed in section 523(a) are non-dischargeable only with respect to an individual debtor.

Finally, from a policy perspective, these courts are not persuaded that the abrogation of the absolute priority rule leads to the conclusion that a corporate subchapter V debts can be deemed non-dischargeable under section 523(a).⁷⁶ Indeed, if a corporate subchapter V debtor is subject to section 523(a), liquidation, not reorganization, would be promoted.

⁶⁹ See, e.g., *id.* at 867 (citations omitted).

⁷⁰ See, e.g., *id.*

⁷¹ See, e.g., *id.* at 867–68.

⁷² See, e.g., *id.* at 868.

⁷³ See, e.g., *Catt v. Rtech Fabrications, LLC (In re Rtech Fabrications, LLC)*, 635 B.R. 559, 565 (Bankr. D. Idaho 2021).

⁷⁴ See, e.g., *Off-Spec Sols., LLC*, 651 B.R. at 869–70.

⁷⁵ See, e.g., *id.* at 870.

⁷⁶ See, e.g., *id.* at 870–72.

Notable Decisions:

- *Lafferty v. Off-Spec Sols., LLC. (In re Off-Spec Sols., LLC)*, 651 B.R. 862 (B.A.P. 9th Cir. 2023).
- *Spring v. Davidson (In re Davidson)*, No. 23-30018, 2025 WL 511226, 2025 Bankr. LEXIS 339 (Bankr. N.D. Fla. Feb. 14, 2025).
- *Halo Hum. Res., LLC. v. Am. Dental of LaGrange, LLC (In re Am. Dental of LaGrange, LLC)*, No. 24-10485, 2025 WL 384536, 2025 Bankr. LEXIS 189 (Bankr. M.D. Ga. Feb. 3, 2025).
- *Chi. & Vicinity Laborers' Dist. Council Pension Plan v. R&W Clark Constr. Inc. (In re R&W Clark Constr. Inc.)*, 656 B.R. 628 (Bankr. N.D. Ill. 2024).
- *BenShot, LLC v. 2 Monkey Trading, LLC (In re 2 Monkey Trading, LLC)*, 650 B.R. 521 (Bankr. M.D. Fla. 2023).
- *Nutrien Ag Sols., Inc. v. Hall (In re Hall)*, 651 B.R. 62 (Bankr. M.D. Fla. 2023).
- *Jennings v. Lapeer Aviation, Inc. (In re Lapeer Aviation, Inc.)*, 2022 WL 1110072 (Bankr. E.D. Mich. Apr. 13, 2022).
- *Catt v. Rtech Fabrications, LLC (In re Rtech Fabrications, LLC)*, 635 B.R. 559 (Bankr. D. Idaho 2021).
- *Gaske v. Satellite Rests. Inc. (In re Satellite Rests. Inc.)*, 626 B.R. 871 (Bankr. D. Md. 2021).

V. Can Avoidance Actions be Sold or Transferred?

A trustee is vested with certain avoidance powers that permit him or her to claw back transfers of property made by the debtor for the benefit of creditors. The goal is to recover assets for the bankruptcy estate, ensuring that all creditors are paid fairly. For example, section 547 allows the trustee to avoid transfers made to a creditor within 90 days (or up to one year for insiders) before the bankruptcy filing if the transfer unfairly favored one creditor over others.⁷⁷ Section 548 allows the trustee to avoid transfers (i) made with the intent to defraud creditors, or (ii) made for a less than reasonably equivalent value.⁷⁸ Section 549 allows the trustee to avoid unauthorized transfers made after the bankruptcy case has begun.⁷⁹ Courts are split on whether these avoidance powers can be sold or transferred to third parties. The answer to this question may depend in part on whether an avoidance action is considered an asset or a power.

a) Pro-Sale Arguments

The Supreme Court has characterized the avoidance powers as “causes of action.”⁸⁰ The Bankruptcy Code also describes avoidance powers as causes of action in section 926(a), which provides that if a debtor “refuses to pursue a cause of action under section 544, 545, 547, 548, [or] 549(a)[,],” then the court, on request of a creditor, “may appoint a trustee to pursue such cause of

⁷⁷ 11 U.S.C. § 547.

⁷⁸ 11 U.S.C. § 548.

⁷⁹ 11 U.S.C. § 549.

