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Bankruptcy Law

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I. INTRODUCTION

This Article focuses on bankruptcy opinions issued by the Supreme Court of the United States and the United States Court of Appeals for the Eleventh Circuit.[1] Topics addressed include 11 U.S.C. § 523(a)(2)(A)'s[2] preclusion of discharge of debts obtained by fraud of a partner or agent; the Supreme Court's effort to "bring some discipline" to 11 U.S.C. § 363(m)[3] and the use of the term "jurisdictional;"[4] abrogation of tribal sovereign immunity in 11 U.S.C. § 106(a);[5] Chapter 11 plan modification under 11 U.S.C. § 1126[6] and Bankruptcy Rule 3019(a);[7] the anti-modification provision of 11 U.S.C. § 1322(b)(2)[8] and its connection

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1. For an analysis of bankruptcy law during the prior survey period, *see* Hon. John T. Laney, III, T. Alec Chappell, & Siena Berrios Gaddy, *Bankruptcy Law, Eleventh Circuit Survey*, 74 MERCER L. REV. 1313 (2023), https://digitalcommons.law.mercer.edu/jour_mlr/vol74/iss4/5/ [https://perma.cc/EJ66-PJLM].
2. 11 U.S.C. § 523(a)(2)(A) (2023).
3. 11 U.S.C. § 363(m) (2019).
4. MOAC Mall Holdings LLC v. Transform Holdco LLC, 598 U.S. 288, 298 (2022).
5. 11 U.S.C. § 106(a) (2010).
6. 11 U.S.C. § 1126 (1984).
7. FED. R. BANKR. P. 3019
8. 11 U.S.C. § 1322(b)(2) (2022).

to 11 U.S.C. § 1327's[9] finality provision; appellate jurisdiction after partial final judgment of a claim where a party failed to seek certification for appeal;[10] and remedies for overpayment of United States Trustee fees post *Siegel*.[11]

II. *BARTENWERFER V. BUCKLEY*: 11 U.S.C. § 523(A)(2)(A) PRECLUDES DISCHARGE OF DEBTS OBTAINED BY FRAUD OF A PARTNER OR AGENT.

The Supreme Court of the United States, in *Bartenwerfer v. Buckley*,[12] determined that 11 U.S.C. § 523(a)(2)(A), in the case of fraud of an agent or partner, "turns on how money was obtained, not who committed fraud to obtain it."[13] The Court evaluated the text of the statute, focusing on the statute's passive-voice structure.[14]

The adversary proceeding arose from a Chapter 7 proceeding filed by a couple, Kate and David Bartenwerfer (the Debtors), who renovated and flipped a residence in San Francisco, California.[15] The plaintiff purchased the residence from the Debtors, and after the sale, discovered several defects in the home. The plaintiff obtained a judgment against the couple after filing suit in California state court based on breach of contract, negligence, and non-disclosure of material facts. Seeking to have the judgment found non-dischargeable, the plaintiff filed an adversary proceeding asserting that the judgment qualified as a debt obtained by fraud under § 523(a)(2)(A).[16]

Although the Debtors jointly purchased the residence, Kate Bartenwerfer had little involvement in the home renovation.[17] David Bartenwerfer, in contrast, managed the project. David hired contractors and engineers, oversaw work, and issued payments. Regardless, after a two-day trial, the bankruptcy court determined that neither debtor was eligible to discharge the debt owed to the plaintiff. During the trial, the evidence revealed David had knowledge of the residence's defects and concealed those defects from the plaintiff. The bankruptcy court imputed

9. 11 U.S.C. § 1327 (1978).

10. In re Esteva, 60 F.4th 664 (11th Cir. 2023).

11. In re Mosaic Mgt. Group, Inc., 71 F.4th 1341 (11th Cir. 2023).

12. 598 U.S. 69 (2023).

13. *Id.* at 72. Defects included: a leaky roof, defective windows, no fire escape, and permit problems. *Id.*

14. *Id.* at 73–76.

15. *Id.* at 72–74.

16. *Id.* at 72–73.

17. *Id.* at 72.

David's fraudulent intent to Kate, as a partner, to find that neither could discharge the debt.[18]

The Bankruptcy Appellate Panel for the Ninth Circuit reversed the finding of the bankruptcy court as to Kate.[19] The panel determined Kate's debt could be non-dischargeable if she knew or had reason to know of David's fraudulent intent.[20] The panel reversed and remanded to the bankruptcy court; and the bankruptcy court, after a bench trial, found Kate's debt to the plaintiff dischargeable. On appeal, the panel affirmed the second ruling of the bankruptcy court. The United States Court of Appeals for the Ninth Circuit, on the other hand, reversed the ruling, holding a debtor who is liable for their partner's fraud cannot discharge such a debt in bankruptcy regardless of their own culpability.[21] After the disagreements between the panel and the circuit court, the Supreme Court of the United States granted certiorari to elucidate the meaning of § 523(a)(2)(A).[22]

The Court began by examining the text of § 523(a)(2)(A).[23] From the text, the Court determined Kate was barred from discharging her liability to the plaintiff.[24] The Court deconstructed the text of § 523(a)(2)(A) into three distinct requirements and held each was satisfied: (1) Kate was an "individual debtor;" (2) the judgment was a "debt;" and (3) the debt arose from the sale proceeds garnered from David's fraud.[25]

