Office of the Chapter 13 Trustee—Akron Ohio
Keith L. Rucinski—Trustee

Chapter 13 Quarterly Newsletter
March 2014

1. Best Wishes to the Honorable Marilyn Shea-Stonum

As the bankruptcy community is aware, the Honorable Marilyn Shea-Stonum will be entering retirement soon after 19 years of judicial service. For those who have practiced in front of her, all will agree she has been a true professional and has always treated everyone with respect. We wish her the best in her retirement and future endeavors.

2. Happy Retirement to Assistant US Attorney, James Bickett

Also retiring this year is Assistant US Attorney, James Bickett. Over the years he has assisted many practitioners in the bankruptcy community and has been an instructor at the White Williams Program. As an instructor he has provided presentations on perfecting proper service on the US Government and the status of student loans and tax issues in bankruptcy. As he soon will not be checking his e-mail, we wanted to make sure to wish him the best in his retirement.

3. Personal Financial Management Class, Monday, April 28, 2014

Please note that the Chapter 13 office in Akron will hold its next Personal Financial Management Class for debtors who have not yet taken this required class on Monday, April 28, 2014 from 6 PM to 8 PM at the main library in downtown Akron. The Chapter 13 office offers this class free of charge to debtors who have filed Chapter 13 in Akron.

As all counsel know, if a debtor fails to take the class, the debtor will not be eligible for discharge and creditors would be permitted to keep all funds paid into the plan and seek further recovery from the debtors. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 made the Personal Financial Management Class a requirement for discharge.

A few cases did not receive a discharge this past year but were closed for the debtor's failure to take the required class. The cases were closed even after the debtor was given a warning that the case would close without a discharge but the debtors, for whatever reasons, failed to take the class.

The Trustee thanks all counsel for working with their clients to take the class as early in the bankruptcy process as possible as taking the class within the first few months of the petition filing date does seem to help the debtors complete the plan successfully and gives the debtors a better understanding of the Chapter 13 program.

A flyer for the April 28, 2014 class is attached to this newsletter for counsel to share with their clients.

4. Debtors are now able to Make Direct Online Payments

As of February 1, 2014, debtors in a Chapter 13 program in Akron are able to make online payments. The debtors can access the online payment program through the Chapter 13 webpage at www.chapter13info.com.

There is a one dollar charge for making an on line payment. The charge is the fee paid to the bank and is in addition to the Chapter 13 monthly payment.

Over the past couple of years, many self employed and retired debtors have been inquiring about the ability to pay on line, hence this service is now available. Please note that the debtor must initiate the monthly payment process, the Chapter 13 office will not set up an automatic deduction from the debtor's bank account.

Attached to this newsletter is a flyer for counsel to share with their clients who need to make direct payments.

5. Direct Payments are not Appropriate for W-2 Wage Earners

The Chapter 13 office has seen an increase in requests for debtors to make direct payments even if the debtors are W-2 wage earners and should be making their payments by wage deductions. There has also been an increase in NSF checks and Counsel not being paid for their services for debtors who should have a wage deduction.

The standard notation in the motion for direct payments is that the debtor believes that his job will be in jeopardy if the employer found out about the bankruptcy. This may be true in a small number of cases, however the motions are being filed where debtors work for Fortune 500 companies or large regional companies. Almost always a wage deduction has no effect on employment.

Counsel should evaluate on a case by case basis on whether the debtor needs to make direct payments or only wants to make direct payments as this can impact how fast parties in interest, especially counsel, are paid.

Generally, direct payments should be reserved for self employed and retired debtors.

6. Basis for Automobile Valuation

Recently, there has been an increase in Chapter 13 plans filed where the debtors attempt to retain an automobile. The Chapter 13 Trustee is requiring that debtors counsel supply the Chapter 13 office a basis for the valuation of the automobile used in the bankruptcy petition. The Trustee has noticed that some of these valuations have not been accurate and often times there is equity in the automobile which has to be accounted for in the best interest of creditors test pursuant to 11 USC Section 1325(a)(4).

7. New Schedules I and J

Effective December 1, 2012 Official Forms B6I and B6J (Schedules I and J) have been changed. The new forms may be used to submit supplements to schedules to capture additional information regarding a debtors' post-petition income and expenses as of a specific date. The new ECF event Supplement to Schedule I /J should be used when filing these forms as supplements. These supplemental filings are distinguishable from Schedules I and J, which are required to be filed as part of the original schedules and statements under F.R.B.P. 1007(b)(1). The new forms may also be used to submit amended schedules to correct information from the original filing. The existing ECF Amended Schedule I and J events should be used when filing these forms as amendments.

Examples of new Schedules I and J are attached to this newsletter.

8. Updated Means Test Numbers

Updated Means Test Numbers became available on November 11, 2013. Counsel should make sure their software has been updated to use the most current numbers.

A copy of the updated numbers is attached to this newsletter.

9. Case Law

Law v. Siegel, 2014 U.S. LEXIS 1784 (U.S. Mar. 4, 2014)

Petitioner Law filed for Chapter 7 bankruptcy. He valued his California home at $363,348, claiming that $75,000 of that value was covered by California's homestead exemption and thus was exempt from the bankruptcy estate, according to 11 USC Section 522 (b)(3)(A). He also claimed that the sum of two voluntary liens—one of which was in favor of "Lin's Mortgage & Associates"—exceeded the home's nonexempt value, leaving no equity recoverable for his other creditors. Respondent Siegel, the bankruptcy estate trustee, challenged the "Lin" lien in an adversary proceeding, but protracted and

expensive litigation ensued when a supposed “Lili Lin” in China claimed to be the beneficiary of Law’s deed of trust. Ultimately, the Bankruptcy Court concluded that the loan was a fiction created by Law to preserve his equity in the house. It then granted Siegel’s motion to “surcharge” Law’s $75,000 homestead exemption, making those funds available to defray attorney’s fees incurred by Siegel in overcoming Law’s fraudulent misrepresentations.

The Ninth Circuit Bankruptcy Appellate Panel and the Ninth Circuit affirmed. Respondent bankruptcy trustee's motion to surcharge petitioner bankruptcy debtor's homestead exemption was granted to award the trustee attorney fees incurred in opposing the debtor's claimed lien against the debtor's homestead which was found to be fraudulent. Upon the grant of a writ of certiorari, the debtor appealed the judgment of the U.S. Court of Appeals for the Ninth Circuit, which upheld the surcharge.

The U.S. Supreme Court unanimously held that the bankruptcy court exceeded the limits of its authority in surcharging the homestead exemption to pay the trustee's attorney fees. The broad authority of the bankruptcy court to carry out the provisions of the Bankruptcy Code and inherent power to sanction abusive litigation practices did not extend to surcharging the exemption, since the surcharge contravened the specific prohibition under 11 USC Section 522(k) that the exemption was not liable for payment of the attorney fees as an administrative expense. Further, since the trustee did not timely object to the exemption, it became final before the surcharge was imposed and could not be challenged or negated by the trustee through the surcharge.

Dale v. Maney (In re Dale), 2014 Bankr. LEXIS 495 (B.A.P. 9th Cir. Feb. 5, 2014)

The debtors filed their chapter 13 petition on October 31, 2011. On August 11, 2012, more than 180 days following the petition date, debtor Dale’s mother passed away, entitling him to an inheritance of approximately $30,000. On December 13, 2012, the debtors filed a declaration with the bankruptcy court disclosing the inheritance. To date, no plan has been confirmed in their chapter 13 case. The chapter 13 trustee demanded that the debtor's turn over the Inheritance funds to the trustee for distribution to their creditors. The Trustee filed an amended motion to dismiss, arguing that the debtors’ chapter 13 case should be dismissed because 1) the debtors' had failed to comply with the Trustee’s recommendations; 2) the debtors had failed to disclose and turn over the nonexempt Inheritance proceeds; and 3) the debtors were still delinquent on plan payments. The debtors asserted that their case should not be dismissed because the post petition Inheritance proceeds were not property of their bankruptcy estate. The debtors argued that even if the inheritance is a part of the bankruptcy estate, the inheritance must be accounted for consistent with “Chapter 7 reconciliation” rather than being required to turn over the entire Inheritance proceeds for distribution to their creditors.

The bankruptcy court determined that the Inheritance proceeds were property of the bankruptcy estate.

The 9th Circuit Bankruptcy Appellate Panel affirmed the Bankruptcy court ruling that an inheritance received by the debtor, 180 days following the petition date but prior to confirmation of the debtor's chapter 13 plan, was an asset of their bankruptcy estate pursuant to 11 U.S.C Section1306 and must be distributed under an amended plan in a manner in the best interest of the creditors as stated in 11 U.S.C Section1325.

In re Pursley, 2014 Bankr. LEXIS 314, 2014 WL 293557 (Bankr. N.D. Ohio Jan. 23, 2014)

The Ohio legislature in House Bill 479 increased the homestead exemption from $20,200 to $125,000 per person on March 27, 2013. The Debtors filed Chapter 13 on July 7, 2013 and argued they were allowed to claim the full amount of the exemption to protect equity they had in a home they owned, even though the increase affected creditors who extended credit to the debtors before March 27, 2013. The plain language of 11 USC Section 522(b) and Ohio case law pertaining to prior changes in exemption law supported the position that the debtors were eligible to claim the amount of the exemption that applied on the date they filed their bankruptcy petition, and a provision in House Bill 479 which suggested otherwise was uncodified and was preempted by the Bankruptcy Code.

The court denied the bankruptcy trustee's objection to the amount of the debtors' homestead exemption claim. The Court stated that based on the case history and statutory guidance, there was no impediment to applying the current homestead exemption amount to bankruptcy cases filed on or after March 27, 2013, the effective date of House Bill 479. The court then moved to an analysis of House Bill 479, and found that while Section 3 may appear to be inconsistent with the court's holding, Section 3 is uncodified law that conflicts with the plain language of Ohio Revised Code Section 2329.66, is internally nonsensical, and is therefore inapplicable.

SAVE THE DATE
18TH ANNUAL WHITE WILLIAMS SEMINAR
APRIL 11, 2014
HARTVILLE KITCHEN

(REGISTRATION FORM IS ATTACHED)

Personal Financial Management Class
Monday April 28, 2014

Phone: (330) 762-6335
Fax: (330) 762-7072
Web: www.chapter13info.com

Office Of
The Chapter 13 Trustee
Keith L. Rucinski, Trustee

One Cascade Plaza
Suite 2020
Akron, Ohio 44308

December 4, 2013

Personal Financial Management Instructional Course

Pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, all people filing for bankruptcy after October 17, 2005, must take a Personal Financial Management Instructional Course in order to earn a discharge of their case. A discharge means a successful completion of the plan and creditors paid through the plan may not seek further payment from you. This course is in addition to the Credit Counseling Course that you took to file your Chapter 13 case. If you have already taken both courses you may disregard this notice.

The Chapter 13 Office in Akron, Ohio will be offering the Personal Financial Management Instruction Course on **Monday, April 28th, 2014**, at the Akron-Summit County Public Library, 60 S. High Street, Akron, Ohio 44308. Pickup of course materials and seating for the class begins at 5:30 p.m. The course runs from 6:00 p.m. to 8:00 p.m. A parking deck is located next to the library and parking is free. **You must register for the course and may do so by calling 330-475-7500, or by email to edclass@ch13akron.com. PLEASE MAKE SURE TO LEAVE YOUR NAME AND CASE NUMBER WHEN CALLING TO MAKE YOUR RESERVATION. Space is limited so please make your reservation as soon as possible**. **The deadline to register for the class is April 25th, 2014.** A photo I.D. will be necessary in order to take the course. If you require a Sign Language interpreter send your request to edclass@ch13akron.com. The instructor will be Keith Rucinski. Mr. Rucinski is a CPA and Attorney and serves as Trustee for the Chapter 13 Office. For the past decade he has taught college courses and has been a frequent speaker at local and national seminars.

This course is only being offered to individuals who have filed Chapter 13 with the U.S. Bankruptcy Court in Akron, Ohio. The course is being offered without regard to an individual's ability to pay. There is no cost to individuals for taking the course sponsored by the Chapter 13 Office.

You are not required to take this course through the Chapter 13 Office, but you must take a course which has been certified by the U.S. Department of Justice – U.S. Trustee Program. The other course providers may charge you a fee. The Chapter 13 Office in Akron does not pay or receive fees or other consideration for the referral of debtor students to or by the provider.

Upon completion of the course the Chapter 13 Office in Akron will provide participants a certificate of course completion. This certificate must be filed with the U.S. Bankruptcy Court in Akron, Ohio in order to earn a discharge in your case.

Main Library

is located at 60 S. High Street
Akron, Ohio 44326
in downtown Akron, OH
330-643-9000.

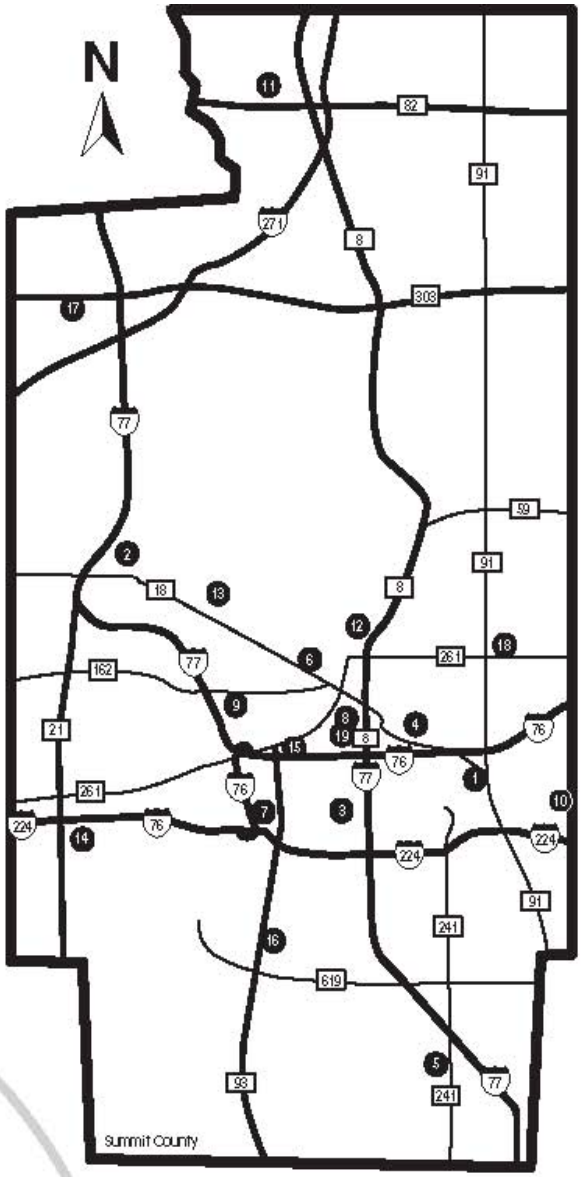
**Drive-through window accessible
from High Street between
Main Library and the High & Market parking deck
***LOADING DOCK entrance is on Mill Street

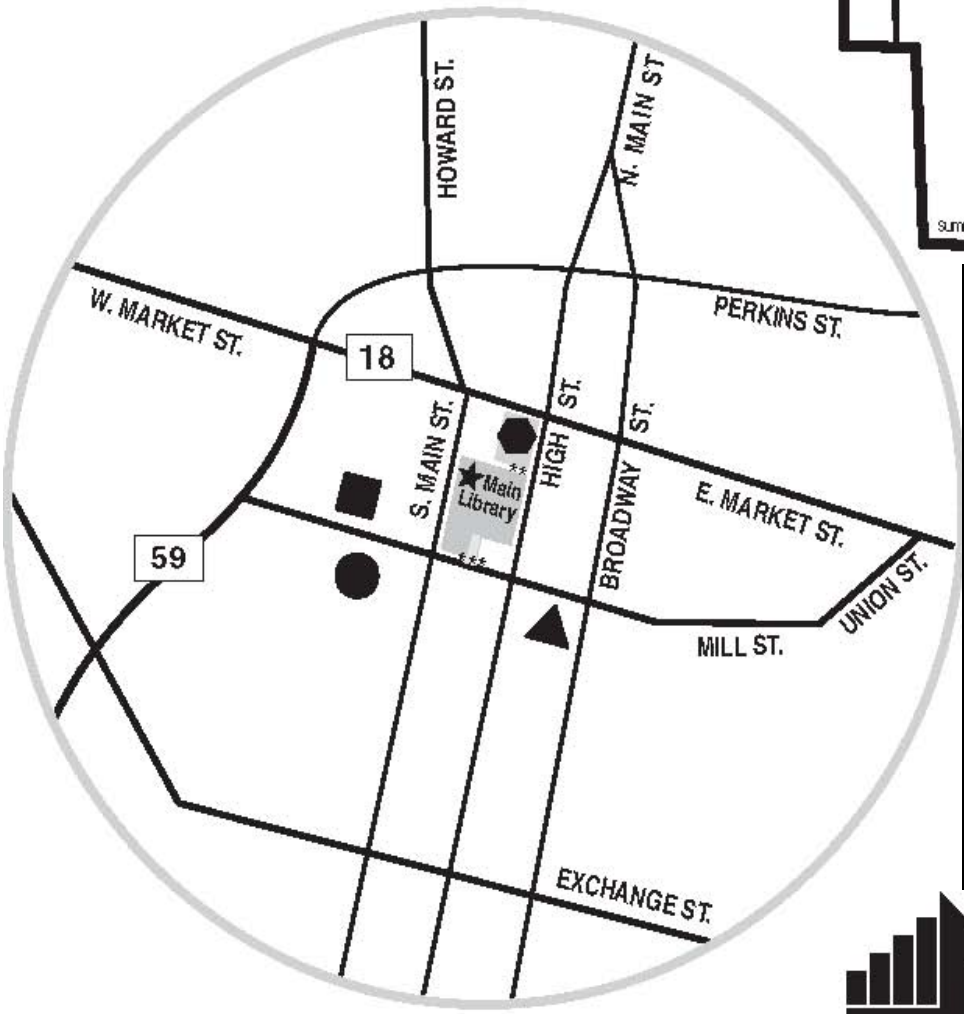
• **From Cleveland**: From Interstate I-77 South, take exit 21C to merge onto Innerbelt/Martin Luther King Jr Fwy E/OH-59 E toward Downtown Akron. Turn right at N. High St.

• **From Canton**: From I-77 North, take the OH-59 W exit toward Perkins St/M.L. King Jr Blvd & Fwy. Turn left at Perkins St and continue on Martin Luther King Jr Blvd. Turn left at N High St.

Convenient Parking for Main Library includes:

- ⬢ - **High & Market Deck** (across from the Akron Art Museum and connects to the library)
- ■ - Super Block Garage
- ● - Cascade Parking Garage
- ▲ - John S. Knight Center Parking





***** A PHOTO ID IS REQUIRED FOR ADMITTANCE TO THE SEMINAR**

***** IF YOU PARK IN THE LIBRARY PARKING DECK MAKE SURE TO BRING YOUR PARKING TICKET TO THE CLASS WITH YOU. IT CAN BE VALIDATED AT THE LIBRARY SECURITY DESK.**

Akron-Summit County Public Library

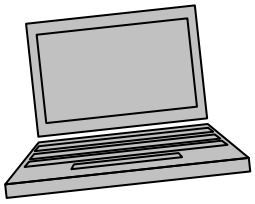
Making On-Line Plan Payments

Keith L. Rucinski

Chapter 13 Trustee

One Cascade Plaza Ste 2020
Akron, Ohio 44308

MAKE YOUR CHAPTER 13 PAYMENT ONLINE OR BY PHONE!*



Pay Online at
www.chapter13info.com

Pay by Phone
(888) 439-5121

THERE IS NO EASIER WAY TO PAY!

