



Cases in Review  
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“Cases in Review” highlights recent cases that may be of particular interest to consumer bankruptcy practitioners. It is brought to you by Consumer Bankruptcy Abstracts & Research ([www.cbar.pro](http://www.cbar.pro)) and the National Consumer Bankruptcy Rights Center ([www.ncbrc.org](http://www.ncbrc.org)).

**Appellate procedure:** The BAP is not a "court of the United States" and therefore lacks authority to grant or deny a motion under 28 U.S.C. § 1915(a) to proceed in forma pauperis in an appeal. *In re Kocak*, 2020 WL 3344182 (E.D. Cal., May 29, 2020) (case no. 1:20-mc-26).

**Automatic stay—Termination of stay under Code § 362(c)(3):** Agreeing with the majority view on the issue, the court held that, when the automatic stay terminates under Code § 362(c)(3), it terminates only as to the debtor and the debtor's property, and not as to the estate and property of the estate. *In re Thu Thi Dao*, --- B.R. ----, 2020 WL 2462521 (Bankr. E.D. Cal., May 11, 2020) (case no. 20-20742).

**Avoidable transfers—Preferential transfer under Code § 547:** The debtor's boyfriend was not a non-statutory insider, for the purpose of avoiding two prepetition transfers by the debtor to the boyfriend as preferential, where the two had always maintained separate households and finances, and the allegedly preferential payments were repayment by the debtor of a loan her boyfriend had made to her after she had become medically disabled and had lost her job. *In re Torpey*, 613 B.R. 898 (Bankr. E.D. Mich., May 11, 2020) (adv. proc. no. 18-04577).

**Chapter 7—Abandonment of property of estate—Upon closing of case under Code § 554(c):** In Code § 554(c), providing for the abandonment upon the closing of the case of scheduled property not administered by the trustee, the phrase "any property scheduled under section 521(a)(1) of this title" refers to property scheduled under any subsection of § 521(a)(1) and not only to property scheduled in the debtor's schedule of assets and liabilities required under § 521(a)(1)(B)(i), as some courts have held. *Bird*

*v. Hart*, --- B.R. ----, 2020 WL 2543172 (D. Utah, May 19, 2020) (case no. 2:19-cv-54), appeal filed, *In re Hart*, Case No. 20-4065 (10th Cir., filed June 18, 2020).

**Chapter 7—Bad faith under Code § 707(b)(3)(A):** A case filed under Chapter 13 and later converted to Chapter 7 may be dismissed for bad faith under Code § 707(b)(3)(A) only where the debtor filed the original case, prior to conversion, in bad faith; the debtor's alleged bad faith while the case was proceeding under Chapter 13 does not support dismissal under § 707(b)(3)(A). *In re Stroh*, 2020 WL 2125884 (Bankr. S.D. N.Y., May 2, 2020) (case no. 18-36301)

**Chapter 13—Application of Bankruptcy Rule 3002.1:** As the debtor was approaching the end of his 60-month chapter 13 plan, his mortgage servicer "sought to spring on him a \$16,749.36 bill for attorney's fees and costs going back nearly five years." Bankruptcy Rule 3002.1 was enacted precisely to avoid these types of surprises. Accordingly, the creditor's motion for post-petition fees would be denied, and the court would award the debtor his reasonable expenses and attorneys fee's incurred in responding to the servicer's motion, as permitted under Rule 3002.1(i)(2). *In re Navarro*, 2020 WL 2843033 (Bankr. S.D. Fla., May 29, 2020) (case no. 15-10301).

**Property of the estate:** The postpetition increase in the equity in the Chapter 7 debtor's residence was property of the estate where the equity resulted from payments on a mortgage made by a third party that were compensation for the debtor's prepetition services. *Coslow v. Reisz*, --- Fed. Appx. ----, 2020 WL 2317493 (6th Cir., May 11, 2020) (case no. 19-6200).

**Property of the estate—Exemptions—Effect of creditor's right of setoff:** The Fourth Circuit Court of Appeals held that, despite Code § 522(c), which provides that exempt property cannot be used to satisfy any of the debtor's prepetition debts, the IRS's right under 26 U.S.C. § 6402 to offset the debtor's prepetition tax overpayment against the debtor's prepetition tax debt superseded the debtor's right to exempt the overpayment under Code § 522. By its plain and unambiguous terms, Code § 553, which preserves whatever right of offset a creditor may possess outside the Bankruptcy Code, provides that no provision of Title 11 "affect[s]" a creditor's right to offset a mutual, prepetition debt with a bankruptcy debtor. The very broad scope of § 553(a) necessarily included the property exemption provisions contained in § 522(c). The source of the IRS's right of offset in § 6402(a) also is unambiguous; without qualification, § 6402(a) provides that "[i]n the case of any overpayment, the IRS may setoff the amount of such overpayment ... against any liability in respect of an internal revenue tax on the part of the person who made the overpayment." *Copley v. United States*, 959 F.3d 118 (4th Cir., May 12, 2020) (case no. 18-2347).

**Property of the estate—Exemptions—Under federal law:** The funds represented by an \$18,000 check that the Chapter 7 debtor received prepetition as a loan from her retirement account were not exempt under Code § 522(d)(12) as funds in a retirement account, although the debtor had not cashed the check as of the petition date, where the debtor did not deposit the funds into another exempt account within 60 days. An exemption claimed under § 522(d)(12) must satisfy two requirements: (1) the amount the debtor seeks to exempt must be retirement funds, and (2) those retirement funds must be in an account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code. Under Code § 522(b)(4)(D)(ii), which provides that funds that are distributed from an eligible fund and then subsequently rolled over and deposited into another eligible fund within 60 days after the distribution continue to qualify for exemption under § 522(d)(12), it was apparent that Congress intended to extend the exemption protection to distributions only to the extent that such distributions are deposited into another eligible fund within 60 days after such a distribution. If the funds are not deposited into another eligible fund within 60 days after distribution, the exemption protection ceases. *In re Brown*, 614 B.R. 416 (1st Cir. B.A.P., May 21, 2020) (case no. 19-024).

**Violation of stay—Damages—Attorney’s fees:** After awarding the debtor \$100,000 in emotional distress damages and \$200,000 in punitive damages for the creditor's willful stay violation, the court awarded the debtor attorney's fees in the amount of \$56,150 and costs (primarily an expert's fee) in the amount of \$10,857.94, although the court declined to allow the debtor's proposed fee enhancement, consisting of a multiplier of 1.5. The debtor's attorney's hourly fee of \$500 was reasonable, as the attorney's educational and practice credentials were undisputed, as were his 25 years of experience in bankruptcy matters. It was also a matter of public record that the attorney was a panel Chapter 7 trustee. *In re Moon*, 2020 WL 3348351 (Bankr. D. Nev., May 29, 2020) (case no. 2:13-bk-12466), appeal filed, Case No. 20-1144 (9th Cir. B.A.P., filed June 15, 2020).