Kate argued that, while the statute fails to specify a fraudulent actor, the court should read § 523(a)(2)(A) to preclude discharge of debts for money obtained by "the debtor's fraud."[26] The Court disagreed and determined Congress intended a broader meaning.[27] The Court explained passive voice "pulls the actor off the stage[,]" and Congress, in using passive voice, "focus[ed] on an event that occurs without respect to a specific actor, and therefore without respect to any actor's intent or culpability."[28]

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18. *Id.* at 72–73.
19. *Id.* at 73–74.
20. *Id.* at 73.
21. *Id.* at 73–74 (citing In re Bartenwerfer, 860 Fed. Appx. 544 (9th Cir. 2021)).
22. *Id.* at 74.
23. *Id.*
24. *Id.*
25. *Id.* at 74–75.
26. *Id.* at 75.
27. *Id.*
28. *Id.* at 75–76 (citing Dean v. United States, 556 U.S. 568, 572 (2009)).

To support its position, the Court also referenced the common law of fraud.[29] The Court explained that historically, courts have held principals liable for the frauds of their agents and individuals liable for the frauds of their partners within the scope of the partnership.[30]

The Court held the intentional use of uncertainty—here, the passive voice in § 523(a)(2)(A)—was consistent with "the age-old rule that individual debtors can be liable for fraudulent schemes they did not devise."[31]

The Court disagreed with Kate's other arguments: (1) that exceptions to discharge should be confined to those plainly expressed, and (2) that other § 523(a)(2)[32] provisions require action by the debtor.[33]

First, the Court rejected Kate's invitation to narrow § 523(a)(2)(A)'s ordinary meaning.[34] The Court explained that when it previously stated, "exceptions to discharge 'should be confined to those plainly expressed,'"[35] in *Kawaauhau v. Geiger*[36] and in its progeny,[37] it used ordinary tools of interpretation and delivered rulings based on the text of the statutes involved.[38] Here, the Court reasoned, the same interpretation took place and it examined § 523(a)(2)(A) using "basic tenets of grammar."[39]

The Court then turned to Kate's argument that other § 523(a)(2) provisions, namely § 523(a)(2)(B)[40] and § 523(a)(2)(C),[41] require action by the debtor.[42] The Court cited its own rule of interpretation, recognizing

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29. *Id.* at 76.

30. *Id.*

31. *Id.*

32. 11 U.S.C. § 523(a)(2) (2023).

33. *Bartenwerfer*, 598 U.S. at 77–78.

34. *Id.* at 77.

35. *Id.* (quoting Bullock v. BankChampaign, N.A., 569 U.S. 267, 275 (2013) (*accord* Kawaauhau v. Geiger, 523 U.S. 57, 62 (1998))).

36. 523 U.S. 57, 62 (1998).

37. Bullock v. BankChampaign, N. A., 569 U.S. 267, 275 (2013).

38. *Bartenwerfer*, 598 U.S. at 77.

39. *Id.*

40. 11 U.S.C. § 523(a)(2)(B) (2023).

41. 11 U.S.C. § 523(a)(2)(C) (2023).

42. *Bartenwerfer,* 598 U.S. at 77–78. Section 523(a)(2)(B) precludes discharge of debts arising from the

> [U]se of a statement in writing—(i) that is materially false; (ii) respecting the debtor's or an insider's financial condition; (iii) on which the creditor to whom the debtor is liable . . . reasonably relied; and (iv) that the debtor cause to be made or published with intent to deceive.

11 U.S.C. § 523(a)(2)(B). Section 523(a)(2)(C) precludes discharge of recently acquired, "consumer debts owed to a single creditor and aggregating more than $800 for luxury goods or services incurred by an individual debtor," and "cash advances aggregating more than $1,100 . . . obtained by an individual debtor." 11 U.S.C. § 523(a)(2)(C) (2023).

that when Congress uses language in one section of a statute but omits it in another, that omission is usually deliberate; however, the Court asserted that the rule is not absolute.[43] The Court determined the better interpretation of Congress's omission is "that (A) excludes debtor culpability from consideration given that (B) and (C) expressly hinge on it."[44]

Finally, the Court reasoned that both its precedent—and congressional response to that precedent—support its textual analysis of § 523(a)(2)(A).[45] Prior to the 1898 Bankruptcy Act,[46] the discharge exception for fraud seemingly limited the exception to fraud committed by the debtor.[47] In 1885, the Court, in *Strang v. Bradner*,[48] held to the contrary.[49] There, the Court ruled that partners, even those without knowledge of the fraud, could not discharge their debts in bankruptcy after their business partner lied to merchants for the benefit of the partnership.[50] The Court reasoned that "because the partners, who were not themselves guilty of wrong, received and appropriated the fruits of the fraudulent conduct of their associate in business" the fraud of one partner is imputed to all partners.[51]

Following the Court's decision in *Strang*, Congress enacted the Bankruptcy Act of 1898, which removed from the discharge exception for fraud the term, "of the bankrupt."[52] This deletion, the Court explained, implies that Congress embraced the *Strang* holding.[53]

Finally, the Court noted that § 523(a)(2)(A) fails to define the scope of one's liability for the frauds of another.[54] Instead, the underlying law determines liability—"[s]ection 523(a)(2)(A) takes the debt as it finds it[.]"[55]

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43. *Bartenwerfer,* 598 U.S. at 78 (citing Badgerow v. Walters, 596 U.S. 1 (2022) (quoting Collins v. Yellen*,* 141 S. Ct. 1761 (2021))).