⁸⁰ See, e.g., *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53-54 (1989) (describing the “right to recover a fraudulent conveyance under 11 U.S.C. § 548(a)(2)” as a “statutory cause of action.”).

action.” Various courts have held that such causes of action constitute property of the estate under section 541(a)(1), (6) or (7).⁸¹ In *Patterson v. Schumate*,⁸² the Supreme Court explained that section 541(a)’s definition of “property of the estate” was intended to be broad. Moreover, property of the estate includes any property made available to the estate by other provisions of the Bankruptcy Code, including “property in which the debtor did not have a possessory interest at the time the bankruptcy proceedings commenced.”⁸³

There are policy arguments in favor of allowing a trustee to sell avoidance powers as well. Selling avoidance powers allows a chapter 7 trustee to obtain recovery for creditors where there might otherwise be insufficient funds to litigate the claims. In addition, courts regularly approve asset sales including chapter 5 causes of action in chapter 11 proceedings.⁸⁴ Allowing a sale of the avoidance powers is consistent with a trustee’s duty under section 704(a), which requires a trustee to “maximize the value of the estate” or maximize the “distribution to creditors” of the estate.

b) Anti-Sale Arguments

The Supreme Court has held that, in the context of section 506(c), the term “trustee” means the trustee and no one else.⁸⁵ This rationale seemingly would apply to sections 547, 548 and 549, which afford to the trustee (and only the trustee) the power to pursue avoidance actions. Similarly, only a trustee may recover on these transfers under section 550. If no other party can pursue the avoidance powers, can they be sold?

Additionally, the plain text of section 541(a) arguably only includes in property of the estate causes of action that accrued prior to the petition date (see section 541(a)(1)) or after the petition date (see 541(a)(7)), not causes of action such as preferences and fraudulent transfers that are created upon the filing of the petition. Courts have reasoned that if Congress intended for avoidance powers to be property of the estate, it would have included an express reference in section 541(a) to sections 547, 548 and 549. It did not do so.

Finally, in pre-Bankruptcy Code practice, it was a “well-settled principle” that a trustee cannot sell or assign avoidance powers.⁸⁶ When Congress enacted the Bankruptcy Code in 1978, it did not materially amend the statutory language or otherwise indicate an intent to deviate from this pre-Code practice.⁸⁷ Thus, courts have reasoned, there is no reason to depart from the “well-settled” principle that avoidance powers cannot be sold.

⁸¹ Nonetheless, at least two courts have held that a prepetition lien does not attach to an inchoate interest in avoidance actions. *In re BDC Grp., Inc.*, 2024 WL 4137984 (Bankr. N.D. Iowa Sept. 10, 2024), *aff’d sub nom. Keystone Sav. Bank v. Hanrahan*, 2025 WL 2014326 (N.D. Iowa July 17, 2025); *cf. Mellon Bank, N.A. v. Dick Corp.*, 351 F.3d 290 (7th Cir. 2003) (discussing post-petition lien on avoidance actions).

⁸² *Patterson v. Schumate*, 504 U.S. 753, 757 (1992).

⁸³ *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203, 205 (1983).

⁸⁴ See also 11 U.S.C. § 1123(a)(5)(B), (b)(3)(B).

⁸⁵ *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6-7 (2000).

⁸⁶ *United Cap. Corp. v. Sapolin Paints, Inc. (In re Sapolin Paints, Inc.)*, 11 B.R. 930, 937 (Bankr. E.D.N.Y. 1981) (collecting cases).

⁸⁷ Compare 11 U.S.C. §§ 547, 550 with Bankruptcy Act of 1898, ch. 541, sec 50, 30 Stat. 562 (codified as amended at 11 U.S.C. § 96 (1958)); see also *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 711 (2018) (“When Congress used the materially same language in [a section of the Bankruptcy Code], it

Cases Permitting the Sale of Avoidance Powers:

- *In re S. Coast Supply Co.*, 91 F.4th 376 (5th Cir. 2024), cert. denied sub nom. *Remmert v. Briar Cap. Working Fund Cap., L.L.C.*, 144 S. Ct. 2631 (2024)
- *Pitman Farms v. ARKK Food Co., LLC (In re Simply Essentials, LLC)*, 78 F.4th 1006 (8th Cir. 2023)
- *Texas Breakbulk Ocean Nav. Enters. v. Angueira (In re Texas Breakbulk Ocean Nav. Enters., LLC)*, 658 B.R. 611 (S.D. Fla. 2024)
- *In re Murray Metallurgical Coal Holdings, LLC*, 623 B.R. 444 (Bankr. S.D. Ohio 2021)
- *Parker v. Goodman (In re Parker)*, 499 F.3d 616 (6th Cir. 2007)

Cases Prohibiting the Sale of Avoidance Powers:

- *In re Clements Mfg. Liquidation Co., LLC*, 558 B.R. 187 (Bankr. E.D. Mich. 2016)
- *In re McGuirk*, 414 B.R. 878 (Bankr. N.D. Ga. 2009)
- *Off. Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 273 (3d. Cir. 2020)
- *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000)

VI. Can a Chapter 13 Debtor Exclude from the Calculation of Disposable Income Voluntary Post-Petition Retirement Contributions?