Sign up today at www.chapter13info.com
It's inexpensive ($1.00 per payment), easy and secure.

Advantages to using ePay to make your Chapter 13 payment:

- **Ability to make payments 24/7**
- **Save Time and Money:** Don't be hassled writing checks, stamping envelopes and mailing your payment
- **Ensure your Chapter 13 payments are made on time:** Stop paying exorbitant charges to overnight our payment for next day deliver. Payments made by 6pm EST will post to your case the next business day!
- **Email confirmation available:** You can select to receive an email confirmation of payments using the online payment system.
- **Payment History:** Ability to view history of payments made using the ePay system.

Visit www.chapter13info.com to sign up for ePay
Save a stamp! Pay online!

*You may continue to mail your Chapter 13 payment to:
Keith L Rucinski, Chapter 13 Trustee
3600 Momentum Place
Chicago, IL 60689-5336

New Schedules I and J

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 (Spouse, if filing) _____
First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____

Case number (If known) _____

Check if this is:
☐ An amended filing
☐ A supplement showing post-petition chapter 13 income as of the following date:
_____
MM / DD / YYYY

Official Form B 6I

Schedule I: Your Income

12/13

Be as complete and accurate as possible. If two married people are filing together (Debtor 1 and Debtor 2), both are equally responsible for supplying correct information. If you are married and not filing jointly, and your spouse is living with you, include information about your spouse. If you are separated and your spouse is not filing with you, do not include information about your spouse. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Employment

1. **Fill in your employment information.**

   If you have more than one job, attach a separate page with information about additional employers.

   Include part-time, seasonal, or self-employed work.

   Occupation may Include student or homemaker, if it applies.

	Debtor 1	Debtor 2 or non-filing spouse
Employment status	☐ Employed ☐ Not employed	☐ Employed ☐ Not employed
Occupation	_____	_____
Employer's name	_____	_____
Employer's address	_____ Number Street _____ _____ _____ City State ZIP Code	_____ Number Street _____ _____ _____ City State ZIP Code
How long employed there?	_____	_____

Part 2: Give Details About Monthly Income

Estimate monthly income as of the date you file this form. If you have nothing to report for any line, write $0 in the space. Include your non-filing spouse unless you are separated.

If you or your non-filing spouse have more than one employer, combine the information for all employers for that person on the lines below. If you need more space, attach a separate sheet to this form.

		For Debtor 1	For Debtor 2 or non-filing spouse
2. **List monthly gross wages, salary, and commissions** (before all payroll deductions). If not paid monthly, calculate what the monthly wage would be.	2.	$_____	$_____
3. **Estimate and list monthly overtime pay.**	3.	+ $_____	+ $_____
4. **Calculate gross income.** Add line 2 + line 3.	4.	$_____	$_____

		For Debtor 1	For Debtor 2 or non-filing spouse
Copy line 4 here ➔	4.	$_____	$_____
5. **List all payroll deductions:**			
5a. **Tax, Medicare, and Social Security deductions**	5a.	$_____	$_____
5b. **Mandatory contributions for retirement plans**	5b.	$_____	$_____
5c. **Voluntary contributions for retirement plans**	5c.	$_____	$_____
5d. **Required repayments of retirement fund loans**	5d.	$_____	$_____
5e. **Insurance**	5e.	$_____	$_____
5f. **Domestic support obligations**	5f.	$_____	$_____
5g. **Union dues**	5g.	$_____	$_____
5h. **Other deductions.** Specify: _____	5h.	+ $_____	+ $_____
6. **Add the payroll deductions**. Add lines 5a + 5b + 5c + 5d + 5e +5f + 5g +5h.	6.	$_____	$_____
7. **Calculate total monthly take-home pay.** Subtract line 6 from line 4.	7.	$_____	$_____
8. **List all other income regularly received:**			
8a. **Net income from rental property and from operating a business, profession, or farm** Attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.	8a.	$_____	$_____
8b. **Interest and dividends**	8b.	$_____	$_____
8c. **Family support payments that you, a non-filing spouse, or a dependent regularly receive** Include alimony, spousal support, child support, maintenance, divorce settlement, and property settlement.	8c.	$_____	$_____
8d. **Unemployment compensation**	8d.	$_____	$_____
8e. **Social Security**	8e.	$_____	$_____
8f. **Other government assistance that you regularly receive** Include cash assistance and the value (if known) of any non-cash assistance that you receive, such as food stamps (benefits under the Supplemental Nutrition Assistance Program) or housing subsidies. Specify: _____	8f.	$_____	$_____
8g. **Pension or retirement income**	8g.	$_____	$_____
8h. **Other monthly income.** Specify: _____	8h.	+ $_____	+ $_____
9. **Add all other income**. Add lines 8a + 8b + 8c + 8d + 8e + 8f +8g + 8h.	9.	$_____	$_____
10. **Calculate monthly income.** Add line 7 + line 9. Add the entries in line 10 for Debtor 1 and Debtor 2 or non-filing spouse.	10.	$_____ +	$_____ = $_____

11. **State all other regular contributions to the expenses that you list in *Schedule J*.**
Include contributions from an unmarried partner, members of your household, your dependents, your roommates, and other friends or relatives**.**
Do not include any amounts already included in lines 2-10 or amounts that are not available to pay expenses listed in *Schedule J*.
Specify: _____ 11. + $_____

12. **Add the amount in the last column of line 10 to the amount in line 11.** The result is the combined monthly income.
Write that amount on the *Summary of Schedules* and *Statistical Summary of Certain Liabilities and Related Data,* if it applies 12. $_____
Combined monthly income

13. **Do you expect an increase or decrease within the year after you file this form?**
☐ No.
☐ Yes. Explain:

Fill in this information to identify your case:

Debtor 1 _____ (First Name / Middle Name / Last Name)

Debtor 2 (Spouse, if filing) _____ (First Name / Middle Name / Last Name)

United States Bankruptcy Court for the: _____ District of _____

Case number (If known) _____

Check if this is:

- ☐ An amended filing
- ☐ A supplement showing post-petition chapter 13 expenses as of the following date: _____ (MM / DD / YYYY)
- ☐ A separate filing for Debtor 2 because Debtor 2 maintains a separate household

Official Form B 6J

Schedule J: Your Expenses

12/13

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach another sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Your Household

1. **Is this a joint case?**
   - ☐ No. Go to line 2.
   - ☐ Yes. **Does Debtor 2 live in a separate household?**
     - ☐ No
     - ☐ Yes. Debtor 2 must file a separate Schedule J.

2. **Do you have dependents?** Do not list Debtor 1 and Debtor 2. Do not state the dependents' names.
   - ☐ No
   - ☐ Yes. Fill out this information for each dependent.....

Dependent's relationship to Debtor 1 or Debtor 2	Dependent's age	Does dependent live with you?
_____	_____	☐ No ☐ Yes
_____	_____	☐ No ☐ Yes
_____	_____	☐ No ☐ Yes
_____	_____	☐ No ☐ Yes
_____	_____	☐ No ☐ Yes

3. **Do your expenses include expenses of people other than yourself and your dependents?**
   - ☐ No
   - ☐ Yes

Part 2: Estimate Your Ongoing Monthly Expenses

Estimate your expenses as of your bankruptcy filing date unless you are using this form as a supplement in a Chapter 13 case to report expenses as of a date after the bankruptcy is filed. If this is a supplemental *Schedule J*, check the box at the top of the form and fill in the applicable date.

Include expenses paid for with non-cash government assistance if you know the value of such assistance and have included it on *Schedule I: Your Income* (Official Form B 6I.)

		Your expenses
4.	**The rental or home ownership expenses for your residence.** Include first mortgage payments and any rent for the ground or lot.	4. $_____
	If not included in line 4:	
4a.	Real estate taxes	4a. $_____
4b.	Property, homeowner's, or renter's insurance	4b. $_____
4c.	Home maintenance, repair, and upkeep expenses	4c. $_____
4d.	Homeowner's association or condominium dues	4d. $_____

		Your expenses
5. **Additional mortgage payments for your residence**, such as home equity loans	5.	$_____
6. **Utilities:**		
6a. Electricity, heat, natural gas	6a.	$_____
6b. Water, sewer, garbage collection	6b.	$_____
6c. Telephone, cell phone, Internet, satellite, and cable services	6c.	$_____
6d. Other. Specify: _____	6d.	$_____
7. **Food and housekeeping supplies**	7.	$_____
8. **Childcare and children's education costs**	8.	$_____
9. **Clothing, laundry, and dry cleaning**	9.	$_____
10. **Personal care products and services**	10.	$_____
11. **Medical and dental expenses**	11.	$_____
12. **Transportation.** Include gas, maintenance, bus or train fare. Do not include car payments.	12.	$_____
13. **Entertainment, clubs, recreation, newspapers, magazines, and books**	13.	$_____
14. **Charitable contributions and religious donations**	14.	$_____
15. **Insurance.** Do not include insurance deducted from your pay or included in lines 4 or 20.		
15a. Life insurance	15a.	$_____
15b. Health insurance	15b.	$_____
15c. Vehicle insurance	15c.	$_____
15d. Other insurance. Specify:_____	15d.	$_____
16. **Taxes.** Do not include taxes deducted from your pay or included in lines 4 or 20. Specify: _____	16.	$_____
17. **Installment or lease payments:**		
17a. Car payments for Vehicle 1	17a.	$_____
17b. Car payments for Vehicle 2	17b.	$_____
17c. Other. Specify:_____	17c.	$_____
17d. Other. Specify:_____	17d.	$_____
18. **Your payments of alimony, maintenance, and support that you did not report as deducted from your pay on line 5, *Schedule I, Your Income* (Official Form B 6I).**	18.	$_____
19. **Other payments you make to support others who do not live with you.** Specify:_____	19.	$_____
20. **Other real property expenses not included in lines 4 or 5 of this form or on *Schedule I*: *Your Income.***		
20a. Mortgages on other property	20a.	$_____
20b. Real estate taxes	20b.	$_____
20c. Property, homeowner's, or renter's insurance	20c.	$_____
20d. Maintenance, repair, and upkeep expenses	20d.	$_____
20e. Homeowner's association or condominium dues	20e.	$_____

21. **Other**. Specify: _____ 21. +$_____

22. **Your monthly expenses.** Add lines 4 through 21.
The result is your monthly expenses. 22. $_____

23. **Calculate your monthly net income.**

23a. Copy line 12 (*your combined monthly income*) from *Schedule I.* 23a. $_____

23b. Copy your monthly expenses from line 22 above. 23b. – $_____

23c. Subtract your monthly expenses from your monthly income.
The result is your *monthly net income*. 23c. $_____

24. **Do you expect an increase or decrease in your expenses within the year after you file this form?**

For example, do you expect to finish paying for your car loan within the year or do you expect your mortgage payment to increase or decrease because of a modification to the terms of your mortgage?

☐ No.
☐ Yes. Explain here:

Updated Means Test Numbers

MEDIAN INCOME FOR OHIO FOR CASES FILED ON OR AFTER 11/15/13

1 Person	2 People	3 People	4 People
$43,057	**$53,075**	**$60,679**	**$76,381**

****Add $8,100 for each individual in excess of 4 people on cases filed on or after 4/1/13**

NATIONAL STANDARD FOR FOOD, CLOTHING & OTHER ITEMS

Expense	One Person	Two People	Three People	Four People
Food	$315	$556	$645	$777
Housekeeping Supplies	$30	$66	$65	$74
Apparel & Services	$88	$162	$209	$244
Personal care products & services	$34	$60	$64	$70
Miscellaneous	$116	$209	$251	$300
TOTAL	$583	$1053	$1234	$1465

More than four persons	Additional Amount Per Person
For each additional person, add to four-person total allowance:	**$281**

Expense	One Person	Two People	Three People	Four People
Food & Clothing (Apparel & Services)	$403	$718	$854	$1021
5% of Food and Clothing	$20	$36	$43	$51

More than four persons	Additional Amount Per Person
Food & Clothing (Apparel & Services)	$196
5% of Food and Clothing	$10

LOCAL HOUSING & UTILITIES STANDARDS FOR OHIO (NON-MORTGAGE EXPENSE)

Family Size	1 Person	2 People	3 People	4 People	5 or more People
SUMMIT COUNTY	$443	$521	$549	$612	$622
PORTAGE COUNTY	$447	$525	$553	$617	$627
MEDINA COUNTY	$435	$511	$539	$600	$610

LOCAL HOUSING & UTILITIES STANDARDS FOR OHIO (MORTGAGE/RENT EXPENSES)

Family Size	1 Person	2 People	3 People	4 People	5 or more People
SUMMIT COUNTY	$869	$1020	$1075	$1199	$1218
PORTAGE COUNTY	$933	$1096	$1155	$1287	$1308
MEDINA COUNTY	$1076	$1264	$1331	$1485	$1509

IRS NATIONAL STANDARDS FOR OUT-OF-POCKET HEALTH CARE

Out of Pocket Costs	
Under 65	$60
65 and Older	$144

LOCAL TRANSPORTATION EXPENSE STANDARDS

No Car	One Car	Two Cars
$182	$226	$452

OWNERSHIP COSTS

One Car	Second Car
$517	$517

****Lease vehicles only get the IRS ownership cost.**

Example: If your lease payment is $350 per month, you claim $517 on the means test with no other deductions. If your lease payment is $650 per month, you only claim $517 on the means test with no other deductions.

Law v. Siegel, 2014 U.S. LEXIS 1784 (U.S. Mar. 4, 2014)

Neutral
As of: March 13, 2014 4:48 PM EDT

Law v. Siegel

Supreme Court of the United States
January 13, 2014, Argued; March 4, 2014, Decided
No. 12-5196.

Reporter: 2014 U.S. LEXIS 1784

STEPHEN LAW, PETITIONER v. ALFRED H. SIEGEL, CHAPTER 7 TRUSTEE

Notice: The LEXIS pagination of this document is subject to change pending release of the final published version.

Prior History: **[*1]** ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Law v. Siegel (In re Law), 435 Fed. Appx. 697, 2011 U.S. App. LEXIS 11479 (9th Cir., 2011)

Disposition: Reversed and remanded.

Core Terms

exempt, bankruptcy court, debtor's, homestead exemption, administrative expense, misconduct, inherent power, trust deed, surcharge, exempt property, contravene, equitable, convert, attorney's, liquidate, trustee's, court's, lili

Case Summary

Procedural Posture

Respondent bankruptcy trustee's motion to surcharge petitioner bankruptcy debtor's homestead exemption was granted to award the trustee attorney fees incurred in opposing the debtor's claimed lien against the debtor's homestead which was found to be fraudulent. Upon the grant of a writ of certiorari, the debtor appealed the judgment of the U.S. Court of Appeals for the Ninth Circuit, which upheld the surcharge.

Overview

The debtor claimed the false lien to establish a lack of non-exempt equity in the residence for distribution to creditors, and the trustee contended that surcharging the debtor's homestead exemption was appropriate to reimburse the trustee for extensive and costly litigation in establishing that the lien was fraudulent. The U.S. Supreme Court unanimously held that the bankruptcy court exceeded the limits of its authority in surcharging the homestead exemption to pay the trustee's attorney fees. The broad authority of the bankruptcy court to carry out the provisions of the Bankruptcy Code and inherent power to sanction abusive litigation practices did not extend to surcharging the exemption, since the surcharge contravened the specific prohibition under *11 U.S.C.S. § 522(k)* that the exemption was not liable for payment of the attorney fees as an administrative expense. Further, since the trustee did not timely object to the exemption, it became final before the surcharge was imposed and could not be challenged or negated by the trustee through the surcharge.

Outcome

The judgment upholding the surcharge of the exemption was reversed, and the case was remanded for further proceedings. Unanimous Decision; 1 Opinion.

LexisNexis® Headnotes

Bankruptcy Law > Exemptions > Claims & Objections

HN1 The Bankruptcy Code provides that a bankruptcy debtor may exempt certain assets from the bankruptcy estate. It further provides that exempt assets generally are not liable for any expenses associated with administering the estate.

Bankruptcy Law > ... > Examiners, Officers & Trustees > Duties & Functions > Liquidations

Bankruptcy Law > Estate Property > Contents of Estate

Bankruptcy Law > Exemptions > Bankruptcy Code Exemptions

Bankruptcy Law > Liquidations > General Overview

HN2 Chapter 7 of the Bankruptcy Code gives an insolvent bankruptcy debtor the opportunity to discharge his debts by liquidating his assets to pay his creditors. *11 U.S.C.S. §§ 704(a)(1)*, *726*, *727*. The filing of a bankruptcy petition under Chapter 7 creates a bankruptcy estate generally comprising all of the debtor's property. *11 U.S.C.S. § 541(a)(1)*. The estate is placed under the control of a trustee, who is responsible for managing liquidation of the estate's assets and distribution of the proceeds. *11 U.S.C.S. § 704(a)(1)*. The Code authorizes the debtor to exempt, however, certain kinds of property from the estate, enabling him to retain those assets post-bankruptcy. *11 U.S.C.S. § 522(b)(1)*. Except in particular situations specified in the Code, exempt property is not liable for the payment of any pre-petition debt or any administrative expense. *§ 522(c)*, *(k)*.

Bankruptcy Law > Exemptions > Bankruptcy Code Exemptions

Bankruptcy Law > Exemptions > State Law Exemptions > Election of Exemptions

Real Property Law > Exemptions & Immunities > Homestead Exemptions

HN3 11 U.S.C.S. § 522(d) provides a number of exemptions in bankruptcy unless they are specifically prohibited by state law. § 522(b)(2), (d). One, commonly known as the homestead exemption, protects up to $22,975 in equity in the bankruptcy debtor's residence. § 522(d)(1). The debtor may elect, however, to forgo the § 522(d) exemptions and instead claim whatever exemptions are available under applicable state or local law. § 522(b)(3)(A).

Bankruptcy Law > Case Administration > Bankruptcy Court Powers

HN4 A bankruptcy court has statutory authority to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code. 11 U.S.C.S. § 105(a). And it may also possess inherent power to sanction abusive litigation practices. But in exercising those statutory and inherent powers, a bankruptcy court may not contravene specific statutory provisions.

Bankruptcy Law > Case Administration > Bankruptcy Court Powers

HN5 11 U.S.C.S. § 105(a) does not allow a bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code. Section 105(a) confers authority to carry out the provisions of the Code, but it is quite impossible to do that by taking action that the Code prohibits. That is simply an application of the axiom that a statute's general permission to take actions of a certain type must yield to a specific prohibition found elsewhere. Courts' inherent sanctioning powers are likewise subordinate to valid statutory directives and prohibitions. Whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code.

Bankruptcy Law > ... > Retention of Professionals > Compensation > General Overview

Bankruptcy Law > ... > Administrative Expenses > Priority > Professional Services

HN6 11 U.S.C.S. § 503(b)(2) provides that administrative expenses in a bankruptcy case include compensation awarded under 11 U.S.C.S. § 330(a); § 330(a)(1) authorizes reasonable compensation for actual, necessary services rendered by a professional person employed under 11 U.S.C.S. § 327; and § 327(a) authorizes the trustee to employ one or more attorneys to represent or assist the trustee in carrying out the trustee's duties under the Bankruptcy Code.