44. *Id.*

45. *Id.* at 79.

46. Law of July 1, 1898, ch. 541, 30 Stat. 544 (repealed 1978).

47. *Bartenwerfer*, 598 U.S. at 79. The section read: "no debt created by the fraud or embezzlement of the bankrupt . . . shall be discharged under this act." Act of Mar. 2, 1867, § 33, 14 Stat. 533.

48. 114 U.S. 555 (1885).

49. *Id.*

50. *Id.* at 561.

51. *Id.*

52. *Bartenwerfer*, 598 U.S. at 80 (citing Act of July 1, 1898, § 17, 30 Stat. 550).

53. *Id.* at 81.

54. *Id.* at 81–82.

55. *Id.* at 82.

In a brief concurrence, Justice Sotomayor, joined by Justice Jackson, reiterated that the bankruptcy court found that Kate and David entered a legal partnership and thus had an agency relationship.[56] Kate did not dispute she and David acted as partners.[57] Because the debt was incurred after the debtors formed a partnership, Justice Sotomayor explained the debt is not dischargeable under § 523(a)(2)(A).[58] Justice Sotomayor's concurring opinion highlighted that the case at bar relates only to fraud of agents and partners—not "a situation involving fraud by a person bearing no agency or partnership relationship to the debtor."[59]

III. *LAC DU FLAMBEAU BAND OF LAKE SUPERIOR CHIPPEWA INDIANS V. COUGHLIN:* BANKRUPTCY CODE ABROGATES TRIBAL SOVEREIGN IMMUNITY IN § 106(A).

The newest Justice to join the bench, Justice Ketanji Brown Jackson authored the opinion in *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*.[60] The Lac du Flambeau Band of Lake Superior Chippewa Indians (the Band) owned Lendgreen and its parent companies, from which the Respondent, Brian Coughlin, borrowed $1,100 in a short-term, high interest loan.[61] Before repaying the loan, Coughlin filed for Chapter 13 bankruptcy.[62] Coughlin alleged Lendgreen continued its collection efforts, violating the automatic stay under § 362(a),[63] and petitioned the Bankruptcy Court to enforce the stay against Lendgreen, its parent companies, and the Band, and for damages from their breach.[64] The Band moved to dismiss saying that Congress had not explicitly abrogated sovereign immunity in § 106(a), and thus, the provisions of the Bankruptcy Code did not apply to the Band's companies and subsidiaries.[65] The Bankruptcy Court granted the Band's motion.[66] On appeal, the United States Court of Appeals for the First Circuit held that the Bankruptcy Code "unequivocally strips tribes of their immunity."[67] The United States Courts of Appeals for the Sixth and

56. *Id.* at 83–84 (Sotomayor, J., concurring).
57. *Id.* (Sotomayor, J., concurring).
58. *Id.* (Sotomayor, J., concurring).
59. *Id.* at 84 (Sotomayor, J., concurring).
60. 599 U.S. 382 (2023).
61. *Id.* at 385.
62. *Id.*
63. 11 U.S.C. § 362(a) (2020).
64. *Lac du Flambeau Band*, 599 U.S. at 385–86.
65. *Id.* at 386.
66. *Id.*
67. In re Coughlin, 33 F. 4th 600, 603 (1st Cir. 2022).

Ninth Circuits had already addressed this issue and came to opposite conclusions, leading the Supreme Court of the United States to grant certiorari to resolve the inconsistencies between the circuit decisions.[68]

The Court looked at the Bankruptcy Code and the legal relationship between Native American tribes and the federal government to conclude that the Congress had explicitly intended to abrogate tribal sovereign immunity.[69] The Court has previously stated, "[t]o 'abrogate sovereign immunity,' Congress 'must make its intent . . . unmistakably clear in the language of the statute.'"[70] The Court began its legal analysis by summarizing its precedent that Native American tribes are assumed to have sovereign immunity unless, while applying the canons of statutory interpretation, it is clear Congress intended otherwise.[71] The question the Court answered was whether § 106(a) and § 101(27)[72] of the Bankruptcy Code abrogated the Band's sovereign immunity.[73]

Section 106(a) of the Bankruptcy Code states, "Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section."[74] Section 106(a) further lists § 362(a) as to which abrogation applies.[75] Section 101(27) defines governmental unit as the:

> United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.[76]

The Court held the language in these sections, "unequivocally abrogates the sovereign immunity of any and every government that possesses the power to assert such immunity. Federally recognized tribes

68. *Lac du Flambeau Band*, 599 U.S. at 386.

69. *Id.* at 388–93.