Prior to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”), there was an “overwhelming consensus” among courts that voluntary retirement contributions constituted disposable income. Following BAPCPA, section 541(b)(7) was amended to provide that property of the estate does not include “any amount ... withheld by an employer from the wages of employees for payment as contributions to [a 401(k)-retirement plan] ... *except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2)....*”

This italicized clause is frequently referred to as the “hanging paragraph.” It has led to disagreements among courts nationwide as they attempt to grapple with the question of whether proposed voluntary retirement contributions are considered disposable income such that they must be paid to creditors.⁸⁸

a) Outline of Approaches

- 1) The Johnson Approach: The majority view reads the hanging paragraph to “place[] retirement contributions outside the purview of a Chapter 13 plan.”⁸⁹ Courts adopting this approach have held that the plain language of the hanging paragraph allows a chapter 13 debtor to make voluntary post-petition contributions to a retirement plan regardless of

presumptively was aware of the longstanding judicial interpretation of the phrase and intended for it to retain its established meaning.”).

⁸⁸ For a more fulsome discussion of this issue, see Kelley M. Donnelly *et al.*, *Dazed and Confused: A Circuit Split Regarding Retirement Contributions in Chapter 13*, 44 Am. Bankr. Inst. J. 26 (Mar. 2025).

⁸⁹ *Baxter v. Johnson (In re Johnson)*, 346 B.R. 256, 263 (Bankr. S.D. Ga. 2006).

whether the debtor was making such contributions at the time of filing, subject only to the good faith requirement imposed on all chapter 13 plans in section 1325(a)(3).

- 2) Seafort-BAP Approach: This approach construes the hanging paragraph to exclude the debtor's pre-petition contribution amount – rather than merely her accumulated savings – from her disposable income.⁹⁰ Therefore, if the debtor was making contributions at the time of filing the chapter 13 bankruptcy petition, the debtor may continue to make contributions in that same amount post-petition, but not more.
- 3) The Prigge Approach: This approach effectively precludes post-petition contributions to a retirement plan during the applicable commitment period.⁹¹ Courts adopting this approach generally conclude that section 541(b)(7) deals only with contributions made to a retirement plan prior to the petition date and proposed post-petition contributions are not excluded from the definition of disposable income.
- 4) CMI Approach: This approach permits a debtor to exclude the six-month average of voluntary retirement contributions made prior to the petition date from the calculation of disposable income, reasoning that looking to the six months before the petition date makes sense because the calculation of projected disposable income focuses on that same period.⁹²

b) The Sixth Circuit Trilogy

The first appellate court to tackle this issue was the Sixth Circuit Court of Appeals, which weighed in on the meaning of the hanging paragraph in a trio of opinions. First, in *In re Seafort*,⁹³ the Sixth Circuit held that income made available once a debtor's 401(k) loan payments were repaid was disposable income that needed to be distributed to creditors and could not be used to make voluntary retirement contributions.⁹⁴ The Sixth Circuit expressly rejected the *Johnson* approach and adopted the *Prigge* approach, stating:

Ultimately then, we find that the *Prigge/McCullers* interpretation is the most persuasive because it gives effect to every word in the statute. Although “awkward” perhaps, we conclude, based on the language and structure of Chapter 13, incorporating § 541, that Congress intended to exclude from disposable income and projected disposable income available for unsecured creditors only voluntary retirement contributions already in existence at the time the petition is filed.⁹⁵

⁹⁰ *Burden v. Seafort (In re Seafort)*, 437 B.R. 204 (B.A.P. 6th Cir. 2010).

⁹¹ *In re Prigge*, 441 B.R. 677 (Bankr. D. Mont. 2010); *see also Parks v. Drummond (In re Parks)*, 475 B.R. 703 (B.A.P. 9th Cir. 2012).

⁹² *In re Anh-Thi Thi Vu*, 2015 WL 6684227 (Bankr. W.D. Wash. June 16, 2015).

⁹³ *Seafort v. Burden (In re Seafort)*, 669 F.3d 662 (6th Cir. 2012).

⁹⁴ *Id.* at 663.

⁹⁵ *Id.* at 673-74 (internal citations omitted).