Governments > Legislation > Interpretation

HN7 Words repeated in different parts of the same statute generally have the same meaning.

Bankruptcy Law > Exemptions > Claims & Objections

HN8 A bankruptcy trustee's failure to make a timely objection prevents him from challenging an exemption.

Bankruptcy Law > Exemptions > Claims & Objections

HN9 11 U.S.C.S. § 522 does not give bankruptcy courts discretion to grant or withhold exemptions based on whatever considerations they deem appropriate. Rather, the statute exhaustively specifies the criteria that will render property exempt. § 522(b), (d). A bankruptcy debtor need not invoke an exemption to which the statute entitles him; but if he does, the court may not refuse to honor the exemption absent a valid statutory basis for doing so.

Bankruptcy Law > Exemptions > Claims & Objections

HN10 Federal law provides no authority for bankruptcy courts to deny an exemption on a ground not specified in the Bankruptcy Code.

Syllabus

Petitioner Law filed for Chapter 7 bankruptcy. He valued his California home at $363,348, claiming that $75,000 of that value was covered by California's homestead exemption and thus was exempt from the bankruptcy estate. See 11 U. S. C. §522(b)(3)(A). He also claimed that the sum of two voluntary liens—one of which was in favor of "Lin's Mortgage & Associates"—exceeded the home's nonexempt value, leaving no equity recoverable for his other creditors. Respondent Siegel, the bankruptcy estate trustee, challenged the "Lin" lien in an adversary proceeding, but protracted and expensive litigation ensued when a supposed "Lili Lin" in China claimed to be the beneficiary of Law's deed of trust. Ultimately, the Bankruptcy Court concluded that the loan was a fiction created by Law to preserve his equity in the house. It thus granted Siegel's motion to "surcharge" Law's $75,000 homestead exemption, making those funds available to defray attorney's fees incurred by Siegel in overcoming Law's fraudulent misrepresentations. The Ninth Circuit Bankruptcy Appellate Panel and the **[*2]** Ninth Circuit affirmed.

Held: The Bankruptcy Court exceeded the limits of its authority when it ordered that the $75,000 protected by Law's homestead exemption be made available to pay Siegel's attorney's fees. Pp. 5-12.

(a) A bankruptcy court may not exercise its authority to "carry out" the provisions of the Code, 11 U. S. C. §105(a), or its "inherent power . . . to sanction 'abusive litigation practices,'" Marrama v. Citizens Bank of Mass.,

549 U. S. 365, 375-376, 127 S. Ct. 1105, 166 L. Ed. 2d 956, by taking action prohibited elsewhere in the Code. Here, the Bankruptcy Court's "surcharge" contravened §522, which (by reference to California law) entitled Law to exempt $75,000 of equity in his home from the bankruptcy estate, §522(b)(3)(A), and which made that $75,000 "not liable for payment of any administrative expense," §522(k), including attorney's fees, see §503(b)(2). The surcharge thus exceeded the limits of both the court's authority under §105(a) and its inherent powers. Pp. 5-7.

(b) Siegel argues that an equitable power to deny an exemption by "surcharging" exempt property in response to a debtor's misconduct can coexist with §522. But insofar as that argument equates the surcharge with an outright denial of **[*3]** Law's homestead exemption, it founders on this case's procedural history. The Bankruptcy Appellate Panel recognized that because no one timely objected to the homestead exemption, it became final before the surcharge was imposed. And a trustee who fails to make a timely objection cannot challenge an exemption. *Taylor* v. *Freeland & Kronz*, 503 U. S. 638, 643-644, 112 S. Ct. 1644, 118 L. Ed. 2d 280. Assuming the Bankruptcy Court could have revisited Law's entitlement to the exemption, §522 specifies the criteria that render property exempt, and a court may not refuse to honor a debtor's invocation of an exemption without a valid statutory basis. Federal courts may apply state law to disallow state-created exemptions, but federal law itself provides no authority for bankruptcy courts to deny an exemption on a ground not specified in the Code. Pp. 7-10.

(c) Neither the holding of *Marrama* v. *Citizens Bank* nor its dictum points toward a different result. There, the debtor's bad faith kept him from converting his bankruptcy from a Chapter 7 liquidation to a Chapter 13 reorganization as permitted by §706(a). But that was because his conduct prevented him from qualifying under Chapter 13, and thus he could not satisfy §706(d), **[*4]** which expressly conditions conversion on the debtor's ability to qualify under Chapter 13. Pp. 10-11.

(d) This ruling forces Siegel to shoulder a heavy financial burden due to Law's egregious misconduct and may produce inequitable results for other trustees and creditors, but it is not for courts to alter the balance that Congress struck in crafting §522. Cf. *Guidry* v. *Sheet Metal Workers National Pension Fund*, 493 U. S. 365, 376-377, 110 S. Ct. 680, 107 L. Ed. 2d 782. P. 11.

(e) Ample authority remains to address debtor misconduct, including denial of discharge, see §727(a)(2)-(6); sanctions for bad-faith litigation conduct under the Bankruptcy Rules, §105(a), or a bankruptcy court's inherent powers; enforcement of monetary sanctions through the normal procedures for collecting money judgments, see §727(b); or possible prosecution under 18 U. S. C. §152. Pp. 11-12.

435 Fed. Appx. 697, reversed and remanded.

Counsel: Matthew S. Hellman argued the cause for petitioner.

Sarah E. Harrington argued the cause for the United States, as amicus curiae, by special leave of the court.

Neal Katyal argued the cause for respondent.

Judges: SCALIA, J., delivered the opinion for a unanimous Court.

Opinion by: SCALIA

Opinion

JUSTICE SCALIA delivered the opinion of the Court.

HN1 The Bankruptcy Code provides that a debtor may exempt certain assets from the bankruptcy estate. It further provides that exempt assets generally are not liable for any expenses associated with administering **[*5]** the estate. In this case, we consider whether a bankruptcy court nonetheless may order that a debtor's exempt assets be used to pay administrative expenses incurred as a result of the debtor's misconduct.

I. Background

A

HN2 Chapter 7 of the Bankruptcy Code gives an insolvent debtor the opportunity to discharge his debts by liquidating his assets to pay his creditors. 11 U. S. C. §§704(a)(1), 726, 727. The filing of a bankruptcy petition under Chapter 7 creates a bankruptcy "estate" generally comprising all of the debtor's property. §541(a)(1). The estate is placed under the control of a trustee, who is responsible for managing liquidation of the estate's assets and distribution of the proceeds. §704(a)(1). The Code authorizes the debtor to "exempt," however, certain kinds of property from the estate, enabling him to retain those assets postbankruptcy. §522(b)(1). Except in particular situations specified in the Code, exempt property "is not liable" for the payment of "any [prepetition] debt" or "any administrative expense." §522(c), (k).

HN3 Section 522(d) of the Code provides a number of exemptions unless they are specifically prohibited by state law. §522(b)(2), (d). One, commonly known as **[*6]** the "homestead exemption," protects up to $22,975 in equity in the debtor's residence. §522(d)(1) and note following §522; see *Owen* v. *Owen*, 500 U. S. 305, 310, 111 S. Ct. 1833, 114 L. Ed. 2d 350 (1991). The debtor may elect, however, to forgo the §522(d) exemptions and instead claim whatever exemptions are available under

applicable state or local law. §522(b)(3)(A). Some States provide homestead exemptions that are more generous than the federal exemption; some provide less generous versions; but nearly every State provides some type of homestead exemption. See López, State Homestead Exemptions and Bankruptcy Law: Is It Time for Congress To Close the Loophole? 7 Rutgers Bus. L. J. 143, 149-165 (2010) (listing state exemptions).

B

Petitioner, Stephen Law, filed for Chapter 7 bankruptcy in 2004, and respondent, Alfred H. Siegel, was appointed to serve as trustee. The estate's only significant asset was Law's house in Hacienda Heights, California. On a schedule filed with the Bankruptcy Court, Law valued the house at $363,348 and claimed that $75,000 of its value was covered by California's homestead exemption. See Cal. Civ. Proc. Code Ann. §704.730(a)(1) (West Supp. 2014). He also reported that the house was subject to **[*7]** two voluntary liens: a note and deed of trust for $147,156.52 in favor of Washington Mutual Bank, and a second note and deed of trust for $156,929.04 in favor of "Lin's Mortgage & Associates." Law thus represented that there was no equity in the house that could be recovered for his other creditors, because the sum of the two liens exceeded the house's nonexempt value.

If Law's representations had been accurate, he presumably would have been able to retain the house, since Siegel would have had no reason to pursue its sale. Instead, a few months after Law's petition was filed, Siegel initiated an adversary proceeding alleging that the lien in favor of "Lin's Mortgage & Associates" was fraudulent. The deed of trust supporting that lien had been recorded by Law in 1999 and reflected a debt to someone named "Lili Lin." Not one but two individuals claiming to be Lili Lin ultimately responded to Siegel's complaint. One, Lili Lin of Artesia, California, was a former acquaintance of Law's who denied ever having loaned him money and described his repeated efforts to involve her in various sham transactions relating to the disputed deed of trust. *That* Lili Lin promptly entered into a stipulated **[*8]** judgment disclaiming any interest in the house. But that was not the end of the matter, because the second "Lili Lin" claimed to be the true beneficiary of the disputed deed of trust. Over the next five years, *this* "Lili Lin" managed—despite supposedly living in China and speaking no English—to engage in extensive and costly litigation, including several appeals, contesting the avoidance of the deed of trust and Siegel's subsequent sale of the house.

Finally, in 2009, the Bankruptcy Court entered an order concluding that "no person named Lili Lin ever made a loan to [Law] in exchange for the disputed deed of trust." *In re Law*, 401 B. R. 447, 453 (Bkrtcy. Ct. CD Cal.). The court found that "the loan was a fiction, meant to preserve [Law's] equity in his residence beyond what he was entitled to exempt" by perpetrating "a fraud on his creditors and the court." *Ibid.* With regard to the second "Lili Lin," the court declared itself "unpersuaded that Lili Lin of China signed or approved any declaration or pleading purporting to come from her." *Ibid.* Rather, it said, the "most plausible conclusion" was that Law himself had "authored, signed, and filed some or all of these papers." *Ibid.* It **[*9]** also found that Law had submitted false evidence "in an effort to persuade the court that Lili Lin of China—rather than Lili Lin of Artesia—was the true holder of the lien on his residence." *Id.*, at 452. The court determined that Siegel had incurred more than $500,000 in attorney's fees overcoming Law's fraudulent misrepresentations. It therefore granted Siegel's motion to "surcharge" the entirety of Law's $75,000 homestead exemption, making those funds available to defray Siegel's attorney's fees.

The Ninth Circuit Bankruptcy Appellate Panel affirmed. *BAP No. CC-09-1077-PaMkH, 2009 Bankr. LEXIS 4542, 2009 WL 7751415 (Oct. 22, 2009)* (*per curiam*). It held that the Bankruptcy Court's factual findings regarding Law's fraud were not clearly erroneous and that the court had not abused its discretion by surcharging Law's exempt assets. It explained that in *Latman v. Burdette*, 366 F. 3d 774 (2004), the Ninth Circuit had recognized a bankruptcy court's power to "equitably surcharge a debtor's statutory exemptions" in exceptional circumstances, such as "when a debtor engages in inequitable or fraudulent conduct." *2009 Bankr. LEXIS 4542, 2009 WL 7751415, *5, *7*. The Bankruptcy Appellate Panel acknowledged that the Tenth Circuit had disagreed **[*10]** with *Latman*, see *In re Scrivner*, 535 F. 3d 1258, 1263-1265 (2008), but the panel affirmed that *Latman* was correct. *2009 Bankr. LEXIS 4542, 2009 WL 7751415, *7, n. 10*. Judge Markell filed a concurring opinion agreeing with the panel's application of *Latman* but questioning "whether *Latman* remains good policy." *2009 Bankr. LEXIS 4542, 2009 WL 7751415, *10*.

The Ninth Circuit affirmed. *In re Law*, 435 Fed. Appx. 697 (2011) (*per curiam*). It held that the surcharge was proper because it was "calculated to compensate the estate for the actual monetary costs imposed by the debtor's misconduct, and was warranted to protect the integrity of the bankruptcy process." *Id.*, at 698. We granted certiorari. *570 U. S. ___, 133 S. Ct. 2824, 186 L. Ed. 2d 883 (2013)*.

II. Analysis

A

HN4 A bankruptcy court has statutory authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. *11 U. S. C. §105(a)*. And it may also possess "inherent power . . . to sanction 'abusive litigation practices.'" *Marrama* v. *Citizens Bank of Mass.*, 549 U. S. 365, 375-376, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007). But in exercising those statutory and inherent powers, a bankruptcy court may not contravene specific statutory provisions.

HN5 It is hornbook law that *§105(a)* "does not allow **[*11]** the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code." 2 Collier on Bankruptcy ¶105.01[2], p. 105-6 (16th ed. 2013). *Section 105(a)* confers authority to "carry out" the provisions of the Code, but it is quite impossible to do that by taking action that the Code prohibits. That is simply an application of the axiom that a statute's general permission to take actions of a certain type must yield to a specific prohibition found elsewhere. See *Morton* v. *Mancari*, 417 U. S. 535, 550-551, 94 S. Ct. 2474, 41 L. Ed. 2d 290 (1974); *D. Ginsberg & Sons, Inc.* v. *Popkin*, 285 U. S. 204, 206-208, 52 S. Ct. 322, 76 L. Ed. 704 (1932). [1] Courts' inherent sanctioning powers are likewise subordinate to valid statutory directives and prohibitions. *Degen* v. *United States*, 517 U. S. 820, 823, 116 S. Ct. 1777, 135 L. Ed. 2d 102 (1996); *Chambers* v. *NASCO, Inc.*, 501 U. S. 32, 47, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991). We have long held that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of" the Bankruptcy Code. *Norwest Bank Worthington* v. *Ahlers*, 485 U. S. 197, 206, 108 S. Ct. 963, 99 L. Ed. 2d 169 (1988); see, *e.g.*, *Raleigh* v. *Illinois Dept. of Revenue*, 530 U. S. 15, 24-25, 120 S. Ct. 1951, 147 L. Ed. 2d 13 (2000); *United States* v. *Noland*, 517 U. S. 535, 543, 116 S. Ct. 1524, 134 L. Ed. 2d 748 (1996); *SEC* v. *United States Realty & Improvement Co.*, 310 U. S. 434, 455, 60 S. Ct. 1044, 84 L. Ed. 1293 (1940).

Thus, the Bankruptcy Court's "surcharge" was unauthorized if it contravened a specific provision of the Code. We conclude that it did. *Section 522* (by reference to California law) entitled Law to exempt $75,000 of equity in his home from the bankruptcy estate. *§522(b)(3)(A)*. And it made that $75,000 "not liable for payment of any administrative expense." *§522(k)*. [2] The reasonable attorney's fees Siegel incurred defeating the "Lili Lin" lien were indubitably an administrative expense, as a short march through a few statutory cross-references makes plain: ***HN6*** *Section 503(b)(2)* provides that administrative **[*13]** expenses include "compensation . . . awarded under" *§330(a)*; *§330(a)(1)* authorizes "reasonable compensation for actual, necessary services rendered" by a "professional person employed under" *§327*; and *§327(a)* authorizes the trustee to "employ one or more attorneys . . . to represent or assist the trustee in carrying out the trustee's duties under this title." Siegel argues that even though attorney's fees incurred responding to a debtor's fraud qualify as "administrative expenses" for purposes of determining the trustee's right to reimbursement under *§503(b)*, they do not so qualify for purposes of *§522(k)*; but he gives us no reason to depart from the "'normal rule of statutory construction'" that ***HN7*** words repeated in different parts of the same statute generally have the same meaning. See *Department of Revenue of Ore.* v. *ACF Industries, Inc.*, 510 U. S. 332, 342, 114 S. Ct. 843, 127 L. Ed. 2d 165 (1994) (quoting *Sorenson* v. *Secretary of Treasury*, 475 U. S. 851, 860, 106 S. Ct. 1600, 89 L. Ed. 2d 855 (1986)).

The Bankruptcy Court thus violated *§522*'s express terms when it ordered that the $75,000 protected by Law's homestead exemption be made available to pay Siegel's attorney's fees, an administrative expense. In doing so, the court exceeded the limits of its authority under *§105(a)* and its inherent powers.

B

Siegel does not dispute the premise that a bankruptcy court's *§105(a)* and inherent powers may not be exercised in contravention of the Code. Instead, his main argument is that the Bankruptcy Court's surcharge did not contravene *§522*. That statute, Siegel contends, "establish[es] the procedure by which a debtor may seek to claim exemptions" but "contains no directive requiring [courts] to allow [an exemption] regardless of the circumstances." Brief for Respondent 35. Thus, he says, recognition of an equitable power in the Bankruptcy Court to deny an exemption by "surcharging" the exempt property in response to the debtor's

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[1] The **[*12]** second sentence of §105(a) adds little to the analysis. It states: "No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." Even if the "abuse of process" language were deemed to confer additional authority beyond that conferred by the first sentence (which is doubtful), that general authority would also be limited by more specific provisions of the Code.

[2] The statute's general rule that exempt assets are not liable for administrative expenses is subject to two narrow exceptions, both pertaining to the use of exempt assets to pay expenses associated with the avoidance of certain voidable transfers of exempt **[*14]** property. §522(k)(1)-(2). Neither of those exceptions is relevant here.

misconduct can coexist comfortably with §522. The United States, appearing in support of Siegel, agrees, arguing that §522 "neither gives debtors an absolute right to retain exempt property nor **[*15]** limits a court's authority to impose an equitable surcharge on such property." Brief for United States as *Amicus Curiae* 23.

Insofar as Siegel and the United States equate the Bankruptcy Court's surcharge with an outright denial of Law's homestead exemption, their arguments founder upon this case's procedural history. The Bankruptcy Appellate Panel stated that because no one "timely oppose[d] [Law]'s homestead exemption claim," the exemption "became final" *before* the Bankruptcy Court imposed the surcharge. 2009 Bankr. LEXIS 4542, 2009 WL 7751415, at *2. We have held that ***HN8*** a trustee's failure to make a timely objection prevents him from challenging an exemption. Taylor v. Freeland & Kronz, 503 U. S. 638, 643-644, 112 S. Ct. 1644, 118 L. Ed. 2d 280 (1992).

But even assuming the Bankruptcy Court could have revisited Law's entitlement to the exemption, ***HN9*** §522 does not give courts discretion to grant or withhold exemptions based on whatever considerations they deem appropriate. Rather, the statute exhaustively specifies the criteria that will render property exempt. See §522(b), (d). Siegel insists that because §522(b) says that the debtor "may exempt" certain property, rather than that he "*shall* be entitled" to do so, the court retains discretion to **[*16]** grant or deny exemptions even when the statutory criteria are met. But the subject of "may exempt" in §522(b) is the debtor, not the court, so it is the debtor in whom the statute vests discretion. A debtor need not invoke an exemption to which the statute entitles him; but if he does, the court may not refuse to honor the exemption absent a valid statutory basis for doing so.