70. Id. at 387 (citing Fin. Oversight and Mgmt. Bd. for P. R. v. Centro De Periodismo Investigativo, Inc., 598 U.S. 339, 346 (2023) (some internal quotations omitted)).

71. *Id.* at 388 (citing Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978); Michigan v. Bay Mills Indian Cmty., 572 U.S. 782, 790 (2014); FAA v. Cooper, 566 U.S. 284, 290 (2012); Kimel v. Fla. Bd. of Regents, 528 U.S. 62, 76 (2000)).

72. 11 U.S.C. § 101(27) (2022).

73. *Lac du Flambeau Band*, 599 U.S. at 387.

74. 11 U.S.C. § 106(a).

75. *Id.*

76. 11 U.S.C. § 101(27).

undeniably fit that description; therefore, the Code's abrogation provision plainly applies to them as well."[77]

The Court first looked at the language in § 101(27).[78] The Court noted first that the statute "exudes comprehensiveness" encompassing government entities that differ in "geographic location, size, and nature[,]" their subdivisions and components, and a "broad catchall phrase" that includes "other foreign or domestic government[s]."[79] The Court analogized this sweeping language to other cases in that the Court found a broader meaning in a statute than explicitly stated because of the breadth of the defined term.[80] Then, specifically addressing the catchall phrase in § 101(27) of "other foreign or domestic government,"[81] the Court noted the English language colloquialisms that use opposite meanings to enforce inclusivity citing "rain or shine" and "near and far."[82] Further, the Court held that "foreign or domestic" as used in the Code echoes its use in the oath taken by elected officials, signifying it is all-inclusive of all governmental entities.[83]

The Court then noted other provisions in which the Code's broad application is essential to the administration of a bankruptcy estate.[84] The Court specifically noted that the automatic stay prevents "dismembering the estate while the bankruptcy case proceeds" and its effectiveness relies on its breadth.[85] The Court also noted inclusivity of the Code to enjoin all creditors from violating the discharge in § 524(a)[86] and the binding powers of §§ 1327(a),[87] 1141(a),[88] and 1227(a)[89] to a confirmed plan as virtues of the Code's construction.[90] Several provisions include specific privileges for governmental entities, the Court noted,

77. *Lac du Flambeau Band*, 599 U.S. at 388.

78. *Id.* at 388.

79. *Id.* at 388–89.

80. *Id.* at 389 (citing Taylor v. United States, 579 U.S. 301, 305–06 (2016); Marietta Memorial Hospital Employee Health Benefit Plan v. DaVita Inc., 596 U.S. 880, 885 n.1 (2022)).

81. 11 U.S.C. § 101(27).

82. *Lac du Flambeau Band*, 599 U.S. at 389.

83. *Id.* at 389–90.

84. *Id.* at 390.

85. *Id.* (quoting Chicago v. Fulton, 592 U.S. 154, 157 (2021) (internal quotations omitted)).

86. 11 U.S.C. § 524(a) (2019).

87. 11 U.S.C. § 1327(a) (1978).

88. 11 U.S.C. § 1141(a) (2010).

89. 11 U.S.C. § 1227(a) (2005).

90. *Lac du Flambeau Band*, 599 U.S. at 390.

citing §§ 362(b)(4)[91] 362(b)(9),[92] 362(b)(18),[93] 362(b)(26)[94] and 523(a)(7),[95] but § 362(a) is not one of them.[96] Therefore, the Court reasoned, excluding federally recognized tribes as "governmental units" "risks upending the policy choices that the Code embodies in this regard."[97]

Finally, the Court remarked briefly that the Petitioners did not argue a federally recognized tribe is not a government and agrees they would not have won that argument citing its own precedent.[98]

The Court then addressed the Band's two main arguments as to why § 106(a) and § 101(27) do not apply to Native American tribes.[99] First, the Band argues that "neither § 101(27) nor § 106(a) mentions Indian tribes by name."[100] The Court noted, however, its precedent states a specific reference that federally recognized tribes are not required, just that Congress's intent is unequivocal.[101] The Band also argued that, when intentionally abrogating tribes' sovereign immunity, Congress has done so in explicit terms.[102] The Court held that, although Congress had used specific language in the past, it is not precluded from creating the same result with different language in the future.[103] Finally, the Band argued that tribal governments are neither purely a foreign nor domestic government because they are neither an independent state nor a subsidiary of a domestic state.[104] The Court called this interpretation "far-fetched" and ruled that it would deem Congress's intention by this meaning implausibly narrow.[105] Justice Thomas concurred with, and Justice Gorsuch dissented from, the Court's opinion.[106]

IV. *MOAC MALL HOLDINGS LLC V. TRANSFORM HOLDCO LLC*: THE SUPREME COURT'S EFFORT TO 'BRING SOME DISCIPLINE' TO USE OF THE

91. 11 U.S.C. § 362(b)(4) (2020).
92. 11 U.S.C. § 362(b)(9) (2020).
93. 11 U.S.C. § 362(b)(18) (2020).
94. 11 U.S.C. § 362(b)(26) (2020).
95. 11 U.S.C. § 523(a)(7) (2023).
96. *Lac du Flambeau Band*, 599 U.S. at 390–91.
97. *Id.* at 391.
98. *Id.* at 392.
99. *Id.* at 393.
100. *Id.*
101. *Id.* at 394.
102. *Id.*
103. *Id.* at 395.
104. *Id.*
105. *Id.*
106. *Id.* at 399, 402 (Thomas, J., concurring) (Gorsuch, J., dissenting)).