Eight years later, in *In re Davis*,⁹⁶ the Sixth Circuit reversed course and rejected the *Prigge* approach in favor of a middle ground approach akin to the *Seafort*-BAP approach and the CMI approach. The court held that a debtor may exclude from her disposable income the monthly 401(k) contribution amount that she withheld from her wages prior to her bankruptcy filing. Thus, notwithstanding the court's prior endorsement of the *Prigge* approach in *In re Seafort*, the Sixth Circuit rejected that approach. A lengthy and thoughtful dissent was penned in *In re Davis* by Judge Chad A. Readler who appeared to follow the *Prigge* approach, expressing concern that the majority's conclusion as to the meaning of the hanging paragraph "invites abuse by debtors," incentivizes those in financial distress to "enhance dramatically" their 401(k) contributions prior to filing, and upsets "settled expectations" based on the court's prior holding in *In re Seafort*.⁹⁷

Finally, in *In re Penfound*,⁹⁸ the Sixth Circuit applied the rules that it had articulated the prior year in *In re Davis* and held that where a chapter 13 debtor had historically contributed to a retirement plan but was unable to do so in the six months leading up to the bankruptcy filing, the debtor could not shield voluntary post-petition contributions from unsecured creditors by excluding that recurring amount from the calculation of projected disposable income. In doing so, the court once again rejected the *Johnson* approach, reasoning that such approach was contrary to its precedent nine years earlier and, in any event, was not persuasive.⁹⁹

c) *In re Saldana* - A Denied Cert. Petition

The Ninth Circuit Court of Appeals most recently examined this issue in *In re Saldana*, creating a circuit split.¹⁰⁰ There, the court adopted the *Johnson* approach, holding that a debtor's voluntary contributions to her retirement plan were not considered disposable income because of the hanging paragraph. Thus, the debtor could confirm her plan which contemplated that she would fund her retirement post-petition to the detriment of her creditors.

A petition for a writ of certiorari was filed on February 20, 2025, by the chapter 13 trustee in *In re Saldana*, requesting that the Supreme Court review and reverse the decision of the Ninth Circuit Court of Appeals and hold that post-petition contributions are excluded from disposable income. The cert. petition was denied.¹⁰¹

VII. Whether 11 U.S.C. § 547(c)(4) Precludes a Defendant from Asserting New Value for Goods Subject to a Satisfied Administrative Expense Under 11 U.S.C. § 503(b)(9)

Under section 547(b), a trustee may avoid a transfer made so long as five separate elements are satisfied.¹⁰² However, even if a trustee satisfies such prima facie elements, the trustee's ability to avoid a transfer is subject to certain affirmative defenses, including when a transfer is made –

⁹⁶ *Davis v. Helbling (In re Davis)*, 960 F.3d 346 (6th Cir. 2020).

⁹⁷ *Id.* at 358 (Readler, J., dissenting).

⁹⁸ *Penfound v. Ruskin (In re Penfound)*, 7 F.4th 527 (6th Cir. 2021).

⁹⁹ *Id.* at 533-34.

¹⁰⁰ *In re Saldana*, 122 F.4th 333 (9th Cir. 2024).

¹⁰¹ *Bronitsky v. Saldana*, No. 24-905, __ S. Ct. __, 2025 U.S. LEXIS 2434 (June 23, 2025).

¹⁰² 11 U.S.C. § 547(b).

- (4) to or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor –
 - (A) not secured by an otherwise unavoidable security interest; and
 - (B) on account of which new value the debtor did not make an otherwise avoidable transfer to or for the benefit of such creditor.¹⁰³

Accordingly, section 547(c)(4) permits a defendant to reduce its liability for a preferential transfer by subtracting the value of the goods or services provided to the debtor subsequent to the receipt of the transfer.

In 2005, section 503(b)(9) was added to the Bankruptcy Code. It provides that a creditor is entitled to an administrative expense for the value of good received by, and sold to, the debtor in the ordinary course of business within twenty days before the petition date.¹⁰⁴

The courts are split as to whether a creditor may reduce its preference exposure by applying new value under section 507(c)(4) even though such new value was paid in full, post-petition, due to an allowed administrative expense under section 503(b)(9).

a) Defendant Is Permitted to Apply New Value Notwithstanding Satisfaction of an Administrative Expense Under 11 U.S.C. § 503(b)(9)

A slight majority of courts, including two circuit courts of appeal, focus on the plain text, and in particular the lack of any temporal limitation in section 547(c)(4), to conclude that a defendant is permitted to reduce its preference exposure even though an administrative expense under section 503(b)(9) has been or will be satisfied in full.¹⁰⁵ Distilled, the issue is whether the funds reserved to pay or the funds used to pay such administrative expense constitute an “otherwise avoidable transfer” under section 547(c)(4)(B).