Moreover, §522 sets forth a number of carefully calibrated exceptions and limitations, some of which relate to the debtor's misconduct. For example, §522(c) makes exempt property liable for certain kinds of prepetition debts, including debts arising from tax fraud, fraud in connection with student loans, and other specified types of wrongdoing. Section 522(o) prevents a debtor from claiming a homestead exemption to the extent he acquired the homestead with nonexempt property in the previous 10 years "with the intent to hinder, delay, or defraud a creditor." And §522(q) caps a debtor's homestead exemption at approximately $150,000 (but does not eliminate it entirely) where the debtor has been convicted of a felony that shows "that the filing of the case was an abuse of the provisions of" the Code, or where the **[*17]** debtor owes a debt arising from specified wrongful acts—such as securities fraud, civil violations of the Racketeer Influenced and Corrupt Organizations Act, or "any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years." §522(q) and note following §522. The Code's meticulous—not to say mind-numbingly detailed—enumeration of exemptions and exceptions to those exemptions confirms that courts are not authorized to create additional exceptions. See Hillman v. Maretta, 569 U. S. ___, ___, 133 S. Ct. 1943, 186 L. Ed. 2d 43 (2013) (slip op., at 12); TRW Inc. v. Andrews, 534 U. S. 19, 28-29, 122 S. Ct. 441, 151 L. Ed. 2d 339 (2001).

Siegel points out that a handful of courts have claimed authority to disallow an exemption (or to bar a debtor from amending his schedules to claim an exemption, which is much the same thing) based on the debtor's fraudulent concealment of the asset alleged to be exempt. See, *e.g.*, In re Yonikus, 996 F. 2d 866, 872-873 (CA7 1993); In re Doan, 672 F. 2d 831, 833 (CA11 1982) (*per curiam*); Stewart v. Ganey, 116 F. 2d 1010, 1011 (CA5 1940). He suggests that those decisions reflect a general, equitable power in bankruptcy courts to **[*18]** deny exemptions based on a debtor's bad-faith conduct. For the reasons we have given, the Bankruptcy Code admits no such power. It is of course true that when a debtor claims a *state-created* exemption, the exemption's scope is determined by state law, which may provide that certain types of debtor misconduct warrant denial of the exemption. *E.g.*, In re Sholdan, 217 F. 3d 1006, 1008 (CA8 2000); see 4 Collier on Bankruptcy ¶522.08[1]-[2], at 522-45 to 522-47. Some of the early decisions on which Siegel relies, and which the Fifth Circuit cited in *Stewart*, are instances in which federal courts applied state law to disallow state-created exemptions. See In re Denson, 195 F. 857, 858 (ND Ala. 1912); Cowan v. Burchfield, 180 F. 614, 619 (ND Ala. 1910); In re Ansley Bros., 153 F. 983, 984 (EDNC 1907). ***HN10*** But *federal law* provides no authority for bankruptcy courts to deny an exemption on a ground not specified in the Code.

C

Our decision in *Marrama* v. *Citizens Bank*, on which Siegel and the United States heavily rely, does not point toward a different result. The question there was whether a debtor's bad-faith conduct was a valid basis for a bankruptcy court to refuse to convert the debtor's bankruptcy **[*19]** from a liquidation under Chapter 7 to a reorganization under Chapter 13. Although §706(a) of the Code gave the debtor a right to convert the case, §706(d) "expressly conditioned" that right on the debtor's "ability to qualify as a 'debtor' under Chapter 13." 549 U. S., at 372, 127 S. Ct. 1105, 166 L. Ed. 2d 956. And

§1307(c) provided that a proceeding under Chapter 13 could be dismissed or converted to a Chapter 7 proceeding "for cause," which the Court interpreted to authorize dismissal or conversion for bad-faith conduct. In light of §1307(c), the Court held that the debtor's bad faith could stop him from qualifying as a debtor under Chapter 13, thus preventing him from satisfying §706(d)'s *express condition* on conversion. *Id.*, at 372-373, 127 S. Ct. 1105, 166 L. Ed. 2d 956. That holding has no relevance here, since no one suggests that Law failed to satisfy any express statutory condition on his claiming of the homestead exemption.

True, the Court in *Marrama* also opined that the Bankruptcy Court's refusal to convert the case was authorized under §105(a) and might have been authorized under the court's inherent powers. *Id.*, at 375-376, 127 S. Ct. 1105, 166 L. Ed. 2d 956. But even that dictum does not support Siegel's position. In *Marrama*, the Court reasoned that if the case had been converted **[*20]** to Chapter 13, §1307(c) would have required it to be either dismissed or reconverted to Chapter 7 in light of the debtor's bad faith. Therefore, the Court suggested, even if the Bankruptcy Court's refusal to convert the case had not been expressly authorized by §706(d), that action could have been justified as a way of providing a "prompt, rather than a delayed, ruling on [the debtor's] unmeritorious attempt to qualify" under §1307(c). *Id.*, at 376, 127 S. Ct. 1105, 166 L. Ed. 2d 956. At most, *Marrama*'s dictum suggests that in some circumstances a bankruptcy court may be authorized to dispense with futile procedural niceties in order to reach more expeditiously an end result required by the Code. *Marrama* most certainly did not endorse, even in dictum, the view that equitable considerations permit a bankruptcy court to contravene express provisions of the Code.

D

We acknowledge that our ruling forces Siegel to shoulder a heavy financial burden resulting from Law's egregious misconduct, and that it may produce inequitable results for trustees and creditors in other cases. We have recognized, however, that in crafting the provisions of §522, "Congress balanced the difficult choices that exemption limits impose on debtors with **[*21]** the economic harm that exemptions visit on creditors." *Schwab* v. *Reilly*, 560 U. S. 770, 791, 130 S. Ct. 2652, 177 L. Ed. 2d 234 (2010). The same can be said of the limits imposed on recovery of administrative expenses by trustees. For the reasons we have explained, it is not for courts to alter the balance struck by the statute. Cf. *Guidry* v. *Sheet Metal Workers Nat. Pension Fund*, 493 U. S. 365, 376-377, 110 S. Ct. 680, 107 L. Ed. 2d 782 (1990).

***

Our decision today does not denude bankruptcy courts of the essential "authority to respond to debtor misconduct with meaningful sanctions." Brief for United States as *Amicus Curiae* 17. There is ample authority to deny the dishonest debtor a discharge. See §727(a)(2)-(6). (That sanction lacks bite here, since by reason of a postpetition settlement between Siegel and Law's major creditor, Law has no debts left to discharge; but that will not often be the case.) In addition, *Federal Rule of Bankruptcy Procedure 9011*—bankruptcy's analogue to Civil *Rule 11*—authorizes the court to impose sanctions for bad-faith litigation conduct, which may include "an order directing payment. . . of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation." **[*22]** *Fed. Rule Bkrtcy. Proc. 9011(c)(2)*. The court may also possess further sanctioning authority under either §105(a) or its inherent powers. Cf. *Chambers*, 501 U. S., at 45-49, 111 S. Ct. 2123, 115 L. Ed. 2d 27. And because it arises postpetition, a bankruptcy court's monetary sanction survives the bankruptcy case and is thereafter enforceable through the normal procedures for collecting money judgments. See §727(b). Fraudulent conduct in a bankruptcy case may also subject a debtor to criminal prosecution under *18 U. S. C. §152*, which carries a maximum penalty of five years' imprisonment.

But whatever other sanctions a bankruptcy court may impose on a dishonest debtor, it may not contravene express provisions of the Bankruptcy Code by ordering that the debtor's exempt property be used to pay debts and expenses for which that property is not liable under the Code.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Dale v. Maney (In re Dale), 2014 Bankr. LEXIS 495
(B.A.P. 9th Cir. Feb. 5, 2014)

Dale v. Maney (In re Dale)

United States Bankruptcy Appellate Panel for the Ninth Circuit
January 23, 2014, Argued and Submitted at Tempe, Arizona; February 5, 2014, Filed
BAP No. AZ-13-1251-DPaKu, Bk. No. 3:11-bk-30579-GBN

Reporter: 2014 Bankr. LEXIS 495

In re: ROBERT G. DALE, JR. and KATHY ANN DALE, Debtors.ROBERT G. DALE, JR.; KATHY ANN DALE, Appellants, v. EDWARD J. MANEY, Chapter 13 Trustee, Appellee.

Prior History: **[*1]** Appeal from the United States Bankruptcy Court for the District of Arizona. Honorable Sarah S. Curley, Bankruptcy Judge, Presiding.[1]

Core Terms

inheritance, convert, bankrupt estate, temporal, bankruptcy court, confirm, kind of property

Case Summary

Overview

ISSUE: Did the bankruptcy court (BC) err as a matter of law in determining that an inheritance received by a chapter 13 debtor more than 180 days after the petition date, but before a plan was confirmed and before the chapter 13 case was closed, dismissed, or converted was an asset of the bankruptcy estate? HOLDINGS: [1]-The statutes' plain language manifests Congress's intent to expand the estate for Chapter 13 purposes by capturing the types, or ″kind,″ of property described in *11 U.S.C.S. § 541* (such as bequests, devises, and inheritances), but not the 180-day temporal restriction, *11 U.S.C.S. § 1306(a)*; [2]-This is because the kind of property is a distinct concept from the time at which the debtor's interest in the property was acquired. And on its face, *§ 1306(a)* incorporates only the kind of property described in *§ 541* into its expanded temporal framework; [3]-The BC did not err.

Outcome

The bankruptcy court's determination was affirmed.

LexisNexis® Headnotes

Bankruptcy Law > ... > Judicial Review > Standards of Review > De Novo Standard of Review

HN1 An appellate court reviews a bankruptcy court's legal conclusions, including its interpretation of provisions of the Bankruptcy Code, de novo. De novo review requires that it consider a matter anew, as if no decision had been rendered previously.

Governments > Legislation > Interpretation

HN2 The starting point in discerning congressional intent is the existing statutory text. It is well established that when the statute's language is plain, the sole function of the courts--at least where the disposition required by the text is not absurd--is to enforce it according to its terms.

Bankruptcy Law > Estate Property > Contents of Estate

HN3 See *11 U.S.C.S. § 541(a)(5)*.

Bankruptcy Law > Individuals With Regular Income > Estate Property

HN4 See *11 U.S.C.S. § 1306(a)(1)*.

Bankruptcy Law > Estate Property > Contents of Estate

Bankruptcy Law > Individuals With Regular Income > Estate Property

HN5 Congress has harmonized *11 U.S.C.S. §§ 541(a)(5)*, *1306(a)*. With *§ 541*, Congress established a general definition for bankruptcy estates. With *§ 1306*, it then expanded on that definition specifically for purposes of Chapter 13 cases. Thus, *§ 1306* broadens the definition of property of the estate for chapter 13 purposes to include all property acquired and all earnings from services performed by the debtor after the commencement of the case. The statutes' plain language manifests Congress 's intent to expand the estate for Chapter 13 purposes by capturing the types, or ″kind,″ of property described in *§ 541* (such as bequests, devises, and inheritances), but not the 180-day temporal restriction. *11 U.S.C.S. § 1306(a)*. This is because the kind of property is a distinct concept from the time at which the debtor's interest in the property was acquired. And on its face, *§ 1306(a)* incorporates only the kind of property described in *§ 541* into its expanded temporal framework.

Bankruptcy Law > Estate Property > Contents of Estate

Bankruptcy Law > Individuals With Regular Income > Estate Property

[1] Although the subject case was assigned originally to the Hon. George B. Nielsen, Jr., Judge Curley presided over the proceedings at issue in this appeal.

HN6 In a Chapter 13 case, *11 U.S.C.S. § 1306(a)(1)* would appear to extend the 180-day period in *11 U.S.C.S. § 541(a)(5)* to include the period between commencement of the chapter 13 case and the time the case is closed, dismissed or converted.

Bankruptcy Law > Estate Property > Contents of Estate

Bankruptcy Law > Individuals With Regular Income > Estate Property

HN7 While recognizing that courts should give effect to every word of a statute whenever possible, the U.S. Court of Appeals for the Fourth Circuit concluded that application of that principle required that inheritances received by chapter 13 debtors more than 180 days after the petition date but before the chapter 13 case was closed, dismissed or converted be included as estate property. If *11 U.S.C.S. § 541*'s 180-day rule restricts what is included in a Chapter 13 estate, then *11 U.S.C.S. § 1306(a)*, which expands the temporal restriction for Chapter 13 purposes, loses all meaning. By contrast, neither statute is rendered superfluous, and both are given effect, if *§ 1306(a)*'s extended timing applies to Chapter 13 estates and supplements *§ 541* with property acquired before the Chapter 13 case is closed, dismissed, or converted. *Section 1306(a)* is specific to Chapter 13 bankruptcies and defines estates solely for purposes of that reorganization chapter. *Section 541*, by contrast, is a general provision that provides generic contours for bankruptcy estates.

Counsel: Pernell McGuire, Esq. argued for Appellants Robert and Kathy Dale; Andrew M. Dudley, Esq. argued for Appellee Edward J. Maney, Chapter 13 Trustee.

Judges: Before: DUNN, PAPPAS, and KURTZ, Bankruptcy Judges.

Opinion by: DUNN

Opinion

DUNN, Bankruptcy Judge:

Debtors Robert and Kathy Dale appeal the bankruptcy court's determination that an inheritance Mr. Dale received from his mother more than 180 days following the petition date but prior to confirmation of a plan in the Dales' chapter 13[2] case was an asset of their bankruptcy estate. We AFFIRM.

FACTUAL BACKGROUND

The relevant facts in this appeal are straightforward and undisputed.

The Dales filed their chapter 13 petition on October 31, 2011. To date, no plan has been confirmed in their chapter 13 case. On August 11, 2012, more than 180 days following the petition date, **[*2]** Mr. Dale's mother passed away, entitling him to an inheritance of approximately $30,000 ("Inheritance"). On December 13, 2012, the Dales filed a declaration with the bankruptcy court disclosing the Inheritance.

The chapter 13 trustee Edward J. Maney ("Trustee") demanded that the Dales turn over the Inheritance funds to the Trustee for distribution to their creditors. On January 9, 2013, the Trustee filed a motion to dismiss the Dales' chapter 13 case, as payments under their proposed plan were delinquent. The Dales responded on January 14, 2013, with an "Amended Motion for Moratorium," proposing that they would make the remaining payments under their plan using $10,000 in unspent funds from the Inheritance. On the same date, the Trustee filed an amended motion to dismiss ("Amended Motion"), arguing that the Dales' chapter 13 case should be dismissed because the Dales 1) had failed to comply with the Trustee's recommendations; 2) had failed to disclose and turn over the nonexempt Inheritance proceeds; and 3) were still delinquent on plan payments. In their response to the Amended Motion, the Dales asserted that their case should not be dismissed because the postpetition Inheritance proceeds **[*3]** were not property of their bankruptcy estate, and even if they were, the Dales merely would be required to account for them in a "Chapter 7 reconciliation" rather than being required to turn over the entire Inheritance proceeds for distribution to their creditors.

After hearing argument on the Amended Motion, the bankruptcy court announced its findings and conclusions orally, deciding that an inheritance received by a chapter 13 debtor before the case is closed, dismissed or converted is property of the bankruptcy estate under *§ 1306*. On May 15, 2013, the bankruptcy court entered an order consistent with its oral findings and conclusions, determining that the Inheritance proceeds were property of the Dales' bankruptcy estate and requiring the Dales either 1) to turn over the entire amount of the Inheritance to the Trustee for distribution to their creditors, or 2) to amend their chapter 13 plan to provide for distributions to their creditors in an amount, accounting for the Inheritance, sufficient to satisfy the "best interests of creditors" test, as required under *§ 1325(a)(4)*. The Dales timely appealed.

JURISDICTION

The bankruptcy court had jurisdiction under *28 U.S.C. §§ 1334* and *157(b)(1)* **[*4]** and *(b)(2)(A)*, *(E)*, *(L)* and *(O)*. We have jurisdiction under *28 U.S.C. § 158*.

ISSUE

[2] Unless otherwise indicated, all chapter and section references are to the federal Bankruptcy Code, 11 U.S.C. §§ 101-1532.

Did the bankruptcy court err as a matter of law in determining that an inheritance received by a chapter 13 debtor more than 180 days after the petition date, but before a plan was confirmed and before the chapter 13 case was closed, dismissed or converted was an asset of the bankruptcy estate?

STANDARDS OF REVIEW

HN1 We review a bankruptcy court's legal conclusions, including its interpretation of provisions of the Bankruptcy Code, de novo. *Roberts v. Erhard (In re Roberts)*, 331 B.R. 876, 880 (9th Cir. BAP 2005), aff'd, *241 F. App'x 420 (9th Cir. 2007)*. De novo review requires that we consider a matter anew, as if no decision had been rendered previously. *United States v. Silverman*, 861 F.2d 571, 576 (9th Cir. 1988); *B-Real, LLC v. Chaussee (In re Chaussee)*, 399 B.R. 225, 229 (9th Cir. BAP 2008).

DISCUSSION

This appeal concerns the interpretation of two subsections of the *Bankruptcy Code, §§ 541(a)(5)(A)* and *1306(a)(1)*.[3] As stated by the Supreme Court in Lamie v. U.S. Trustee,

> ***HN2*** The starting point in discerning congressional intent is the existing statutory text, see *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438, 119 S. Ct. 755, 142 L. Ed. 2d 881 (1999), **[*5]** . . . It is well established that "when the statute's language is plain, the sole function of the courts — at least where the disposition required by the text is not absurd — is to enforce it according to its terms."

Lamie v. U.S. Tr., 540 U.S. 526, 534, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004) (citations omitted).

Section 541(a)(5) provides in relevant part:

> ***HN3*** (a) The commencement of a case under . . . this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> . . . .
>
> (5) Any interest in property **[*6]** that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date —
>
> (A) by bequest, devise, or inheritance; . . . .

(Emphasis added.)

Section 1306(a)(1) provides:

> ***HN4*** (a) Property of the estate includes, in addition to the property specified in *section 541* of this title
>
> (1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first[.]

(Emphasis added.)

The Dales argue that in spite of the fact that *§ 1306(a)(1)* refers only to "property of the kind" specified in *§ 541*, without referring to any time limitation other than the date that a case is "closed, dismissed, or converted," it makes no sense to consider property of the "kinds" specified in *§ 541* without considering its exclusions as well, including the 180-day postpetition limit on inclusion of inheritances. The Fourth Circuit recently considered the interplay between *§§ 541(a)(5)(A)* and *1306(a)(1)* **[*7]** in a similar context and came to the opposite conclusion:

> ***HN5*** Congress has harmonized *[§§ 541(a)(5)* and *1306(a)*] for us. With *Section 541*, Congress established a general definition for bankruptcy estates. With *Section 1306*, it then expanded on that definition specifically for purposes of Chapter 13 cases. Thus, "*Section 1306* broadens the definition of property of the estate for chapter 13 purposes to include all property acquired and all earnings from services performed by the

[3] The Dales argue that analysis of § 1327(b) also is 3 appropriate to provide context for our consideration of § 1306(a), citing California Franchise Tax Board v. Jones (In re Jones), 420 B.R. 506 (9th Cir. BAP 2009), aff'd, 657 F.3d 921 (9th Cir. 2011). Section 1327(b) provides that, "Except as otherwise provided in the [chapter 13] plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor." Since no plan has been confirmed in the Dales' chapter 13 case, we, like the bankruptcy court, do not consider § 1327(b) or the analysis in In re Jones relevant or applicable to disposition of the issue in this appeal.