TERM 'JURISDICTIONAL' AND 11 U.S.C. § 363(M).

The Supreme Court of the United States, in *MOAC Mall Holdings LLC v. Transform Holdco LLC*,[107] resolved a circuit split and determined that 11 U.S.C. § 363(m) is not a jurisdictional provision.[108] The Court delivered a unanimous decision, finding a jurisdictional rule must include a clear statement of congressional intent to govern a court's adjudicatory capacity and that § 363(m) lacks any such language.[109]

The facts giving rise to the issue before the court arose within the Sears, Roebuck and Co. Chapter 11 bankruptcy case [110] filed in 2018.[111] Sears acted as the debtor-in-possession and held statutory power to dispose of estate property.[112] Sears, under authority of § 363(b),[113] sold most assets to Transform Holdco, LLC (Transform), including the right to, "designate to whom a lease between Sears . . . and some landlord should be assigned."[114] That agreement designated no assignees, but rather meant that Transform could require Sears to assign a lease to its designee.[115] MOAC Mall Holdings LLC (MOAC) leased space to tenant Sears at the Minnesota Mall of America, and as such, that lease was eligible for assignment under the agreement between Sears and Transform.[116]

However, the Bankruptcy Code prohibits certain assignments of unexpired leases.[117] Section 365[118] requires "adequate assurance of future performance by the assignee," and includes specific criteria defining "adequate assurance" where it relates to "shopping centers."[119] The parties stipulated that the Mall of America qualified as a "shopping center" under § 363(b).[120] Thus, proper adequate assurance required: "(1) [T]he proposed assignee has a 'similar . . . financial condition and operating performance' as the debtor 'as of the time the debtor became

107. 598 U.S. 288 (2023).

108. *Id.*

109. *Id.* at 298.

110. MOAC Mall Holdings, LLC v. Transform Holdco LLC (*Sears II*), 616 B.R. 615 (S.D.N.Y. 2020).

111. *MOAC Mall Holdings*, 598 U.S. at 292.

112. *Id.*

113. 11 U.S.C. § 363(b) (2019).

114. *MOAC Mall Holdings*, 598 U.S. at 292 (citing *Sears II,* 616 B.R. at 619).

115. *Id.* at 293.

116. *Id.*

117. *Id.*; 11 U.S.C. § 365(f)(2)(B) (2020).

118. 11 U.S.C. § 365 (2020).

119. *MOAC Mall Holdings*, 598 U.S. at 293; 11 U.S.C. §§ 365(b)(3)(A), (D).

120. *MOAC Mall Holdings,* 598 U.S. at 293.

the lessee under the lease,' and (2) the assignment will not 'disrupt any tenant mix or balance within [the] shopping center.'"[121]

When Transform designated the Sears-Mall of America lease for assignment to its subsidiary, MOAC objected, citing § 365.[122] The bankruptcy court overruled the objection and entered an order approving the assignment.[123] Following entry of the bankruptcy court's order, MOAC sought a stay of the assignment order under § 363(m).[124] The bankruptcy court denied MOAC's request, explaining that appeal of its order assigning the lease failed to qualify as an appeal of an authorization under § 363(m).[125] Thus, the assignment order was effective and Sears assigned the lease to the subsidiary of Transform.[126]

An appeal followed.[127] The district court agreed with MOAC, finding Transform failed to provide adequate assurances under § 365.[128] After the district court vacated the assignment order, Transform requested a rehearing, at which it raised an entirely new argument—that § 363(m) stripped the district court of jurisdiction.[129] The district court agreed with Transform, although it admonished Transform for waiting to raise its jurisdictional argument until a ruling on the merits.[130] The district court explained that United States Court of Appeals for the Second Circuit precedent required it to "treat § 363(m) as jurisdictional, and thus not subject to 'waiver [or] judicial estoppel.'"[131] The district court dismissed the appeal.[132] Thus, the bankruptcy court's assignment order remained effective.[133] On appeal to the Second Circuit, the district court's order dismissing the appeal was affirmed.[134] The Second Circuit agreed with the district court as to its jurisdictional finding.[135]

On certiorari, the Supreme Court of the United States addressed two issues: (1) whether § 363(m) deprived the district court of jurisdiction;

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121. *Id.* (citing 11 U.S.C. §§ 365(b)(3)(A), (D)).
122. *Id.*
123. *Id.*
124. *Id.*
125. *Id.* at 294.
126. *Id.*
127. *Id.*
128. *Id.* (citing MOAC Mall Holdings LLC v. Transform Holdco LLC *(Sears I)*, 613 B.R. 51, 79 (S.D.N.Y. 2020)).
129. *Id.*
130. *Id.*
131. *Id.* (citing *Sears II*, 616 B.R. at 624).
132. *Id.*
133. *Id.*
134. *Id.*
135. *Id.*

and (2) whether the appeal should be dismissed as moot because the assignment transferred the lease out of the bankruptcy estate.[136]