When viewing the statutory text holistically and schematically, the majority of courts note that section 547 is based on prepetition transactions.¹⁰⁶ More to the point, use of the defined term “transfer” in section 547 is confined to the period set forth in that section, which is either ninety days prior to the petition date or one year prior to the petition date for insiders. Relatedly, both the Eleventh Circuit and the Third Circuit rely on the title of section 547 – “Preferences.”¹⁰⁷ Again, because the section concerns only transfers occurring in the preference period, the “otherwise unavoidable” transfer must, too, be made prepetition. As further support, the majority view is that section 549, not section 547, addresses avoidable post-petition transfers.

¹⁰³ 11 U.S.C. § 547(c)(4).

¹⁰⁴ 11 U.S.C. § 503(b)(9).

¹⁰⁵ See, e.g., *Auriga Polymers Inc. v. PMCM2, LLC*, 40 F.4th 1273 (11th Cir. 2022); *Friedman’s Liquidating Tr. v. Roth Staffing Cos. LP (In re Friedman’s Inc.)*, 738 F.3d 547 (3d Cir. 2013).

¹⁰⁶ See, e.g., *Friedman’s Inc.*, 738 F.3d at 549.

¹⁰⁷ See, e.g., *Auriga Polymers Inc.*, 40 F.4th at 1285–86.

The majority also focuses on the timing of the transfers and any subsequent new value, which cannot be applied when such new value is provided post-petition.¹⁰⁸ Instead, the overwhelming consensus is that a transferee's new value must be provided before the petition date. Accordingly, it would be an incongruous interpretation to take into account post-petition transfers.

Turning to section 546, the majority stresses that the statute of limitations to commence an action for the avoidance of preferential transfers begins on the petition date. Therefore, the majority reasons, if a debtor's post-petition payment of prepetition invoices reduces the transferee's new value defense, the calculation of the transferee's preference exposure would be fluid in that it would be dependent on the date that the avoidance action is commenced.¹⁰⁹

Finally, the majority notes that purpose and policy would be served by allowing a transferee to apply new value.¹¹⁰ Section 547(c)(4) is designed to encourage creditors to continue to do business with a debtor even in times of financial distress. No "double dip" occurs, as application of the new value defense simply prevents an estate representative from essentially taking back transfers previously made.

Notable Decisions:

- *Auriga Polymers Inc. v. PMCM2, LLC*, 40 F.4th 1273 (11th Cir. 2022).
- *Friedman's Liquidating Tr. v. Roth Staffing Cos. LP (In re Friedman's Inc.)*, 738 F.3d 547 (3d Cir. 2013).
- *Bergquist v. Anderson-Greenwood Aviation Corp. (In re Bellanca Aircraft Corp.)*, 850 F.2d 1275 (8th Cir. 1988).
- *Siegel v. Sony Elecs., Inc. (In re Circuit City Stores, Inc.)*, 515 B.R. 302 (Bankr. E.D. Va. 2014).
- *Circuit City Stores, Inc. v. Mitsubishi Digit. Elecs. Am. (In re Circuit City Stores, Inc.)*, No. 08-35653, 2010 WL 4956022, 2010 Bankr. LEXIS 4398 (Bankr. E.D. Va. Dec. 1, 2010).
- *TI Acquisition, LLC v. Southern Polymer, Inc. (In re TI Acquisition, LLC)*, 429 B.R. 377 (Bankr. N.D. Ga. 2010).
- *MMR Holding Corp. v. C & C Consultants, Inc. (In re MMR Holding Corp.)*, 203 B.R. 605 (Bankr. M.D. La. 1996).
- *Boyd v. The Water Doctor (In re Check Reporting Servs., Inc.)*, 140 B.R. 425 (Bankr. W.D. Mich. 1992).

¹⁰⁸ See, e.g., *id.* at 1286.

¹⁰⁹ See, e.g., *Friedman's Inc.*, 738 F.3d at 556.

¹¹⁰ See, e.g., *Auriga Polymers Inc.*, 40 F.4th at 1287–88.

b) A Defendant May Not Apply New Value Subsequently Paid Through an Administrative Expense Under 11 U.S.C. § 503(b)(9)

A slight minority of courts also focus on the temporal aspect to section 547(c)(4). However, applying the plain meaning of the text, they conclude that an “otherwise unavoidable transfer” may occur either prepetition or post-petition because that section is silent with respect to timing.¹¹¹

The minority view rejects the argument that the term “transfer” when read in the context of section 547 is limited to those made within the preference period.¹¹² Rather, the term “transfer” is broadly defined to mean “each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with . . . property . . . or an interest in property.”¹¹³ It therefore includes any distribution or payment made in satisfaction of an administrative expense under section 503(b)(9).