> debtor after the commencement of the case." S. Rep. No. 95-989, at 140-41 (1978).
>
> The statutes' plain language manifests Congress's intent to expand the estate for Chapter 13 purposes by capturing the types, or "kind," of property described in *Section 541* (such as bequests, devises, and inheritances), but not the 180-day temporal restriction. *11 U.S.C. § 1306(a)*. This is because "[t]he kind of property is a distinct concept from the time at which the debtor's interest in the property was acquired." *In re Tinney*, 07-42020-JJR13, 2012 Bankr. LEXIS 3092, 2012 WL 2742457, at *2 (Bankr. N.D. Ala. July 9, 2012). And on its face, *Section 1306(a)* incorporates only the kind of property described in *Section 541* into its expanded temporal framework.

Carroll v. Logan, 735 F.3d 147, 150 (4th Cir. 2013).

The **[*8]** Fourth Circuit's decision in Carroll v. Logan is consistent with the great weight of authority interpreting the application of *§ 1306(a)(1)* with respect to postpetition inheritances in chapter 13, explicitly considering the temporal exclusion included in *§ 541(a)(5)*. See, e.g., *Vannordstrand v. Hamilton (In re Vannordstrand)*, 356 B.R. 788, 2007 WL 283076 (10th Cir. BAP 2007) (unpublished); *In re Tinney*, No. 07-42020-JJR13, 2012 Bankr. LEXIS 3092, 2012 WL 2742457, at *1 (Bankr. N.D. Ala. July 9, 2012) ("Whether the Court should grant the Trustee's motion simply boils down to whether the temporal language in *§ 1306* — 'after commencement of the case but before the case is closed, dismissed, or converted' — expands the 180-day time period in *§ 541(a)(5)(A)*; the Court finds that by its plain language *§ 1306* does just that."); *Geddes v. Watson (In re Watson)*, No. 12-80006, 2012 Bankr. LEXIS 2635, 2012 WL 2120530 (Bankr. N.D. Ala. June 11, 2012); *In re Zeitchik*, No. 09-05821-8-JRL, 2011 Bankr. LEXIS 4588, 2011 WL 5909279 (Bankr. E.D.N.C. Sept. 23, 2011); *In re Jackson*, 403 B.R. 95, 98 (Bankr. D. Idaho 2009); *Moser v. Mullican (In re Mullican)*, 417 B.R. 389 (Bankr. E.D. Tex. 2008); *In re Nott*, 269 B.R. 250 (Bankr. M.D. Fla. 2000); and *In re Euerle*, 70 B.R. 72 (Bankr. D.N.H. 1987). **[*9]** See also Keith M. Lundin, 1 Chapter 13 Bankruptcy ¶ 47.2 (3d ed. 2007-1) (***HN6*** "In a Chapter 13 case, *§ 1306(a)(1)* would appear to extend the 180-day period in *§ 541(a)(5)* to include the period between commencement of the chapter 13 case and the time the case is closed, dismissed or converted.").

The Fourth Circuit explicitly considered and rejected in Carroll v. Logan two of the statutory construction arguments made by the Dales in this appeal: 1) that courts "must give effect to every word of a statute," and 2) that "specific language in a statute governs general language." *735 F.3d at 152*. ***HN7*** While recognizing that "courts should give effect to every word of a statute whenever possible," id., the Fourth Circuit concluded that application of that principle required that inheritances received by chapter 13 debtors more than 180 days after the petition date but before the chapter 13 case was closed, dismissed or converted be included as estate property.

> [I]f *Section 541*'s 180-day rule restricts what is included in a Chapter 13 estate, then *Section 1306(a)*, which expands the temporal restriction for Chapter 13 purposes, loses all meaning. By contrast, neither statute is rendered superfluous, **[*10]** and both are given effect, if *Section 1306(a)*'s extended timing applies to Chapter 13 estates and supplements *Section 541* with property acquired before the Chapter 13 case is closed, dismissed, or converted.

Id.

The Fourth Circuit further concluded that the canon of construction that the specific controls the general did not help the chapter 13 debtor appellants before them. Specifically, they rejected the contention that *§ 541(a)(5)* was a specific provision while *§ 1306(a)* was general.

> *Section 1306(a)* is specific to Chapter 13 bankruptcies and defines estates solely for purposes of that reorganization chapter. *Section 541*, by contrast, is a general provision that provides generic contours for bankruptcy estates.

Id.

The Dales cite primarily three bankruptcy court decisions from the Eleventh Circuit in support of their arguments that an inheritance received by a chapter 13 debtor(s) more than 180 days after the petition date is not bankruptcy estate property.[4] See *In re Key*, 465 B.R.

[4] The Dales further cite the Fourth Circuit's decision in McLean v. Cent. States, Se. & Sw. Areas Pension Fund, 762 F.2d 1204, 1206 (4th Cir. 1985), as general support for their statutory construction arguments. Obviously, the McLean decision is preempted in this context by the Fourth Circuit's more recent, directly applicable decision in Carroll **[*12]** v. Logan.

709 (Bankr. S.D. Ga. 2012); *Le v. Walsh (In re Walsh)*, No. 07-60774, 2011 Bankr. LEXIS 2602, 2011 WL 2621018 (Bankr. S.D. Ga. June 15, 2011); and *In re Schlottman*, 319 B.R. 23 (Bankr. M.D. Fla. 2004). We are unpersuaded by the analyses **[*11]** of these bankruptcy cases and in any event, we question their viability in light of the Eleventh Circuit's decision in *Waldron v. Brown (In re Waldron)*, 536 F.3d 1239 (11th Cir. 2008). In In re Waldron, the Eleventh Circuit held that a chapter 13 debtor's claims for underinsured-motorist benefits that arose following confirmation of the chapter 13 plan were estate property pursuant to *§ 1306(a)* as a matter of plain language interpretation, in spite of the vesting of estate property in the debtor following confirmation under *§ 1327(b)*. *Id.* at 1242. The Eleventh Circuit cited *In re Nott*, 269 B.R. at 257-58, which held that an inheritance received by a chapter 13 debtor more than 180 days after the petition date and after confirmation of the chapter 13 plan was property of the estate, as consistent with its conclusion. *In re Waldron*, 536 F.3d at 1243.

Ultimately, we agree with the analysis of the Fourth Circuit in Carroll v. Logan, and we conclude that the bankruptcy court did not err in determining that an inheritance received by chapter 13 debtors more than 180 days following the petition date but before confirmation of a chapter 13 plan and before the case is closed, dismissed or converted is property of the debtors' bankruptcy estate.

CONCLUSION

For the foregoing reasons, we AFFIRM.

In re Pursley, 2014 Bankr. LEXIS 314, 2014 WL 293557
(Bankr. N.D. Ohio Jan. 23, 2014)

In re Pursley

United States Bankruptcy Court for the Northern District of Ohio, Eastern Division
January 23, 2014, Decided
CHAPTER 13, CASE NO. 13-61707

Reporter: 2014 Bankr. LEXIS 314; 2014 WL 293557

IN RE: STEVEN WAYNE PURSLEY AND DIANA LYNN PURSLEY, Debtors.
Notice: NOT FOR PUBLICATION

Core Terms

exempt, law, debtor, statute, homestead, bankruptcy, property, debts, effective date, date, creditors, state law, amount, retroactive, remedial, claims, filed, accrue, impair, homestead exemption, conflict, nature, protect, opt out, current, policy, constitutional, bankruptcy code, language, adopted

Case Summary

Overview
HOLDINGS: [1]-Debtors who declared Chapter 13 bankruptcy after the March 27, 2013, effective date of legislation which raised Ohio's homestead exemption from $20,200 to $125,000 per person, were allowed to claim the full amount of the exemption to protect equity they had in a home they owned, even though the increase affected creditors who extended credit to the debtors before March 27, 2013; [2]-The plain language of *11 U.S.C.S. § 522(b)* and Ohio case law pertaining to prior changes in exemption law supported the position that the debtors were eligible to claim the amount of the exemption that applied on the date they filed their bankruptcy petition, and a provision in H.B. 479, Gen. Assem. (Ohio 2012) which suggested otherwise was uncodified and was preempted by the Bankruptcy Code.
Outcome
The court denied the bankruptcy trustee's objection to the amount of the debtors' homestead exemption claim.

LexisNexis® Headnotes

Real Property Law > Exemptions & Immunities > Homestead Exemptions

HN1 The Ohio Legislature, in H.B. 479, Gen. Assem. (Ohio 2012), increased the homestead exemption to $125,000 per person, with an effective date of March 27, 2013, from a prior amount of $20,200.

Bankruptcy Law > Exemptions > General Overview

Bankruptcy Law > Exemptions > Bankruptcy Code Exemptions

Bankruptcy Law > Exemptions > State Law Exemptions > Opt Out Powers

Constitutional Law > Supremacy Clause > Federal Preemption

HN2 An exemption allows a debtor to protect certain property in the bankruptcy process by moving that property beyond the reach of most creditors. Both Ohio and the Bankruptcy Code have created their own exemption regimes, often with differing categories and amounts. While federal law is normally superior to conflicting state law, U.S. Const. art. VI, cl. 2, the Bankruptcy Code defers to state law in the realm of exemptions, specifically allowing a state to ″opt-out″ of the federal exemptions listed in *11 U.S.C.S. § 522(d)*. *11 U.S.C.S. § 522(b)*. Ohio has opted out, only allowing a debtor domiciled in Ohio to take the Ohio exemptions. *Ohio Rev. Code Ann. § 2329.662*.

Real Property Law > Exemptions & Immunities > Homestead Exemptions

HN3 Ohio's current homestead law allows a debtor to exempt his interest, not to exceed $125,000, in one parcel or item of real or personal property that the person or a dependent of the person uses as a residence. *Ohio Rev. Code Ann. § 2329.66(A)(1)(b)*. Ohio 's prior homestead law, adopted by the Ohio General Assembly in 2008, allowed an exemption of $20,200. The current homestead law and the previous homestead law are both indexed for inflation. *Ohio Rev. Code Ann. § 2329.66(B)*. When the Ohio Legislature adopted the current homestead law, § 3 of the adopting legislation stated that the amendments the act made to *Ohio Rev. Code Ann. §§ 2329.66* and *2329.661* applied to claims accruing on or after the effective date of the act, and that the act was not intended to impair any secured or unsecured creditors' claims that accrued prior to the effective date of the act. H.B. 479, § 3, Gen. Assem. (Ohio 2012). While § 3 appears to limit the current homestead law to claims accruing after its effective date, § 3 is ″uncodified law.″

Governments > Legislation > Types of Statutes

HN4 In Ohio , ″uncodified law″ is law of a special nature that has a limited duration or operation and is not

assigned a permanent Ohio Revised Code section number. Especially important is that uncodified law does not appear in the codified Ohio Revised Code. The purpose of codification is to put all of the laws and regulations in one place to allow for an individual to easily find all of the relevant law. If an individual is required to look to both the codified law and the original statutory text, legal research becomes considerably more difficult, time consuming, and uncertain. However, uncodified law is part of the law of Ohio .

Bankruptcy Law > Exemptions > General Overview

Civil Procedure > Judgments > Enforcement & Execution > Exemptions From Execution

HN5 Exemptions allow a debtor to remove specific property from his bankruptcy estate (therefore protecting it from his creditors) for the debtor's own benefit. In other words, an exemption is a privilege allowed by law to a judgment debtor, by which he may retain property to a certain amount or certain classes of property, free from all liability to levy and sale on execution, attachment, or bankruptcy. Once property is deemed exempt, it is ″immunized against liability,″ unless the debt falls within an exception listed within *11 U.S.C.S. § 522(c)*. Exemptions have often been controversial, as exemptions spark accusations that debtors are shielding property from debts they can afford to pay. The policy behind exemptions is to protect a debtor from his creditors, to provide him with the necessities of life so that even if his creditors levy on all of his nonexempt property, the debtor will not be left destitute and a public charge. Exemptions also cause a rift between parties favoring state rights, who favor the traditional state legislative prerogative to adjust exemptions to local economic conditions, and parties favoring federal power, who are interested in national uniformity in exemption amounts based on conceptions of national equity.

Bankruptcy Law > Exemptions > State Law Exemptions > Election of Exemptions

Bankruptcy Law > Exemptions > State Law Exemptions > Opt Out Powers

Constitutional Law > Congressional Duties & Powers > Bankruptcy Clause

HN6 The United States Constitution gives Congress the power to establish uniform laws on the subject of bankruptcies throughout the United States . *U.S. Const. art. I, § 8, cl. 4*. While the Constitution gives Congress expansive bankruptcy power, in light of competing state and federal interests, the Bankruptcy Code gives states three options for the application of exemptions: (1) only allow a debtor to use the Bankruptcy Code exemptions listed in *11 U.S.C.S. § 522(d)*; (2) only allow a debtor to exempt property under state law (in Ohio , found within *Ohio Rev. Code Ann. § 2329.66*); or (3) allow a debtor to choose between options (1) and (2). *11 U.S.C.S. § 522(b)*. If a state decides to opt out of the federal exemptions under *§ 522(b)*, the federal exemptions in *§ 522(d)* are no longer applicable. While allowing a state to opt out of the federal exemptions illustrates substantial deference to state law, Congress nevertheless enacted a number of general rules pertaining to exemptions in the other sections of *§ 522* without any statutory indication that the rules were to apply only to the federal exemptions. *11 U.S.C.S. § 522(c)*, *(e)-(f)*. The scope of these ″general rules″ has caused disagreements between bankruptcy courts.

Bankruptcy Law > Exemptions > Claims & Objections

Bankruptcy Law > Exemptions > State Law Exemptions > General Overview

HN7 The plain language of *11 U.S.C.S. § 522(b)* allows a debtor to exempt property under federal law or state or local law that is applicable on the date of the filing of the debtor's bankruptcy petition. Additionally, *Ohio Rev. Code Ann. § 2329.66(D)(1)*, the Ohio Revised Code section setting out the Ohio exemptions, states that exemptions should be determined as of the petition date. Bankruptcy policy also uses the filing date as a guidepost in establishing a party's rights in bankruptcy. The United States Supreme Court has also long favored the petition date as the proper time to measure exemptions.

Bankruptcy Law > Exemptions > State Law Exemptions > Specific Exemptions

Real Property Law > Exemptions & Immunities > Homestead Exemptions

HN8 Ohio case law pertaining to prior changes in exemption law supports the position that Ohio 's current homestead law should be applied as of the date a debtor files his or her bankruptcy petition. The United States Bankruptcy Court for the Northern District of Ohio reached that conclusion in In re Depascale, noting that courts in Ohio have consistently applied bankruptcy exemptions in effect as of the petition date to debts that accrued before the petition date. The court then moved to an analysis of the relevant statutes, noting that both *11 U.S.C.S. § 522(b)(3)(A)* and *Ohio Rev. Code Ann. § 2329.66(D)(1)* suggest that the petition date should be used to determine available exemptions. Based on case history and statutory guidance, the court did not see any impediment to applying the current homestead exemption amount to bankruptcy cases filed on or after March 27, 2013, the effective date of H.B. 479, Gen. Assem. (Ohio 2012). The court then moved to an analysis of H.B. 479, and found that while § 3 of H.B. 479 may appear to be inconsistent with the court's holding, § 3 is uncodified law that conflicts with the plain language of *Ohio Rev. Code Ann. § 2329.66*, is

internally nonsensical, and is therefore inapplicable. The United States Bankruptcy Court for the Northern District of Ohio, Eastern Division , agrees with the reasoning of In re Depascale.

Bankruptcy Law > Exemptions > Claims & Objections

HN9 The plain language of *11 U.S.C.S. § 522(b)(3)(A)* and *Ohio Rev. Code Ann. § 2329.66(D)(1)*, bankruptcy policy, and case law support the position that exemptions should be determined as of the date a debtor files a bankruptcy petition.

Bankruptcy Law > Exemptions > State Law Exemptions > Opt Out Powers

HN10 In a showing of deference to state interests, the Bankruptcy Code gives states the ability to opt out of the federal exemptions and create their own exemptions. However, courts have not always been consistent in the scope of the Code's grant of authority to the states in the field of exemptions.

Bankruptcy Law > Exemptions > Bankruptcy Code Exemptions

HN11 *11 U.S.C.S. § 522(c)* provides that property exempted under *§ 522* is not liable during or after a debtor's bankruptcy case for any debt of the debtor that arose before the commencement of the case, with certain exceptions. The clear wording of *§ 522(c)* protects most exempt property from pre-bankruptcy debts. In essence, *§ 522(c)* establishes the post-bankruptcy relationships between exempt property and debts that arose before the commencement of a bankruptcy case.

Bankruptcy Law > Exemptions > State Law Exemptions > Election of Exemptions

Bankruptcy Law > Exemptions > State Law Exemptions > Opt Out Powers

HN12 In Owen v. Owen, the United States Supreme Court determined that opt-out states and states that allow a debtor to choose the federal exemptions should be treated the same, as nothing in the text of *11 U.S.C.S. § 522(f)* remotely justifies treating the two categories of exemptions differently. The Court found that *§ 522(f)* refers to the impairment of exemptions to which a debtor would have been entitled under *§ 522(b)*, and that includes federal exemptions and state exemptions alike. The Court also rejected as ″plainly not true″ the argument that because Congress allows a state to create its own exemptions, courts must apply the exemptions with all of their ″built-in limitations.″ The Court illustrated this point by noting that a state exemption that is available ″unless waived″ will be given full effect, even if a debtor actually waived the exemption. *11 U.S.C.S. § 522(e)-(f)*. The Court concluded by noting that the ″opt out″ policy is not absolute, but must be applied along with whatever other competing or limiting policies the statute contains.

Bankruptcy Law > Exemptions > Bankruptcy Code Exemptions

Bankruptcy Law > Exemptions > State Law Exemptions > Opt Out Powers

Constitutional Law > Supremacy Clause > Federal Preemption

HN13 While the United States Supreme Court's decision in Owen v. Owen helped to settle the issue of whether states are allowed to adopt laws which conflict with the Bankruptcy Code, courts still remain split over the applicability of *11 U.S.C.S. § 522*, with most courts coming down in one of two camps. Some courts have decided that because Congress delegated the authority to create exemptions to the states under *§ 522(b)*, the states have broad authority with respect to exemptions, even if the state law contradicts the Bankruptcy Code. In contrast, the majority of courts, as well as most courts that have recently addressed the issue, have decided that states may define the ″nature and amount″ of their exemptions, but that state exemptions cannot supplement or contradict the Bankruptcy Code. The United States Bankruptcy Court for the Northern District of Ohio, Eastern Division, agrees with the majority position: states may define the nature and amount of their exemptions as allowed by *§ 522(b)*, but the other portions of *§ 522*, except for *§ 522(d)*, remain applicable. The language of *§ 522* supports this conclusion.

Bankruptcy Law > Exemptions > Bankruptcy Code Exemptions

Bankruptcy Law > Exemptions > State Law Exemptions > Opt Out Powers

HN14 *11 U.S.C.S. § 522(b)* allows a state to ″opt out″ of the federal exemptions listed in *§ 522(d)*, unless state law that is applicable to a debtor under *§ 522(b)(3)(A)* specifically does not so authorize. While *§ 522(b)* allows a state to opt out of *§ 522(d)*, it does not mention a state's ability to opt out of the remainder of *§ 522*. Additionally, the section of the Ohio Revised Code which effectuates Ohio 's decision to opt out of the federal exemptions only specifically opts out of *§ 522(d)* and makes no mention of the remaining sections. *Ohio Rev. Code Ann. § 2329.662*; The text of *11 U.S.C.S. § 522(c)* also states that it applies to property exempted under ″this section.″ The use of the word ″section,″ as opposed to ″subsection″ (which is used elsewhere within *§ 522*), suggests that *§ 522(c)* is intended to apply to all of *§ 522*.