The Court, in three meager paragraphs, disposed of Transform's mootness argument.[137] Transform argued that the bankruptcy court could not reconstitute the lease as estate property because the time for avoiding the transfer, per § 549,[138] had expired.[139] The Court disagreed and explained that it, "disfavors these kinds of mootness arguments."[140] The Court further held that MOAC sought typical appellate relief, "that the Court of Appeals reverse the District Court and the District Court undo what it has done."[141]

The Court then turned to the issue of whether § 363(m) is a jurisdictional provision.[142] The Court ruled that § 363(m) is not jurisdictional and reversed the ruling of the Second Circuit.[143]

The Court explained that defining a statute as "jurisdictional" is significant for three reasons.[144] First, jurisdictional requirements "deprive[] [the] courts of power to hear [a] [] case, thus requiring immediate dismissal."[145] Next, the Court held that "jurisdictional rules are impervious to excuses like waiver or forfeiture." [146] Finally, the Court held that jurisdictional rules must be raised and enforced *sua sponte*.[147]

Turning to the case at bar, the Court cited the language of the district court, which stated, "if ever there were an appropriate situation for the application of judicial estoppel, this would be it."[148] But, the Court reasoned "not even such egregious conduct by a litigant" can overcome a jurisdictional rule.[149] Explaining its holding, the Court stated, "[t]his case exemplifies why the distinction between non-jurisdictional and jurisdictional preconditions matters."[150]

The Court, seemingly apologetic for its earlier interpretations of "jurisdiction," stated, "we have endeavored 'to bring some discipline' to

136. *Id.* at 294–95.
137. *Id.* at 295.
138. 11 U.S.C. § 549 (2005).
139. *MOAC Mall Holdings*, 598 U.S. at 295.
140. *Id.*
141. *Id.* at 296.
142. *Id.* at 297.
143. *Id.*
144. *Id.*
145. *Id.* (citation omitted).
146. *Id.* (citation omitted).
147. *Id.* (citation omitted).
148. *Id.* at 298 (citing *Sears II*, 616 B.R. at 627).
149. *Id.*
150. *Id.* at 297.

this area."[151] The Court explained that it has clarified the meaning of "jurisdictional rules," which "pertain to 'the power of the court rather than the rights or obligations of the parties.'"[152] Finally, the Court stated it "only treat[s] a provision as jurisdictional if Congress 'clearly states' as much."[153]

The Court explained the clear-statement rule establishes a high standard to interpret congressional intent regarding whether failure to comply with a precondition "governs a court's adjudicatory capacity."[154] Citing its prior precedent, the Court described that "Congress ordinarily enacts preconditions to facilitate the orderly disposition or litigation and would not heedlessly give those same rules an unusual character that threatens to upend orderly progress."[155] To express an intent as jurisdictional, the Court reasoned, Congress is not required to use any specific language or "magic words."[156] Instead, the Court explained that it should use the traditional rules of statutory interpretation to deduce congressional intent.[157] The Court added that plausibility is insufficient—any statement connected to a statute's jurisdiction must be clear.[158]

Turning to § 363(m), the Court held nothing within the text of the statute limits a court's adjudicatory capacity.[159] The Court began its analysis by examining the text of § 363(m).[160] The Court focused on the multiple caveats within the language of § 363(m), explaining that the statute "plainly contemplates" appellate reversal or modification of covered authorization, but the statute includes constraints on the effects of a reversal or modification.[161] Those constraints, the Court determined, are caveated—the constraints are "inapplicable where the sale or lease was made to a bad-faith purchaser or lessee, or if the sale or lease is stayed pending appeal, or (for that matter) if the court does something other than 'revers[e]' or 'modify' the authorization."[162]

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151. *Id.* at 298 (quoting Henderson v. Shinseki, 562 U.S. 426, 435 (2010)).

152. *Id.* (quoting Reed Elsevier, Inc. v. Muchnick, 559 U.S. 154, 161 (2009)).

153. *Id.* (quoting Boechler, P.C. v. Comm'r, 569 U.S. 199, 203 (2022)).

154. *Id.* (quoting *Henderson*, 562 U.S. at 435).

155. *Id.* (citing Wilkins v. United States, 598 U.S. 152, 157 (2023); Hamer v. Neighborhood Housing Servs. of Chicago, 583 U.S. 17, 19 (2017); Fort Bend Cty. v. Davis, 139 S. Ct. 1843, 1849 (2019)).

156. *Id.* (quoting *Boechler, P.C.*, 569 U.S. at 203).

157. *Id.*

158. *Id.*

159. *Id.* at 299.