According to the minority view, section 549 is the only avoidance power that concerns post-petition transfers.¹¹⁴ That section provides that a trustee may avoid a transfer made after the petition date if the transfer was not authorized by the Bankruptcy Code or the bankruptcy court. Because an administrative expense under section 503(b)(9) requires allowance through an order of the bankruptcy court, the minority views the payment as an “otherwise unavoidable transfer,” meaning that the goods cannot be used as new value.¹¹⁵

The minority further emphasizes the lack of a temporal restriction in section 547(c)(4). To that end, section 547(c)(5), in contrast, imposes a temporal limitation.¹¹⁶ Because Congress did not apply a temporal limitation in section 547(c)(4), the minority reasons that a court should not impose one in connection with an “otherwise unavoidable transfer.”¹¹⁷ Otherwise, the court, not Congress, would be importing non-existent words into the text.

Finally, the minority approach focuses, from a policy perspective, on the equality of distribution among creditors.¹¹⁸ The minority view rejects any “double dip,” as the creditor would be allowed to reduce its preference exposure while at the same time receiving payment in satisfaction of the new value it provided.

Notable Decisions:

¹¹¹ See, e.g., *Beaulieu Liquidating Tr. v. Fabric Sources, Inc. (In re Beaulieu Grp., LLC)*, 616 B.R. 857, 873 (Bankr. N.D. Ga. 2020).

¹¹² See, e.g., *Phoenix Rest. Grp., Inc. v. Ajilon Pro. Staffing LLC (In re Phoenix Rest. Grp., Inc.)*, 317 B.R. 491, 496–97 (Bankr. M.D. Tenn. 2004).

¹¹³ 11 U.S.C. § 101(54).

¹¹⁴ See, e.g., *Phoenix Rest. Grp., Inc.*, 317 B.R. at 497; *Beaulieu Grp., LLC*, 616 B.R. at 869.

¹¹⁵ See, e.g., *Beaulieu Grp., LLC*, 616 B.R. at 869.

¹¹⁶ See, e.g., *id.* at 875; see also 11 U.S.C. §§ 502(d), 542(c), 550, 551, 749, 766, 783, 1101.

¹¹⁷ See, e.g., *Beaulieu Grp., LLC*, 616 B.R. at 869.

¹¹⁸ See, e.g., *id.*; *Phoenix Rest. Grp., Inc.*, 317 B.R. at 497–98.

- *Beaulieu Liquidating Tr. v. Fabric Sources, Inc. (In re Beaulieu Grp., LLC)*, 616 B.R. 857 (Bankr. N.D. Ga. 2020).
- *Off. Comm. of Unsecured Creditors ex rel. Bankr. Est. of the Great Atl. & Pac. Tea Co. v. McKesson Corp. (In re Great Atl. & Pac. Tea Co.)*, 657 B.R. 572 (Bankr. S.D.N.Y. 2024).
- *Miller v. JNJ Logistics LLC (In re Proliance Int'l Inc.)*, 514 B.R. 426 (Bankr. D. Del. 2014).
- *Commissary Operations, Inc. v. Dot Foods, Inc. (In re Commissary Operations, Inc.)*, 421 B.R. 873 (Bankr. M.D. Tenn. 2010).
- *Kaye v. Accord Mfg., Inc. (In re Murray, Inc.)*, No. 04-13611, 2007 WL 5595447, 2007 Bankr. LEXIS 4738 (Bankr. M.D. Tenn. June 6, 2007).
- *Roberds, Inc. v. Broyhill Furniture (In re Roberds, Inc.)*, 315 B.R. 443 (Bankr. S.D. Ohio 2004).
- *Phoenix Rest. Grp., Inc. v. Ajilon Pro. Staffing LLC (In re Phoenix Rest. Grp., Inc.)*, 317 B.R. 491 (Bankr. M.D. Tenn. 2004).

VIII. Whether the Anti-Modification Provisions in 11 U.S.C. § 1123(b)(5) and 11 U.S.C. § 1322(b)(2) Apply to Multi-Use Property

In *Nobelman v. American Savings Bank*,¹¹⁹ the United States Supreme Court held that section 1322(b)(2) protected from modification all the rights of the holder of a claim secured only by a security interest in the debtor's principal residence. Thus, section 1322(b)(2) prohibits a chapter 13 debtor from utilizing section 506(a) to reduce the secured claim associated with an undersecured homestead mortgage to the fair market value of the mortgaged residence.¹²⁰ *Nobelman* does not, however, address the scope of the phrase "secured only by a security interest in real property that is the debtor's principal residence" as used in section 1322(b)(2) and section 1123(b)(5).¹²¹

Courts are split on whether the anti-modification provisions apply to property that is multi-use, such as a security interest encompassing income-producing property (e.g., rental units, farmland) as well as the situs of the debtor's residence.

a) Anti-Modification Provisions Do Not Apply to Multi-Use Property

One of the earliest circuit court decisions indirectly dealing with this issue, *Federal Land Bank of Louisville v. Glenn (In re Glenn)*,¹²² concerned a security interest which encompassed the debtor's principal residence and fifty acres of land. The Sixth Circuit Court of Appeals focused

¹¹⁹ *Nobelman v. Am. Sav. Bank*, 508 U.S. 324 (1993).