Bankruptcy Law > ... > Types of Claims > Secured Claims & Liens > Avoidance & Survival

Bankruptcy Law > Exemptions > State Law Exemptions > Specific Exemptions

Real Property Law > Exemptions & Immunities > Homestead Exemptions

HN15 In In re Depascale, the United States Bankruptcy Court for the Northern District of Ohio analyzed Ohio 's current homestead law and found that debtors who declare bankruptcy after the effective date of the current

homestead law are allowed to claim the full amount of the homestead exemption authorized by the law, even if they incurred debts before the effective date of the law. The court noted the Bankruptcy Code's definition of ″impairment″ in *11 U.S.C.S. § 522(f)* preempts any attempt by the Ohio General Assembly to put forth a different definition. The court first noted that the Bankruptcy Code creates a uniform definition of ″impairment″ in *§ 522(f)(2)(A)* without any reference to conflicting state law provisions. Additionally, *§ 522(b)* requires that property exemptions be determined as of the petition date. Therefore, the requirement that is found in § 3 of H.B. 479, Gen. Assem. (Ohio 2012) that Ohio 's current homestead law should not ″impair any secured or unsecured creditors' claims that accrue prior to the effective date″ is in direct conflict with the Bankruptcy Code's definition of impairment in *§ 522(f)*. The United States Court of Appeals for the Sixth Circuit has taken the same position, noting that the definition of lien ″impairment″ must be determined by reference to *§ 522(f)*, even if state law defines impairment differently.

Bankruptcy Law > Exemptions > Bankruptcy Code Exemptions

Bankruptcy Law > Exemptions > State Law Exemptions > Opt Out Powers

HN16 The United States Supreme Court's decision in Owen v. Owen supports the position that states may define the nature and amount of their exemptions as allowed by *11 U.S.C.S. § 522(b)*, but that the other portions of *§ 522*, except for *§ 522(d)*, remain applicable. In Owen, the Supreme Court noted that there is no basis for pronouncing that *11 U.S.C.S. § 522(b)*'s opt-out policy absolute, but must apply it along with whatever other competing or limiting policies the statute contains. The Court reached a compromise between federal and state interests in adopting the opt-out provision of *§ 522(b)*. However, deference to state interests cannot supersede the ultimate purpose of the Bankruptcy Code, which is to give the honest debtor a fresh start. While Congress allows a state to opt out of the federal exemptions, *§ 522(c)* balances state and local interests, therefore limiting a state's ability to curtail a debtor's fresh start. *11 U.S.C.S. § 522(c)* therefore limits and competes with the opt-out policy found in *§ 522(b)*.

Bankruptcy Law > Exemptions > Bankruptcy Code Exemptions

Bankruptcy Law > Exemptions > State Law Exemptions > Opt Out Powers

Bankruptcy Law > Exemptions > State Law Exemptions > Specific Exemptions

Real Property Law > Exemptions & Immunities > Homestead Exemptions

HN17 While H.B. 479, § 3, Gen. Assem. (Ohio 2012) limits Ohio 's current homestead law's applicability ″to claims accruing on or after the effective date of this act,″ the grant of authority to the states in *11 U.S.C.S. § 522(b)* does not allow a state to pass statutes that conflict with the Bankruptcy Code. Even assuming that § 3 is applicable, its protection of pre-petition debts, a category of debts that is not protected by *§ 522(c)*, conflicts with the Bankruptcy Code.

Bankruptcy Law > Exemptions > Bankruptcy Code Exemptions

Bankruptcy Law > Exemptions > State Law Exemptions > General Overview

Bankruptcy Law > Exemptions > State Law Exemptions > Opt Out Powers

HN18 Even though *11 U.S.C.S. § 522(c)* applies even if a state opts out of the federal exemptions, a recent line of cases discusses whether a debt must fall within a state exemption before *§ 522* becomes applicable. *11 U.S.C.S. § 522(b)(3)(A)* allows debtors to exempt any property that is exempt under state or local law that is applicable on the date of the filing of a debtor's bankruptcy petition. In CFCU Cmty. Credit Union v. Hayward, the United States Court of Appeals for the Second Circuit decided that ″applicable″ within *§ 522(b)* requires that state law apply to a debtor at the time the debtor's bankruptcy petition is filed before the other provisions of *§ 522(c)* become effective. However, other courts, such as the United States Bankruptcy Court for the District of Massachusetts in In re Betz, relying heavily on the United States Supreme Court's decision in Owen v. Owen and the United States Court of Appeals for the First Circuit 's decision in In re Weinstein, have determined that a state exemption available on the petition date is subject to the requirements of *§ 522(c)*, regardless of state law language limiting the scope of the exemption.

Bankruptcy Law > Exemptions > Bankruptcy Code Exemptions

Bankruptcy Law > Exemptions > State Law Exemptions > General Overview

HN19 The United States Bankruptcy Court for the Northern District of Ohio, Eastern Division, agrees with the conclusion reached in In re Depascale and In re Betz that a state exemption that is available on a debtor's petition date is subject to the requirements of *11 U.S.C.S. § 522(c)*, regardless of state law language limiting the scope of the exemption.

Governments > Legislation > Effect & Operation > Retrospective Operation

HN20 The Ohio Supreme Court has adopted a two-step test for determining if a statute should be applied retroactively: (1) as a threshold matter, is the statute ″expressly made″ retroactive; and (2) if the statute is clearly retroactive, is the statute substantive or remedial in nature?

Constitutional Law > State Constitutional Operation

Governments > Legislation > Effect & Operation > Prospective Operation

Governments > Legislation > Effect & Operation > Retrospective Operation

Governments > Legislation > Types of Statutes

Real Property Law > Exemptions & Immunities > Homestead Exemptions

HN21 Ohio's current homestead law is not a traditional retroactive statute. Instead, it is a statute that only applies to cases filed after the effective date (i.e. prospectively), but may still implicate the retroactivity clause of the Ohio Constitution. The constitutional limitation against retroactive laws in Ohio includes a prohibition against laws which commence on the date of enactment and which operate in the future, but which, in doing so, divest rights, particularly property rights, which had been vested anterior to the time of enactment of the laws. While the retroactivity clause bars laws that affect substantive rights, it has no reference to laws of a remedial nature providing rules of practice, courses of procedure, or methods of review. The Supreme Court of Ohio has defined ″remedial″ and ″substantive″ statutes as follows: A statute is ″substantive″ if it impairs or takes away vested rights, affects an accrued substantive right, imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction, or creates a new right. Conversely, remedial laws are those affecting only the remedy provided, and include laws that merely substitute a new or more appropriate remedy for the enforcement of an existing right.

Bankruptcy Law > Exemptions > State Law Exemptions > Specific Exemptions

Constitutional Law > State Constitutional Operation

Governments > Legislation > Effect & Operation > Retrospective Operation

Governments > Legislation > Types of Statutes

Real Property Law > Exemptions & Immunities > Homestead Exemptions

HN22 A statute with retroactive effect will not violate the Ohio Constitution if it impairs a right that does not have a reasonable expectation of finality. A statute designed to correct imperfections or gaps is classified as ″remedial.″ *Ohio Const. art. II, § 28*. Therefore, if a law is found to be remedial, it can be applied to bankruptcy cases commenced after the statute's effective date even if the law alters legal rights accruing before the statute's effective date. Because Ohio 's current homestead law is only applicable to cases filed after March 27, 2013, the law's effective date, as long as the statute is remedial in nature, it is a constitutional enactment by the General Assembly .

Bankruptcy Law > Exemptions > Claims & Objections

Bankruptcy Law > Exemptions > State Law Exemptions > Specific Exemptions

Real Property Law > Exemptions & Immunities > Homestead Exemptions

HN23 Most courts evaluating the constitutionality of changes in exemption laws have found that applying the exemptions in effect as of the petition date to debts acquired before the statute's effective date is not a constitutional violation. Additionally, courts in Ohio , when viewing earlier statutory changes to Ohio homestead exemptions, have not had constitutional problems applying an increased exemption to claims accruing before the new exemption's effective date.

Bankruptcy Law > Exemptions > State Law Exemptions > Specific Exemptions

Governments > Legislation > Effect & Operation > Retrospective Operation

Real Property Law > Exemptions & Immunities > Homestead Exemptions

HN24 The United States Bankruptcy Court for the Northern District of Ohio addressed retroactivity of Ohio 's homestead exemption law in In re Depascale, and concluding that Ohio 's current homestead law should be applied in cases filed after March 27, 2013, the law's effective date, but relating to claims arising before that date. The court did not find a constitutional violation for two reasons. First, because the past practice of Ohio bankruptcy courts was to apply any changes to exemption laws as of the petition date, more is needed to change court precedent than the unclear and ″nonsensical″ language of H.B. 479, § 3, Gen. Assem. (Ohio 2012). Second, the increase to the homestead exemption does not deprive creditors of any substantive rights. Creditors know or should know that the Ohio General Assembly periodically amends the exemption statute and, thus, the amount of the homestead exemption is subject to change. While it is true that any change in the homestead statute can affect a creditor's ability to foreclose on a judgment, a creditor has an obligation to timely and diligently enforce its rights under Ohio law. A creditor's failure to foreclose on a debt before bankruptcy should not deprive a debtor of the homestead exemption amount to which he is otherwise entitled.

Bankruptcy Law > Exemptions > State Law Exemptions > Specific Exemptions

Constitutional Law > State Constitutional Operation

Governments > Legislation > Effect & Operation > Retrospective Operation

Governments > Legislation > Types of Statutes

Real Property Law > Exemptions & Immunities > Homestead Exemptions

HN25 Ohio 's current homestead law is remedial in nature and can be constitutionally applied in bankruptcy cases filed after March 27, 2013, the law's effective date, even to claims accruing before the effective date.

While it is true that changing the homestead exemption may alter the money available to creditors, changing the value of the homestead exemption neither destroys nor eliminates the rights of creditors, but instead only changes the amount. While a creditor may have an existing right to move against a debtor's property, that right also carries a corresponding obligation to assert and enforce that right promptly under the existing statutory provisions. Ohio courts have recognized that a right is not vested if there is a not a reasonable expectation of finality, which is not present in Ohio exemption law as evidenced by numerous statutory changes in amount. Additionally, the reasoning of other courts, both inside and outside of Ohio , which have consistently decided that applying exemptions in effect as of the date a debtor files a bankruptcy petition is not a constitutional violation further strengthens the court's position.

Bankruptcy Law > Exemptions > State Law Exemptions > Specific Exemptions

Constitutional Law > Supremacy Clause > Federal Preemption

Constitutional Law > State Constitutional Operation

Real Property Law > Exemptions & Immunities > Homestead Exemptions

HN26 *11 U.S.C.S. § 522* preempts inconsistent state law. Therefore, H.B. 479, § 3, Gen. Assem. (Ohio 2012) conflicts with *§ 522(b)* and *(c)* and is preempted. Based on the plain language of *§ 522* and *Ohio Rev. Code Ann. § 2329.66*, a debtor's exemptions are those available as of the petition date. Additionally, application of the Ohio's current homestead law to debts a debtor incurred before the debtor declared bankruptcy is not a violation of the Ohio Constitution's prohibition on retroactive legislation.

Counsel: **[*1]** For Steven Wayne Pursley, Diana Lynn Pursley, aka Diana Lynn Robinson-Pursley, Debtors: Nicole L. Rohr, Thrush & Rohr LLC, Canton, OH.
For Toby L Rosen, Trustee: Toby L Rosen trose07, Toby L Rosen trose12, Toby L Rosen, Trustee, Canton, OH.
Judges: Russ Kendig, United States Bankruptcy Judge.
Opinion by: Russ Kendig

Opinion

MEMORANDUM OF OPINION

The issue in the current case is the applicability of a change in the Ohio homestead exemption. Is the exemption the amount in effect when a debt is obtained or when a bankruptcy petition is filed? ***HN1*** The Ohio legislature, in House Bill 479,[1] increased the homestead exemption to $125,000 per person ("Current Homestead"), with an effective date of March 27, 2013 ("Effective Date"), from a prior amount of $20,200.00. In adopting the Current Homestead the Ohio Legislature, in section 3 of House Bill 479 ("Section 3"), stated that the Current Homestead "shall apply to claims accruing on or after the effective date of this act." Steven Wayne Pursley and Diana Lynn Pursley (collectively, "Debtors") filed their bankruptcy petition on July 7, 2013, which is after the Effective Date. However, claims held by a number of unsecured creditors were incurred before the Effective Date. The court **[*2]** must determine if the Current Homestead should apply in a bankruptcy case commenced after the Effective Date, but where a number of creditors have debts that predate the Effective Date.

The court has jurisdiction over this case pursuant to *28 U.S.C. § 1334* and the general order of reference entered in this district on April 4, 2012. Venue in this district and division is proper pursuant to *28 U.S.C. § 1409*. This is a core proceeding under *28 U.S.C. § 157(b)(2)(B)*.

This opinion is not intended for publication or citation. The availability of this opinion, in electronic or printed form, is not the result of a direct submission by the court.

The facts of this case are brief and uncontested. Debtors own real estate in Uniontown, Ohio with an estimated market value of $203,000.00 ("Real Estate"). Two banks hold mortgage liens against the property totaling $54,769.87, leaving approximately $148,200.00 in equity. Debtors have approximately $124,000.00 in unsecured debts, the majority of which were incurred before the Effective Date. Debtors' bankruptcy petition claims a homestead **[*3]** exemption of $265,800.00,[2] sufficient to protect their entire equity in the Real Estate. Toby L. Rosen, the chapter 13 trustee ("Trustee"), objects to Debtors' homestead exemption to the extent that the Current Homestead applies to debts incurred before the Effective Date.

Trustee makes two arguments in support of her position. First, Section 3 of Ohio House Bill 479 states in an uncodified section that "[t]he amendments made by this act . . . shall apply to claims accruing on or after the effective date of this act." According to Trustee, if the court applies the Current Homestead to debts obtained before the Effective Date, the court would be ignoring the intent of the legislature. Second, Trustee believes the Ohio Constitution mandates that the Current Homestead may only impact debts acquired after the Effective Date. Debtors counter by arguing that previous Ohio

[1] H.B. 479, 129th Gen. Assemb. (Ohio 2012), available athttp://www.legislature.state.oh.us/bills.cfm?ID=129_HB_479.

[2] The Current Homestead is indexed for inflation, which explains why Debtors' claimed exemption is larger than $250,000.00.

cases dealing with changes in exemptions have applied the exemptions in effect at the petition date. Debtors also argue that the uncodified language in Section 3 is unclear, is not controlling, and conflicts **[*4]** with the text of the Ohio Revised Code. The court notes the existence of an issue pertaining to the relationship between the bankruptcy code ("the Code") and state exemptions.

Law and Analysis

HN2 An exemption allows a debtor to protect certain property in the bankruptcy process by moving that property beyond the reach of most creditors. *Owen v. Owen*, 500 U.S. 305, 308, 111 S. Ct. 1833, 114 L. Ed. 2d 350 (1991). Both Ohio and the Code have created their own exemption regimes, often with differing categories and amounts. While federal law is normally superior to conflicting state law, U.S. Const. art. VI, cl. 2, the Code defers to state law in the realm of exemptions, specifically allowing a state to "opt-out" of the federal exemptions listed in *§ 522(d)*. *11 U.S.C. § 522(b)*. Ohio has opted out, only allowing a debtor domiciled in Ohio to take the Ohio exemptions. *O.R.C. § 2329.662*.

HN3 The Current Homestead allows a debtor to exempt his interest, "not to exceed one hundred twenty-five thousand dollars [$125,000.00], in one parcel or item of real or personal property that the person or a dependent of the person uses as a residence." *O.R.C. § 2329.66(A)(1)(b)*. The Prior Homestead, adopted by the Ohio General Assembly in 2008, allowed **[*5]** an exemption of $20,200.00. *In re Depascale*, 496 B.R. 860, 866 (Bankr. N.D. Ohio 2013).[3] The Current Homestead and the previous homestead are both indexed for inflation. *O.R.C. § 2329.66(B)*. When the Ohio Legislature adopted the Current Homestead, Section 3 of the adopting legislation stated:

> The amendments made by this act to *sections 2329.66* and *2329.661* of the Revised Code shall apply to claims accruing on or after the effective date of this act . . . . This act is not intended to impair any secured or unsecured creditors' claims that accrue prior to the effective date of this act.

While Section 3 appears to limit the Current Homestead to claims accruing after the Effective Date, Section 3 is "uncodified law." ***HN4*** In Ohio, "uncodified law is law of a special nature that has a limited duration or operation and is not assigned a permanent Ohio Revised Code section number." *Maynard v. Eaton Corp.*, 119 Ohio St. 3d 443, 2008 Ohio 4542, 895 N.E.2d 145, 147 (Ohio 2008). Especially important is that uncodified law does *not* appear in the codified Ohio Revised Code. See *Wa. Envtl Servs., LLC v. Morrow Cnty. Dist. Bd. Of Health*, 2010-Ohio-2322, 2010 WL 2091465 (Ohio Ct. App. 2010). The purpose of codification is to put all of the laws and regulations **[*6]** in one place to allow for an individual to easily find all of the relevant law. *In re McKinnon et al.*, 16 Ohio B. 438, 476 N.E.2d 1101, 1104 (Ohio Ct. Cl. 1984)rev'd on other grounds by *In re Vaughn*, 698 N.E.2d 148 (Ohio Ct. Cl. 1997). If an individual is required to look to both the codified law and the original statutory text, legal research becomes considerably more difficult, time consuming, and uncertain. See id. However, uncodified law is "part of the law of Ohio." *In re Depascale*, 496 B.R. at 870; *Maynard*, 895 N.E.2d at 147.

I. The *Bankruptcy Code § 522* and the Ohio Homestead Exemption

HN5 Exemptions allow a debtor to remove specific property from his bankruptcy estate (therefore protecting it from his creditors) for the debtor's own benefit. *In re Jaber*, 406 B.R. 756, 762 (Bankr. N.D. Ohio 2009). In other words, an exemption "is a privilege allowed by law to a judgment debtor, by which he may retain property to a certain amount or certain classes of property, free from all liability to levy and sale on execution, attachment, or bankruptcy." Black's Law Dictionary 571 (6th ed. **[*7]** 1999). Once property is deemed exempt, it is "immunized against liability," unless the debt falls within an exception listed within *§ 522(c)*. *Owen*, 500 U.S. at 308. Exemptions have often been controversial, as exemptions "spark accusations that debtors are shielding property from debts they can afford to pay." *In re Little*, 2006 Bankr. LEXIS 1010, 2006 WL 1524594, at *3 (Bankr. N.D.N.Y. 2006). The policy behind exemptions are "to protect a debtor from his creditors, to provide him with the necessities of life so that even if his creditors levy on all of his nonexempt property, the debtor will not be left destitute and a public charge." *In re Goodrich*, 7 B.R. 590, 593 (Bankr. S.D. Ohio 1980). Exemptions also cause a rift between parties favoring state rights, "who favor the traditional state legislative prerogative to adjust exemptions to local economic conditions," and parties favoring federal power, who are interested in national uniformity in exemption amounts "based on conceptions of national equity." Id. (quoting *Davis v. Davis (In re Davis)*, 170 F.3d 475, 478 (5th Cir. 1999)).