160. *Id.*

161. *Id.*

162. *Id.*

The Court compared prior precedent interpreting a provision of the Copyright Act[163] to the case at bar and the language of § 363(m).[164] There, the Court held the provision in contention non-jurisdictional because, among other reasons, the statute contemplated adjudication even where a party failed to comply with a registration requirement.[165] The Court compared this to § 363(m)'s "clear expectation that courts will exercise jurisdiction over a covered authorization" and determined the two were similar.[166] The Court determined that "§ 363(m) read[] like a statutory limitation," which requires a party to sometimes take steps, like seeking a stay.[167]

To support its finding, the Court noted the statutory context of § 363(m), stating that § 363[168] is located in the United States Code separate from the Code's jurisdictional provisions and lacks any clear ties to the Code's jurisdictional provisions.[169] The Court compared § 305(c),[170] which includes language connecting it to 28 U.S.C. § 158(d)[171] to § 363(m).[172] Section 305(c) serves as an example, the Court reasoned, that Congress intentionally omitted any language connecting § 363(m) to jurisdiction.[173] Because Congress, in other statutes within the Bankruptcy Code, made overt connections to 28 U.S.C. § 158[174] and other jurisdictional provisions, the Court held § 363(m) failed to meet the "clear statement" standard.[175]

Additionally, the Court explained that "congressional commands are non[-]jurisdictional despite emphatic directives."[176] Although § 363(m) issues directions, those directions are "statutory limitation[s]" but not adjudicatory restraints.[177]

Finally, the Court addressed two arguments of Transform: (1) That § 363(m) acts to ensure that courts, absent a stay, cannot undo a transfer to a good faith purchaser; and (2) former Federal Rule of Bankruptcy

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163. U.S.C. tit. 17 (2020).
164. *MOAC Mall Holdings*, 598 U.S. at 299.
165. *Id.* at 299–300 (citing *Reed Elsevier*, 559 U.S. at 165).
166. *Id.* at 300.
167. *Id.*
168. 11 U.S.C. § 363 (2019).
169. *MOAC Mall Holdings*, 598 U.S. at 300–01.
170. 11 U.S.C. § 305(c) (2005).
171. 28 U.S.C. § 158(d) (2010).
172. *MOAC Mall Holdings*, 598 U.S. at 300–01.
173. *Id.* at 301.
174. 28 U.S.C. § 158 (2010).
175. *MOAC Mall Holdings*, 598 U.S. at 301 n.6.
176. *Id.* at 301.
177. *Id.*

Procedure 805[178] was "fully transplanted" into § 363(m), and thus, the historical practice associated with that Rule should carry over to § 363(m).[179] The Court ruled neither were persuasive.[180] The Court held Transform's first argument failed to meet the clear statement standard, stating, "Transform's contentions about § 363(m)'s relationship to traditional *in rem* jurisdiction merely offer a reason to think Congress intended § 363(m) to be jurisdictional. That, without more, is not enough."[181] As to Transform's second argument, the Court explained that it rejects arguments that "predate[ ] this Court's effort to 'bring some discipline' to the use of the term jurisdictional."[182] The Court stated that every case Transform cited predates § 363(m)'s 1978 enactment and, as such, also predates the Court's "modern efforts on jurisdictional nomenclature."[183]

V. BRAUN V. AMERICA-CV STATION GROUP, INC. (IN RE AMERICA-CV STATION GROUP, INC): CHAPTER 11 PLAN MODIFICATION UNDER § 1126 AND BANKRUPTCY RULE 3019(A)

The United States Court of Appeals for the Eleventh Circuit, in *Braun v. America-CV Station Group, Inc.*,[184] reversed and remanded the ruling of a bankruptcy court.[185] There, the court analyzed Federal Rule of Bankruptcy Procedure (Bankruptcy Rule) 3019(a)[186] as well as Chapter 11 plan confirmation and modification requirements, and ruled the debtors' emergency plan modification materially and adversely affected the treatment of certain interest holders.[187] As such, those interest holders were entitled to a new disclosure statement and another opportunity to vote.[188] The court explained, "[e]nsuring that interest holders that are materially and adversely affected by last-minute modifications receive an opportunity to review the modification and consider whether to change their vote or present an objection is a primary benefit of the procedural requirements."[189]

178. FED. R. BANKR. P. 805 (1976).
179. *MOAC Mall Holdings,* 598 U.S. at 301–04.
180. *Id.* at 304–05.
181. *Id.* at 302.
182. *Id.* at 304.
183. *Id.*
184. 56 F.4th 1302 (11th Cir. 2023).
185. *Id.* at 1313–14.
186. FED. R. BANKR. P. 3019
187. *Braun*, 56 F.4th at 1312.
188. *Id.* at 1311.
189. *Id.* at 1313.

Braun involved the reorganization of holding companies of a set of television networks in Florida, New York, and Puerto Rico.[190] The networks sought court intervention after financial difficulties arising from debt, litigation, and the impact of Hurricane Maria. The debtors' proposed plans required the post-petition equity holders to contribute $500,000 in capital and execute a line of credit valued at $1.6 million. Additionally, the plans canceled the equity interest in pre-petition entities and issued new equity interests in the reorganized entities to four shareholders. Of those four shareholders, three (the Shareholders) were to receive 65.8% of the equity in each reorganized entity. The fourth shareholder, a company owned by the debtors' President and Chief Operating Officer, was to receive the remaining equity. These entities together comprised Class 3 of the debtors' Chapter 11 plan.[191]