¹²⁰ *Id.* at 325–26.

¹²¹ 11 U.S.C. § 1322(b)(2) and § 1123(b)(5) contain identical language and therefore the case law and applicability of one is similarly tied to the other. See *Roberts v. United States*, 572 U.S. 639, 643 (2014) (identical words in different parts of the same statute presumed to have same meaning); *Lomas Mortg. v. Louis*, 82 F.3d 1, 6–7 (1st Cir. 1996).

¹²² *Fed. Land Bank of Louisville v. Glenn (In re Glenn)*, 760 F.2d 1428 (6th Cir. 1985).

on the debtor's use of the property, observing that if the real property is truly for additional purposes beyond being the principal residence, the secured claimant's rights may be subject to modification.¹²³

Since then, the majority of courts (including other circuit courts of appeal and bankruptcy courts) have adopted this view. Most of the decisions allowing modification of multi-use property examine the language of section 1322(b)(2), focusing on the meaning of the words "only" and "is." For example, in *Scarborough v. Chase Manhattan Mortgage Corp. (In re Scarborough)*,¹²⁴ the Third Circuit Court of Appeals stated:

By using the word "is" in the phrase "real property that *is* the debtor's principal residence," Congress equated the terms "real property" and "principal residence." Put differently, this use of "is" means that the real property that secures the mortgage must *be only* the debtor's principal residence in order for the anti-modification provision to apply. . . . A claim secured by real property that is, even in part, *not* the debtor's principal residence does not fall under the terms of § 1322(b)(2).¹²⁵

Therefore, the Third Circuit allowed modification of the secured claimant's rights because the property was not only the debtor's principal residence, but also included income-producing rental property.¹²⁶

Courts adopting this interpretation often find support in the legislative history to the 1994 amendment to section 1123(b)(5).¹²⁷ The Judiciary Committee Report refers to a decision from the Bankruptcy Court for the Southern District of California, *In re Ramirez*,¹²⁸ used as an example of a case where the anti-modification provision would not apply.¹²⁹ *Ramirez* dealt with section 1322(b)(2), which was found to not apply to multi-unit houses where the security interest extended to rental units.¹³⁰ Accordingly, the legislative history evidences clear congressional intent as to the scope of the anti-modification provisions.

Notable Decisions:

- *Lomas Mortg., Inc. v. Louis*, 82 F.3d 1 (1st Cir. 1996).

¹²³ *Id.* at 1441; *see also id.* at 1424 ("[T]he preferred status granted to some creditors under section 1322(b)(2) [i]s limited to holders of claims secured *only* by a security interest in the debtor's principal residence.").

¹²⁴ *Scarborough v. Chase Manhattan Mortg. Corp. (In re Scarborough)*, 461 F.3d 406 (3d Cir. 2006).

¹²⁵ *Id.* at 411.

¹²⁶ *Id.* at 408.

¹²⁷ *See, e.g., Lomas*, 82 F.3d at 6–7.

¹²⁸ *In re Ramirez*, 62 B.R. 668 (Bankr. S.D. Cal. 1986).

¹²⁹ *See* H.R. Rep. No. 835 at 46 n.13, 103 Cong., 2d Sess. 46 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3340, 3354.

¹³⁰ *See Ramirez*, 62 B.R. at 669–70.

- *Scarborough v. Chase Manhattan Mortg. Corp. (In re Scarborough)*, 461 F.3d 406 (3d Cir. 2006).
- *Reinhardt v. Vanderbilt Mortg. & Fin., Inc. (In re Reinhardt)*, 563 F.3d 558 (6th Cir. 2009).
- *Fed. Land Bank of Louisville v. Glenn (In re Glenn)*, 760 F.2d 1428 (6th Cir. 1985).
- *Pawtucket Credit Union v. Picchi (In re Picchi)*, 448 B.R. 870 (B.A.P. 1st Cir. 2011).
- *In re Moorer*, 544 B.R. 702 (Bankr. M.D. Ala. 2016).
- *In re Colcord*, No. 15-46941, 2015 WL 5461543, 2015 Bankr. LEXIS 3135 (Bankr. E.D. Mich. Sept. 16, 2015).
- *Lopez v. Credit Union One (In re Lopez)*, 511 B.R. 517 (Bankr. N.D. Ill. 2014).
- *In re Abrego*, 506 B.R. 509 (Bankr. N.D. Ill. 2014).
- *In re Zaldivar*, 441 B.R. 389 (Bankr. S.D. Fla. 2011).
- *In re Ramierz*, 62 B.R. 668 (Bankr. S.D. Cal. 1986).