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[3] Before the increase to $20,200.00, Ohio allowed a homestead exemption of only $5,000.00.In re Depascale, 496 B.R. at 866.

HN6 The United States Constitution gives Congress the power "to establish . . . uniform laws on the subject of bankruptcies throughout **[*8]** the United States." *U.S. Const. art. I, § 8, cl. 4*. While the Constitution gives Congress expansive bankruptcy power, in light of competing state and federal interests, the Code gives states three options for the application of exemptions: (1) only allow a debtor to use the Code exemptions listed in *§ 522(d)*; (2) only allow a debtor to exempt property under state law (in Ohio, found within *O.R.C. § 2329.66*); or (3) allow a debtor to choose between options (1) and (2). *11 U.S.C. § 522(b)*. If a state decides to opt out of the federal exemptions under *§ 522(b)*, the federal exemptions in *§ 522(d)* are no longer applicable. While allowing a state to opt out of the federal exemptions illustrates substantial deference to state law, Congress nevertheless enacted a number of general rules pertaining to exemptions in the other sections of *§ 522* without any statutory indication that the rules were to apply only to the federal exemptions. See *11 U.S.C. § 522(c), (e)—(f)*. The scope of these "general rules" has caused disagreements between bankruptcy courts. See e.g. *Owen v. Owen*, 500 U.S. 305, 111 S. Ct. 1833, 114 L. Ed. 2d 350; *CFCU Cmty. Credit Union v. Hayward*, 552 F.3d 253 (2d Cir. 2009); *Bruin Portfolio, LLC v. Leicht (In re Leicht)*, 222 B.R. 670, 677 (B.A.P. 1st Cir. 1998); **[*9]** *In re Whalen-Griffin*, 206 B.R. 277 (D. Mass. 1997); *In re Scott*, 199 B.R. 586 (Bankr. E.D. Va. 1996); *Marinski v. Firstmark Finance Co. (In re Marinski)*, 9 B.R. 579, 582 (Bankr. N.D. Ohio 1981).

a. The Bankruptcy Code and Ohio Case Law Apply Exemptions as of the Petition Date

HN7 The plain language of *§ 522(b)* allows a debtor to exempt property under "Federal law . . . or State or local law that is applicable on the *date of the filing of the petition*." *In re Pier*, 310 B.R. 347, 354 (Bankr. N.D. Ohio 2004) ("The terms of *§ 522* provide that the petition date establishes whether a debtor is entitled to an exemption"). Additionally, *O.R.C. § 2329.66(D)(1)*, the Ohio Revised Code section setting out the Ohio exemptions, states that exemptions should be determined as of the *petition date*. Bankruptcy policy also uses the filing date "as a guidepost in establishing a party's rights in bankruptcy." *In re Pier*, 310 B.R. at 354. The United States Supreme Court has also long favored the petition date as the proper time to measure exemptions. *White v. Stump*, 266 U.S. 310, 313, 45 S. Ct. 103, 69 L. Ed. 301 (1924) ("When the law speaks of property which is exempt and of rights to exemptions, it of course refers to some point of time. **[*10]** . . . [O]ne common point of time is intended and that is the date of the filing of the petition.").

HN8 Ohio case law pertaining to prior changes in exemption law also supports the position. See, e.g., *In re Jaber*, 406 B.R. 756; *In re Lude*, 291 B.R. 109 (Bankr. S.D. Ohio 2003); *In re Marinski*, 9 B.R. 579. Because the Current Homestead is a relatively new topic in Ohio bankruptcy law, the court was able to locate only one case analyzing the applicability of the Current Homestead. The United States Bankruptcy Court for the Northern District of Ohio in *In re Depascale*, 496 B.R. 860, ultimately concluded that the Current Homestead should be applied as of the petition date. In analyzing the issue, the court first noted that courts in Ohio have consistently applied bankruptcy exemptions in effect as of the petition date to debts that accrued before the petition date. *Id.* at 867—68. The court then moved to an analysis of the relevant statutes, noting that both *§§ 522(b)(3)(A)* and *O.R.C. 2329.66(D)(1)* suggest that the petition date should be used to determine the available exemptions. *Id.* at 869. Therefore, based on case history and statutory guidance, the court "[did] not see any impediment to **[*11]** applying the [Current Homestead] amount to bankruptcy cases filed on or after the effective date of H.B. 479." *Id.* at 868. The court then moved to an analysis of House Bill 479, noting that while Section 3 may appear to be inconsistent with the court's holding, Section 3 is uncodified law that conflicts with the plain language of *O.R.C. § 2329.66*, is internally nonsensical, and is therefore inapplicable. See *id.* at 869—71.

The court agrees with the reasoning of *In re Depascale*. 496 B.R. at 867—68. ***HN9*** The plain language of *§§ 522(b)(3)(A)* and *O.R.C. 2329.66(D)(1)*, bankruptcy policy, and case law support the position that exemptions should be determined as of the *petition date*. However, Section 3 of House Bill 479 states that "[t]he amendments made by [the Current Homestead] shall apply to claims accruing on or after the effective date of this act." If the court assumes that Section 3 is applicable, which is the opposite of the decision in In re Depascale, the Code's requirement that exemptions should be determined as of the petition date would conflict with Section 3. The court must determine which law to apply: federal or state.

b. The Bankruptcy Code Preempts Inconsistent State Law

HN10 In a **[*12]** showing of deference to state interests, the Code gives states the ability to opt out of the federal exemptions and create their own. However, courts have not always been consistent in the scope of the Code's grant of authority to the states in the field of exemptions. For example, does the Code's grant of authority to opt out of *§ 522(d)* allow a state to create exemption laws inconsistent with the other portions of *§ 522*? Compare *In re Davis*, 170 F.3d at 482 (holding

that because Congress gave states discretion under § 522(b), the states are free to "supplement bankruptcy law with respect to exemptions"), and *Clark v. Chicago Mun. Credit Union*, 119 F.3d 540, 544 (7th Cir. 1997) ("Because Illinois has opted out of the federal exemptions, the Illinois scheme of exemptions is allowed to be quite inconsistent with the general goals of the bankruptcy code." (internal quotation marks omitted)), with *Patriot Portfolio v. Weinstein (In re Weinstein)*, 164 F.3d 677 (1st Cir. 1999) ("States may not pass or enforce laws to interfere with or complement [the Code] to provide additional or auxiliary regulations." (quoting *Int'l Shoe Co. v. Pinkus*, 278 U.S. 261, 265, 49 S. Ct. 108, 73 L. Ed. 318 (1929)), and *In re Conyers*, 129 B.R. 470, 472 (Bankr. E.D. Ky. 1991) **[*13]** (holding that "the determination of the types of debts that remain collectible after bankruptcy from exempt property is controlled by federal rather than state law").

The resolution of this issue is determinative. ***HN11*** *Section 522(c)* provides that "property exempted under this section is not liable during or after the case for any debt of the debtor that arose . . . *before the commencement of the case*," except for certain exceptions not applicable in the current case.[4](emphasis added). The clear wording of *§ 522(c)* protects most exempt property from prebankruptcy debts. *In re Leicht*, 222 B.R. at 673. In essence, *§ 522(c)* establishes the post-bankruptcy relationships between exempt property and debts that arose before the commencement of the bankruptcy case. Id. If *§ 522(c)* is applicable, the value of Debtor's homestead exemption is immunized from debts that arose before the commencement of the case. *In re Weinstein*, 164 F.3d 677. Debtors' unsecured debts were incurred before the commencement of the case and are not the types of debts that are exceptions to the protections provided by *§ 522(c)*. Therefore, if *§522(c)* is applicable in the current case, Section 3's mandate that the Current Homestead **[*14]** applies only to debts accruing after the Effective Date conflicts with the Code.

i. *Section 522(c)* **Is Applicable in Bankruptcy**

While the applicability of *§ 522(c)* has not been determined by the Supreme Court, in *Owen*, 500 U.S. 305, 111 S. Ct. 1833, 114 L. Ed. 2d 350, the Court addressed the applicability of *§ 522(f)* once a state opts out of the federal exemptions. While Owen did not center on the applicability of *§ 522(c)*, much of the analysis remains relevant to the current case. In Owen, Florida decided to "opt-out" of the federal exemptions under *§ 522(b)* and adopted a state statute that defined exempt property so judgment liens are immune from Florida exemptions. *Id.* at 307. Because *§ 522(f)* states that a "debtor may avoid the fixing of a lien . . . to the extent that such lien impairs an exemption to which the debtor would have been entitled," the Supreme Court determined that the correct reading of **[*15]** the statute should not ask "whether the lien impairs an exemption to which the debtor is in fact entitled, but whether it impairs an exemption to which he *would have been* entitled but for the lien itself." *Owen*, 500 U.S. at 310—11. The court also analyzed the question of whether states that opt out of the federal exemptions should be subject to *§ 522(f)*. ***HN12*** The court determined that opt-out states and states that allow a debtor to choose the federal exemptions should be treated the same as "[n]othing in the text of *§ 522(f)* remotely justifies treating the two categories of exemptions differently." *Id.* at 313. *Section 522(f)* "refers to the impairment of 'exemption[s] to which the debtor would have been entitled under *subsection (b)*,' and that includes federal exemptions and state exemptions alike." Id. The court also rejected as "plainly not true" the creditor's argument that because Congress allows a state to create its own exemptions, courts must apply the exemptions with all of their "built-in limitations." Id. The court illustrated this point by noting that a state exemption that is available "unless waived" will be given full effect, even if the debtor actually waived the exemption. **[*16]** *11 U.S.C. § 522(e)—(f)*; *Owen*, 500 U.S. at 313. The court concluded by noting that the "opt out" policy is not absolute, but must be applied "along with whatever other competing or limiting policies the statute contains." *Owen*, 500 U.S. at 313.

HN13 While Owen helped to settle the issue, courts still remain split over the applicability of *§ 522*, with most courts coming down in one of two camps. Some courts have decided that because Congress delegated the authority to create exemptions to the states under *§ 522(b)*, the states have broad authority with respect to exemptions, even if the state law contradicts the Code. See *Davis*, 170 F.3d at 482; *Clark*, 119 F.3d at 544. In contrast, the majority of courts, as well as most courts who have recently addressed the issue, have decided that states may define the "nature and amount" of their exemptions, but the state exemptions cannot supplement or contradict the Code. See, e.g., *CFCU*, 552 F.3d 253; *In re Weinstein*, 164 F.3d 677; *In re Depascale*, 496 B.R. at 872—73; *In re Betz*, 273 B.R. 313 (Bankr. D. Mass. 2002).

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[4] Section 522(c) does not protect exemptions from (1) debts for certain taxes and custom duties, (2) domestic support obligations, (3) liens that cannot be avoided, (4) liens that are not void, (5) tax liens, and (6) certain nondischargeable debts owed to federal depository institutions. In re Weinstein, 164 F.3d at 682.

The court agrees with the majority position: States may define the nature and amount of their exemptions as allowed by § 522(b), but the **[*17]** other portions of § 522, except for § 522(d), remain applicable. In re Leicht, 222 B.R. at 677. The language of § 522 supports this conclusion. ***HN14*** Section 522(b) allows a state to "opt out" of the federal exemptions listed in "subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize." While § 522(b) allows a state to opt out of subsection (d), it does not mention a state's ability to opt out of the remainder of § 522. Additionally, the section effectuating the state's decision to opt out of the federal exemptions only specifically opts out of § 522(d) and makes no mention of the remaining sections. O.R.C. § 2329.662; see also In re Scott, 199 B.R. at 591 n.8. The text of § 522(c) also states that it applies to "property exempted under this section." The use of the word "section," as opposed to "subsection" (which is used elsewhere within § 522), further suggests that § 522(c) is intended to apply to all of § 522.

HN15 In re Depascale, the only Ohio case analyzing the Current Homestead, agrees, noting that the Code's definition of impairment in § 522(f) preempts any attempt by the Ohio General Assembly to put forth a different **[*18]** definition. 496 B.R. at 872—73. The court in In re Depascale first noted that the Code creates a uniform definition of impairment in § 522(f)(2)(A) without any reference to conflicting state law provisions. Id. at 873. Additionally, § 522(b) requires that property exemptions be determined as of the petition date. Id. Therefore, Section 3's requirement that the Current Homestead should not "impair any secured or unsecured creditors' claims that accrue prior to the effective date" is in direct conflict with the Code's definition of impairment in § 522(f). Id. The Sixth Circuit has taken the same position, noting that the definition of lien impairment must be determined by reference to § 522(f), even if state law defines impairment differently. Holland v. Star Bank, N.A. (In re Holland), 151 F.3d 547, 550 (6th Cir. 1998); see also 4 Collier on Bankruptcy, ¶ 522.02[2] (Alan N. Resnick & Henry J. Sommers eds., 16th ed. 2013).

HN16 The Supreme Court's decision in Owen also supports the court's position. The Supreme Court noted that there is "no basis for pronouncing [§ 522(b)'s] **[*19]** opt-out policy absolute, but must apply it along with whatever other competing or limiting policies the statute contains." Owen, 500 U.S. at 313. As noted above, the court reached a compromise between federal and state interests in adopting the opt-out provision of § 522(b). However, deference to state interests cannot supersede the ultimate purpose of the Code, which is to give the honest debtor a fresh start. Indus. Ins. Servs., Inc. v. Zick (In re Zick), 931 F.2d 1124, 1130 (6th Cir. 1991). While Congress allows a state to opt out of the federal exemptions, § 522(c) balances state and local interests, therefore limiting a state's ability to curtail a debtor's fresh start. In re Skjetne, 213 B.R. 274, 279 (Bankr. D. Vt. 1997) (noting that § 522(c) codifies the Code's policy of providing debtors a fresh start). Section § 522(c) therefore limits and competes with the opt-out policy found in § 522(b). Id. at 279 (citing Owen, 500 U.S. at 308).

For example, the court in In re Scott, 199 B.R. 586, was tasked with determining the applicability of § 522(c) to a state statute which allowed a creditor with a debt related to an intentional tort to recover from a debtor's exempt property. The **[*20]** court ultimately decided that the best reading of § 522 is that which allows a state to define the "nature and amount" of exemptions, but retain the applicability of the remainder of § 522. Id. at 593. The court reasoned that this approach:

> allows the states to opt out of section 522(d), as the Code expressly permits, while giving full effect to the remaining provisions of section 522 and deferring to Congress' enactments. Such a reading of the statute furthers the overall policy goals of the bankruptcy process such as ensuring uniformity under a federal distribution scheme, providing a debtor with a fresh start, and treating classes of creditors equally.

Id. Similarly, in In re Boucher, 203 B.R. 10, 13 (Bankr. D. Mass. 1996), the court was addressing whether a Massachusetts exemption law that subordinated the homestead exemption to a creditor's claims that were in existence before the debtor made a proper declaration of his homestead conflicts with the Code. The court summarized its position as follows:

> In light of the clear command of section 522(c) and the pre-emptive power of Congress under its constitutional authority to establish uniform bankruptcy laws, congressional approval of **[*21]** the use of state exemptions cannot be taken to extend to exemptions that protect debts left unprotected by section 522(c). Yet, Congress obviously wanted a debtor to have exempt property. The result is that the Debtor's election of the state exemption stands, but the state exception for prehomestead debts does not. Invalidating this exception to the exemption is much like

> voiding the waiver of a state exemption pursuant to *section 522(e)*, notwithstanding the waiver's validity under state law. Courts have had no difficulty doing this.

Id.; see also *In re Conyers*, 129 B.R. 470, 472 (Bankr. E.D. Ky. 1991). One court has summarized the logic behind the argument as follows:

> (1) *§ 522(b)* permits a debtor's use of state law exemptions; (2) once exemptions are invoked in a bankruptcy proceeding, *§ 522(c)* dictates the extent to which exempt property may be called to answer for prebankruptcy debts; (3) *§ 522(c)* generally provides that, after bankruptcy, exempt property is not liable for prebankruptcy debts . . . ; (4) *§ 522(c)* preempts state laws that define the operative effect of exemptions more restrictively, or more expansively, than it does; and, (5) [if a state law] homestead statute purports **[*22]** to limit the operative effect of the homestead exemption against pre-acquisition . . . debts, it is preempted by *§ 522(c)*.

In re Leicht, 222 B.R. at 676.

The court concludes that state exemptions define the ″nature and amount″ of bankruptcy exemptions, but the remaining portions of *§ 522* remain applicable and preempt inconsistent state law. ″This approach is commensurate with *§ 522(b)*'s goal of balancing the state's interest in defining exemptions according to the needs and conditions of the locality, and the Code's 'freshstart' policy and uniformity.″ *In re Betz*, 273 B.R. at 324; *In re Scott*, 199 B.R. 586 (Applying *§ 522(c)* uniformly, even when a state opts-out of the federal exemptions, ″furthers the overall policy goals of the bankruptcy process such as ensuring uniformity under a federal distribution scheme, providing the debtor with a fresh start, and treating classes of creditors evenly″).

In the current case, Debtors have claimed the Current Homestead, even though the majority of their debts were acquired before the Effective Date. ***HN17*** While Section 3 limits the Current Homestead's applicability ″to claims accruing on or after the effective date of this act,″ the grant of authority **[*23]** to the states in *§ 522(b)* does not allow a state to pass statutes that conflict with the Code. Even assuming that Section 3 is applicable, its protection of prepetition debts, a category of debts that is not protected by *§ 522(c)*, conflicts with the *Code*.[5] ~~In re~~ Weinstein, 164 F.3d at 677.

ii. The Debate Over When a State Exemption is ″Applicable″

HN18 Even though *§ 522(c)* applies even if a state opts out of the federal exemptions, a recent line of cases discusses whether a debt must fall within a state exemption before *§ 522* becomes applicable. *CFCU*, 552 F.3d 253; *In re Lewis*, 400 B.R. 417 (Bankr D. Vt. 2009). *Section 522(b)(3)(A)* allows debtors to exempt ″any property that is exempt under . . . State or local law that is *applicable* on the date of the filing of the petition.″ (emphasis added). In CFCU, the Second Circuit decided that ″applicable″ within *§ 522(b)* requires that the state law apply to the debtor at the time the bankruptcy petition was filed before the other provisions of *§ 522(c)* become effective. *CFCU*, 552 F.3d at 259. However, other courts, such as *In re Betz*, 273 B.R. 313, relying heavily on the Supreme Court's decision in Owen and the First Circuit's decision **[*25]** in In re Weinstein, determined that a state exemption available on the petition date is subject to the requirements of *§ 522(c)*, regardless of state law language limiting the scope of the exemption. The court will evaluate the two competing methodologies below.