b) Anti-Modification Provisions Apply to Multi-Use Property

More recently, courts have embraced a different conclusion – that the anti-modification provisions apply in multi-use scenarios as long as the debtor principally resides in some portion of the property. The Eleventh Circuit Court of Appeals, in *Lee v. U.S. Bank National Ass’n*,¹³¹ is one such court (creating a circuit split). In *Lee*, the majority, over a strong dissent, concluded that “is” in section 1123(b)(5) and section 1322(b)(2) does not mean “*only* or *exclusively*.”¹³² Instead, the meaning of “is,” simply, means includes: “A debtor’s real property may have as one of its qualities that it is [the debtor’s] principal residence. But it can also have other qualities, like having a lemonade stand or a beehive.”¹³³ Therefore, the Eleventh Circuit determined that the chapter 11 debtor could not modify the mortgagee’s rights even though she used only 2.5 acres of her land to live on and the other 40.5 acres for commercial farming.¹³⁴

Courts such as *Lee* and others have reasoned that the typical understanding of the word “is,” along with certain amendments to the Bankruptcy Code, indicate that this interpretation is correct. Section 101(13A) has been amended by Congress to define a “debtor’s principal residence” to mean “a residential structure if used as the principal residence by the debtor, including incidental property, without regard to whether that structure is attached to real property.”¹³⁵ Courts have pointed to these amendments to infer Congress’s intent to expand the scope of the anti-modification provisions in order to provide greater protections to holders of security interests.¹³⁶

Further, such courts have focused on the original purpose behind the anti-modification provisions: to encourage home mortgage lending, protect such lenders, and avoid disruption of this

¹³¹ *Lee v. U.S. Bank Nat’l Ass’n*, 102 F.4th 1177 (11th Cir. 2024).

¹³² *Id.* at 1183.

¹³³ *Id.* at 1184.

¹³⁴ *See id.* at 1180–81.

¹³⁵ 11 U.S.C. § 101(13A)(A); *see also* 11 U.S.C. § 101(27B).

¹³⁶ *See, e.g., Wissel v. Deutsche Bank Nat’l Tr. Co. (In re Wissel)*, 619 B.R. 299, 311–13 (Bankr. D. N.J. 2020).

market.¹³⁷ Therefore, as the District Court for the Northern District of California put it, in *Utzman v. Suntrust Mortgage, Inc.*:

Interpreting the exception to require only that the real property be used as a debtor's principal residence affords greater protection to residential lenders, promoting the issuance of loans. This bright-line approach also fosters certainty in the home lending market. Specifically, it counteracts the fear raised by the Third Circuit in *Scarborough* that petitioners will sidestep the exemption by renting a portion of their property to another on the eve of their bankruptcy filing.¹³⁸

Therefore, such interpretation has been posited as being both in keeping with the original purpose of these provisions, and as safeguarding against bad-faith debtors.

Notable Decisions:

- *Lee v. U.S. Bank, N.A.*, 102 F.4th 1177 (11th Cir. 2024).
- *Utzman v. Suntrust Mortg., Inc.*, No. 15-CV-04299, 2016 WL 795739, 2016 U.S. Dist. LEXIS 26341 (N.D. Cal. Mar. 1, 2016).
- *Wages v. J.P. Morgan Chase Bank, N.A. (In re Wages)*, 508 B.R. 161 (B.A.P. 9th Cir. 2014).
- *In re Sandoval*, 640 B.R. 165 (Bankr. E.D. Wisc. 2022).
- *Wissel v. Deutsch Bank Nat'l Tr. Co. (In re Wissel)*, 619 B.R. 299 (Bankr. D. N.J. 2020).
- *In re Lister*, 593 B.R. 587 (Bankr. S.D. Ohio 2018).
- *In re Hock*, 571 B.R. 891 (Bankr. S.D. Fla. 2017).
- *In re Addams*, 564 B.R. 458 (Bankr. E.D.N.Y. 2017).
- *In re Brooks*, 550 B.R. 19 (Bankr. W.D.N.Y. 2016).
- *In re Macaluso*, 254 B.R. 799 (Bankr. W.D.N.Y. 2000).

¹³⁷ See, e.g., *Utzman v. Suntrust Mortg., Inc.*, 2016 WL 795739, at *7 (N.D. Cal. Mar. 1, 2016).

¹³⁸ *Id.*