In *CFCU*, 552 F.3d at 256, the New York homestead was increased from $10,000.00 to $50,000.00. After the increased homestead became effective, the debtors in the case filed a bankruptcy petition claiming the increased homestead. *Id.* at 257. CFCU objected to the debtor's homestead to the extent it applied to debts acquired before the effective date of the new statute. Id. The Second Circuit in CFCU noted that ″while federal law governs the date on which the exemptions comes into play, New York law governs the nature and scope of the

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[5] As noted above, ″uncodified law is law of a special nature that has a limited duration or operation and is not assigned a permanent Ohio Revised Code section number.″ Maynard, 895 N.E.2d at 147. While uncodified law does not appear in the Ohio Revised Code, it is ″part of the law of Ohio.″ In re Depascale, 496 B.R. at 870. The court in In re Depascale, 496 B.R. at 869—72, analyzed Section 3 and concluded that because Section 3 conflicts with the plain language of O.R.C. § 2329.66 and is internally nonsensical, it should not be given effect. However, the Supreme Court of Ohio has used uncodified law to help determine the application of a statute, even when the text of the statute is unambiguous. See Maynard, 895 N.E.2d at 147—48 (using uncodified law to interpret a statute calculating prejudgment interest that is unambiguous on its face); Havel v. Villa St. Joseph, 131 Ohio St. 3d 235, 2012 Ohio 552, 963 N.E.2d 1270, 1278 (Ohio 2012) **[*24]** (″[N]o rule of construction precludes [the] review of uncodified law in an effort to ascertain legislative intent.″). As the court finds that the Section 3 is inconsistent with the Code, and also that the Code preempts inconsistent state law, the court need not evaluate the applicability of Section 3.

exemptions." *Id.* at 259. In essence, CFCU adopted a two part test. First, the court must determine the "nature and scope" of the exemption under state law (whether the debtor may properly claim the property as exempt). Second, if the first step is satisfied, the court will then apply the other portions of *§ 522*. *In re LaVictoire*, 2011 Bankr. LEXIS 1139, 2011 WL 1168288, at *4 (Bankr. D. Vt. 2011). However, if the property **[*26]** cannot be claimed as exempt under the state statute, then there is no conflict between the state statute and the Code because *§ 522* never comes into play. *CFCU*, 552 F.3d at 259; *In re Lewis*, 400 B.R. at 419. In *In re Lewis*, 400 B.R. 417, a bankruptcy court applied the CFCU methodology to determine the applicability of a statute that did not protect the homestead from debts in existence before the debtor filed proper notice. *Id.* at 418. According to the court, if a debt existed before the debtor filed the necessary homestead documentation, *§ 522(c)* never comes into play because the property is not exempt under state law. *Id.* at 419. The court summarized their position as follows: "Because *§ 522(c)* only applies to exempt property, there is no conflict in recognizing that state law may render property nonexempt to particular claims. As to such nonexempt property, *§ 522(c)* never comes into effect." Id.; see also *In re Banner*, 394 B.R. 292 (Bankr. D. Conn. 2008).

Courts within the First Circuit conclude that state law defines the "nature and amount" of exemptions, but reaches a different conclusion as to when state exemption laws come into play. For example, in In re Betz, the court was **[*27]** tasked with determining how to apply a Massachusetts law that increased the state homestead exemption from $100,000.00 to $300,000.00, but explicitly subordinated the increase to preexisting liens. *273 B.R. at 315*. The creditors in the case argued that determination of the amount of an exemption "is wholly outside the sphere of federal law when the state exemption scheme is at play." Id. The court rejected this argument, noting that:

> Whether the state excludes a category of debt from exemption protection altogether or whether it carves out an exception for the applicable dollar amount for the same category of debt is an irrelevant distinction given the overarching principle that conflicting state exemption limitations have no effect under the Bankruptcy Code. Either method of carving out exceptions ultimately reduces the debtor's homestead estate because under either method, this Court must first apply the statute's exceptions before determining what property is exempt. Under the Bankruptcy Code, both methods must fail because *§ 522(b)(2)* does not incorporate all of a state's built-in limitations on exemptions. Rather, the state exemption scheme is merely the platform upon which federal **[*28]** policies operate.

Id. at 324—25. The court summarized its position by noting that *§ 522* applies "irrespective of whether the exemption statute's exceptions apply to a category of debt as a whole or to the dollar amounts of an exemption as applied to a particular category of debts." *Id.* at 325. Therefore, because *§ 522(c)* protects exemptions from preexisting debts, the portion of the Massachusetts homestead statute allowing preexisting debts to impair exemptions "conflicts with *§ 522(c)* and has no effect in this bankruptcy proceeding." *Id.* at 325. The court in In re Depascale "agree[d] with the persuasive reasoning of Betz" and adopted the same analysis. *496 B.R. at 872—73*.

HN19 The court agrees with In re Depascale and In re Betz. Under the reasoning of CFCU, if, instead of changing the value of an exemption, an Ohio statute created a new category of debt that could forego exemption protection, *§ 522* would apply in its entirety. In this example, because the entire exemption is included within the state law, *§ 522* is applicable to the entire exemption. When the new state-law exception attempts to remove the property from exemption protection, the Code invalidates the inconsistent state law. **[*29]** Similarly, if a state statute decreases an exemption and includes language limiting the decrease to debts acquired after the statute's effective date, *§ 522* would again be applicable to the entire exemption. In re Lewis noted that "*§ 522(c)* only applies to exempt property," but because the larger exemption is applicable under the state statute, the entire exemption is brought within *§ 522*. Therefore, *§ 522* is applicable and invalidates inconsistent state law. The court agrees with In re Betz that this is an "irrelevant distinction." The court can think of no persuasive reason why the two above examples should lead to different outcomes than the situation in In re Lewis, especially considering the Code's overarching goal of giving a debtor a fresh start, as embodied in *§ 522*.

II. Application of the Current Homestead to Debts Accruing Before the Effective Date Does Not Violate the Ohio Constitution

Trustee also argues that the Ohio Supreme Court would likely conclude that the Current Homestead should only be applied to debts accruing after the Effective Date. Trustee cites to *State v. Consilio*, 114 Ohio St. 3d 295, 2007 Ohio 4163, 871 N.E.2d 1167 (Ohio 2007), where the Ohio Supreme Court stated that:

> [i]t is well-settled law **[*30]** that statutes are presumed to apply prospectively unless expressly declared to be retroactive. It is also settled that the General Assembly does not possess an absolute right to adopt retroactive statutes. *Section 28, Article II of the Ohio Constitution* prohibits retroactive impairment of vested substantive rights. However, the General Assembly may make retroactive any legislation that is merely remedial in nature.

Id. at 1171. ***HN20*** The Ohio Supreme Court has adopted a two-step test for retroactivity: (1) as a threshold matter, is the statute ″expressly made″ retroactive, and (2) if the statute is clearly retroactive, is the statute substantive or remedial in nature? Id. Therefore, Trustee argues that House Bill 479 not only failed to explicitly make the Current Homestead retroactive, Section 3 instead illustrates the General Assembly's intent that the statute should only apply prospectively. Trustee argues that because the Current Homestead is not expressly retroactive it fails the Consilio test. Debtors do not directly address the constitutional issue.

HN21 The Current Homestead is not a traditional retroactive statute. Instead, it is a statute that only applies to cases filed after the Effective **[*31]** Date (i.e. prospectively), but may still implicate the retroactivity clause of the Ohio Constitution. *Longbottom v. Mercy Hosp. Clermont*, 137 Ohio St. 3d 103, 2013- Ohio 4068, 998 N.E.2d 419, 425 (Ohio 2013). ″[T]he constitutional limitation against retroactive laws include[s] a prohibition against laws which commenced on the date of enactment and which operate[] in [the] future, but which, in doing so, divest[] rights, particularly property rights, which had been vested anterior to the time of enactment of the laws.″ *Tobacco Use Prevention & Control Fund Bd. of Trs. v. Boyce*, 127 Ohio St. 3d 511, 2010 Ohio 6207, 941 N.E.2d 745, 750 (Ohio 2010) (internal quotation marks omitted). While the retroactivity clause bars laws that affect substantive rights, it ″has no reference to laws of a remedial nature providing rules of practice, courses of procedure, or methods of review.″ *Kilbreath v. Rudy*, 16 Ohio St. 2d 70, 242 N.E.2d 658, 660 (Ohio 1968). The Supreme Court of Ohio has defined remedial and substantive statutes as follows:

> A statute is ″substantive″ if it impairs or takes away vested rights, affects an accrued substantive right, imposes new or additional burdens, duties, obligation[s], or liabilities as to a past transaction, or creates a new right. Conversely, remedial laws **[*32]** are those affecting only the remedy provided, and include laws that merely substitute a new or more appropriate remedy for the enforcement of an existing right.

Ackison v. Anchor Packing Co., 120 Ohio St. 3d 228, 2008 Ohio 5243, 897 N.E.2d 1118, 1123 (Ohio 2008); *Longbottom*, 998 N.E.2d at 425 (holding that the Ohio Constitution does not prohibit remedial statutes, which ″merely affect[] the method and procedure by which rights are recognized, protected and enforced, and not the rights themselves″ (internal quotation marks omitted)); *State v. Williams*, 129 Ohio St. 3d 344, 2011 Ohio 3374, 952 N.E.2d 1108, 1110—11 (Ohio 2011) (holding that laws are remedial if they ″merely substitute a new or more appropriate remedy for the enforcement of an existing right″).

Additionally, ***HN22*** a statute with retroactive effect will not violate the Ohio constitution if it impairs a right that does not have a reasonable expectation of finality. *In re Depascale*, 496 B.R. at 874 (″[A creditor] knew or should have known that the Ohio General Assembly periodically amends the exemption statute and, thus the amount of the [h]omestead [e]xemption was subject to change. . . . Accordingly, [a creditor] had an obligation to timely and diligently enforce its rights under Ohio law.″); see also **[*33]** *State ex rel. Matz v. Brown*, 37 Ohio St. 3d 279, 525 N.E.2d 805, 808 (Ohio 1988) (holding that because a felon has ″no reasonable right to expect their [previously felonious] conduct will never thereafter be made the subject of legislation,″ a statute enacting gun control laws limiting a former felon's gun access can be applied retroactively). Finally, a statute designed to correct imperfections or gaps is classified as remedial. *Ohio Const. Art. II, § 28* (″The General Assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contract, but may . . . cure[] omissions, defects, and errors . . . .″); *Bielat v. Bielat*, 87 Ohio St. 3d 350, 2000 Ohio 451, 721 N.E.2d 28, 33 (Ohio 2000) (noting that the Ohio Supreme Court has recognized ″curative″ law, designed to allow the General Assembly to retroactively fix ″omissions, defects, and errors″). Therefore, if a law is found to be remedial, it can be applied to bankruptcy cases commenced after the statute's effective date even if the law alters legal rights accruing before the statute's effective date. *Kilbreath*, 242 N.E.2d at 660. Because the Current Homestead is only applicable to cases filed after the Effective Date, as long as the statute is remedial in nature, **[*34]** the Current Homestead is a constitutional

enactment by the General Assembly.[6] *Longbottom*, 998 N.E.2d at 425—26.

Even armed with the above definitions, classifying statutes as either substantive or remedial can be difficult. For example, in Longbottom, the court was evaluating the applicability of a statute that changed both the time when prejudgment interest starts to accrue and the rate of accrual. *998 N.E.2d at 421—22*. The case involved the medical malpractice claim of Mr. and Mrs. Longbottm, as well as their son Kyle, against Mercy Hospital. *Id.* at 421. After a trial, a jury found that Mercy Hospital negligently cared for Kyle and awarded $2,412,899.00 in damages and $830,774.66 in prejudgment interest. Id. In calculating prejudgment interest, the court applied the statute in effect when the complaint was filed, not the statute in effect when the malpractice occurred. Id. The statute in effect when the malpractice occurred **[*35]** allowed prejudgment interest from the date of the cause of action, while the new statute only allows prejudgment interest if the party required to pay the money admitted liability or engaged in the conduct with the specific goal of causing harm. *Id.* at 423. The new statute also changed the prejudgment interest rate from 10% to a rate tied to the federal short-term borrowing rate. *Id.* at 424. The Supreme Court of Ohio concluded that the statute was remedial in nature because it ″neither destroys nor eliminates the right to prejudgment interest . . . ; rather, the amended statute affects only the method by which prejudgment interest is calculated.″ *Id.* at 426. In other words, ″[b]ecause the amended statute does not eliminate the right to prejudgment interest but only modifies the remedy available, it applies to causes of action accruing before but filed on or after . . . the effective date of the statute.″ Id.

HN23 Most courts evaluating the constitutionality of changes in exemption laws have found that applying the exemptions in effect as of the petition date to debts acquired before the statute's effective date is not a constitutional violation. See e.g., *In re Little*, 2006 Bankr. LEXIS 1010, 2006 WL 1524594, at *9—11 **[*36]** (holding that New York's increased homestead statute should apply retroactively because remedial statutes are those ″designed to correct imperfections in prior law″ and increasing the value of the homestead corrects the harsh result where a debtor may be removed from their home in bankruptcy); *CFCU*, 552 F.3d at 264—65 (finding that increasing the value of the homestead exemption was remedial in nature because the update ″reflect[s] current economic conditions and [] once again protect[s] debtors from losing their homes″); *Bartlett v. Giguere (In re Bartlett)*, 168 B.R. 488, 495 (Bankr. D.N.H. 1994) (holding that because creditors should have the ″general knowledge that homestead exemption laws are . . . periodically updated and changed in amount as inflation and other economic conditions warrant,″ creditors only have ″vested rights″ to the extent their rights are exercised before changes in bankruptcy law). Additionally, courts in Ohio, when viewing earlier statutory changes to the Ohio homestead exemptions, have not had constitutional problems applying the increased exemption to claims accruing before the new exemption's effective date. See, e.g., *In re Jaber*, 406 B.R. 756; *In re Lude*, 291 B.R. 109; **[*37]** *Lucas v. Beneficial Fin. Co. of Ohio*, 18 B.R. 179, 180 (Bankr. S.D. Ohio 1982); *Marinski*, 9 B.R. 579.

HN24 The court in *In re Depascale*, 496 B.R. 860, also addressed retroactivity, similarly concluding that the Current Homestead should be applied in cases filed after the Effective Date, but relating to claims arising before that date. The court did not find a constitutional violation for two reasons. First, because the past practice of Ohio bankruptcy courts was to apply any changes to exemption laws as of the petition date, more is needed to change court precedent than the unclear and ″nonsensical″ language of Section 3. Second, the increase to the homestead exemption does not deprive creditors of any substantive rights. Creditors ″knew or should have known that the Ohio General Assembly periodically amends the exemption statute and, thus, the amount of the [h]omestead [e]xemption was subject to change.″ *Id.* at 874. While it is true that any change in the homestead statute could affect a creditor's ability to foreclose on a judgment, a creditor has ″an obligation to timely and diligently enforce its rights under Ohio law.″ Id. A creditor's failure to foreclose on a debt before bankruptcy **[*38]** ″should not deprive the [d]ebtor of the [h]omestead [e]xemption amount to which he is otherwise entitled.″ Id.

Based on the above reasoning, ***HN25*** the Current Homestead is remedial in nature and can be constitutionally applied in cases filed after the Effective date, even to claims accruing before the Effective Date. While it is true that changing the homestead exemption may alter the money available to creditors, the change to the prejudgment interest calculation in Longbottom similarly affected an individual's monetary recovery and was found constitutional. In other words, changing the value of the homestead exemption neither

[6] While courts normally look to the intent of the General Assembly when addressing retroactivity, this court will not consider Section 3 because it is both ″internally nonsensical and unworkable,″ In re Depascale, 496 B.R. at 870—72, and is inapplicable in bankruptcy.

destroys nor eliminates the rights of creditors, but instead only changes the amount. See *Longbottom*, 998 N.E.2d at 425—26. The court is also persuaded, as was the In re Depascale court, by the reasoning of In re Bartlett, which noted that while a creditor may have an ″existing right″ to move against a debtor's property, that right ″also carrie[s] a corresponding obligation to assert and enforce that right promptly under the existing statutory provisions.″ *168 B.R. at 494—95*. Ohio courts have recognized that a right is not vested if there is a not a ″reasonable expectation **[*39]** of finality,″ which is not present in Ohio exemption law as evidenced by numerous statutory changes in amount. See *In re Depascale*, 496 B.R. at 866. Additionally, the reasoning of other courts, both inside and outside of Ohio, which have consistently decided that applying the exemptions in effect as of the petition date is not a constitutional violation further strengthens the court's position.

Conclusion

For the reasons stated above, ***HN26*** the court finds that *§ 522* is applicable and preempts inconsistent state law. Therefore, Section 3 of House Bill 479 conflicts with *§ 522(b)* and *(c)* and is preempted. Based on the plain language of *§§ 522* and *O.R.C. 2329.66*, Debtors' exemptions are those available as of the petition date. Additionally, application of the Current Homestead in this case is not a violation of the Ohio Constitution's prohibition on retroactive legislation. Consequently, Trustee's Objection to Debtors' Exemption is **DENIED**.

An order will be entered simultaneously with this opinion.

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document was signed electronically at the time and date indicated, [*40] which may be materially different from its entry on the record.

/s/ Russ Kendig

Russ Kendig

United States Bankruptcy Judge

Dated: 04:22 PM January 23, 2014

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8:00 a.m. **Registration** *"Good Morning, Good Morning"*

8:25 a.m. **Welcome** *"Hello, Hello"*
Anthony J. DeGirolamo, Esq., *Stark County Bar Association*
Y. Eric Holtz, Esq., *Akron Bar Association*

8:30 a.m. **Case Law Update** *"All Together Now"*
The Honorable Russ Kendig, *U.S. Bankruptcy Court - Canton*

9:30 a.m. **New Rule Changes** *"Don't Ever Change"*
Edward J. Boll, III, Esq., *Lerner, Sampson & Rothfuss, LPA*

10:15 a.m. **Break** *"I'm Only Sleeping"*

10:30 a.m. **Federal Tax Update** *"Tax Man"*
James L. Bickett, Esq., *U.S. Attorney's Office*

11:30 a.m. **Luncheon for Attendees –** *Tribute to the Honorable Marilyn Shea-Stonum*

1:00 p.m. **What the UST's Office is Looking for and Applying Extra Scrutiny to in Recently Filed Petitions** *"You Never Give Me Your Money"*
Maria D. Giannirakis, *U.S. Trustees Office*
Lenore Kleinman, *U.S. Trustees Office*

1:45 p.m. **Chapter 7 Trustee Panel – Trustee Issues with Filers** *"Help I Need Somebody"*
Lisa Barbacci, Esq., *Chapter 7 Trustee – Canton*
Harold A. Corzin, Esq., *Chapter 7 Trustee – Akron*
Robert S. Thomas, Esq., *Chapter 7 Trustee – Akron*

2:30 p.m. **Oil & Gas Panel** *"Dig It"*
Bethany R. Hunt, Esq., *Mazurek, Alford & Holliday*
William G. Williams, Esq., *Krugliak, Wilkins, Griffiths & Dougherty Co., LPA*

3:30 p.m. **Pie Break** *"Strawberry Fields"*
Sponsored by Vance Truman

3:45 p.m. **Ethical Issues in Bankruptcy (Ethics)** *"You Can't Do That"*
Anthony J. DeGirolamo, Esq., Stark County Bar Association
Thomas P. Kot, Esq., Akron Bar Association – Bar Counsel
Richard Milligan, Esq., Stark County Bar Association – Bar Counsel
Sam O. Simmerman, Esq., Krugliak, Wilkins, Griffths & Dougherty Co., LPA

4:45 p.m. **Drawing for Dean Wyman Scholarship and Adjournment**
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