Two weeks prior to the confirmation hearing, and on the same day as the deadline to vote on the proposed plan, the debtors communicated to the Shareholders a deadline for exit financing of three days before the confirmation hearing.[192] The Shareholders failed to meet the deadline, but the fourth shareholder—the entity owned by the debtors' officer—met the deadline and funded the entirety of the equity contribution and the line of credit. Following the contribution and execution of the line of credit, the debtors moved to modify their plans of reorganization on an emergency basis.[193]

The debtors' proposed modification gave to the entity owned by the debtors' officer all equity in the reorganized holding companies.[194] The proposed modification was not served on the Shareholders, though they knew of a possible modification. The Shareholders completed the wire transfer per the terms of the initial Chapter 11 plan despite the debtors having received the full amount from the fourth entity. Regardless, the debtors prosecuted the emergency motions to modify their Chapter 11 plans and the bankruptcy court approved such modifications. Importantly, the bankruptcy court required neither a new disclosure statement nor another solicitation of votes on the modified plans. After the hearing on the modifications, the court considered confirmation of the new plans.[195] The court, in confirming the modified plans, deemed the class three interest holders to have rejected the new plans.[196]

190. *Id.* at 1305.
191. *Id.* at 1305–06.
192. *Id.* at 1306.
193. *Id.*
194. *Id.*
195. *Id.* at 1306–07.
196. *Id.* at 1307.

Following the court's entry of its order confirming the Chapter 11 plans, the Shareholders moved the court to reconsider the confirmation order and to strike the effective date of the plans.[197] The Shareholders argued that they (1) timely performed obligations under the plan; (2) were entitled to disclosure of the proposed modification; and (3) should regain the equity interests they lost.[198]

The bankruptcy court denied the Shareholders' motions because the Shareholders failed to present any newly discovered evidence and found no manifest error of law or fact in its granting of the motions to modify.[199] The bankruptcy court reasoned that because the class three interest holders were deemed to have rejected the plan, those interest holders were entitled to no additional disclosure or voting.[200] The Shareholders then appealed to the district court, which upheld the ruling of the bankruptcy court.[201]

The Eleventh Circuit reversed and remanded.[202] The court held the bankruptcy court erred twice.[203] First, in deeming the Shareholders to have rejected the modified plans, and second, in narrowly construing Bankruptcy Rule 3019(a).[204] The court also rejected debtors' argument that these errors were harmless.[205]

First, the Court analyzed 11 U.S.C. § 1126[206] regarding the bankruptcy court's error in deeming that the Shareholders rejected the modified plans.[207] Section 1126(g),[208] the court explained, provides that a class will be "deemed to not have accepted the plan" where the plan provides that a class is not entitled to receive or retain any property under the plan.[209] But, if a plan entitles a class to receive property on account of its pre-petition interests, then § 1126(g) is inapplicable and a bankruptcy court cannot deem that class to have rejected the plan.[210] Thus, the court explained, under § 1126(g), whether the bankruptcy

197. *Id.* at 1307–08.

198. *Id.* at 1307.

199. *Id.* at 1308.

200. *Id.*

201. *Id.* Although the Shareholders also raised a due process challenge, the Eleventh Circuit declined to address the constitutional issue. *Id.* at 1313 n.2.

202. *Id.* at 1313–14.

203. *Id.* at 1309.

204. *Id.* at 1309, 1311.

205. *Id.* at 1311.

206. 11 U.S.C. § 1126 (2022).

207. *Braun*, 56 F.4th at 13o9.

208. 11 U.S.C. § 1126(g) (2022).

209. *Braun*, 56 F.4th at 1309; 11 U.S.C. § 1126(g).

210. *Braun*, 56 F.4th at 1309.

court properly deemed the modified plans rejected depends on whether, before modification, the plans entitled the Shareholders to receive or retain property.[211]

Following precedent from the Supreme Court of the United States, the court determined that the Shareholders' exclusive opportunity to obtain equity in the restructured entities qualified as a property interest received on account of their pre-petition interest.[212] Because the plans provided new equity interests in the reorganized debtor, the Court explained, the fact that the plans extinguished prior equity interests of the Shareholders on the effective date of the plans was of no consequence.[213] Additionally, the Court ruled the text of the Chapter 11 plans supported its conclusion.[214] The plans granted to class three interest holders a right to vote.[215] The Court held that giving interest holders a right to vote implicitly concedes that those interest holders "were entitled to receive or retain property" under the plan and thus, "the bankruptcy court had no basis for deciding that [the Shareholders] had rejected the unmodified plans."[216]

Next, the Court explained that the bankruptcy court misconstrued Bankruptcy Rule 3019(a).[217] The bankruptcy court interpreted Bankruptcy Rule 3019(a) to require additional disclosure and voting where "a claim or interest holder materially or adversely affected by a proposed modification had previously voted to accept the plan."[218] The Court determined such an interpretation contradictory to the Rule's plain text. The Court focused on inclusion of the word "any" within Bankruptcy Rule 3019(a).[219] Because Bankruptcy Rule 3019(a) refers to "the treatment of the claim of *any* creditor or the interest of *any* equity security holder," the Court held Bankruptcy Rule 3019(a) must be broadly construed.[220] "The repeated use of the word 'any' refers to creditors or equity security holders of whatever kind[,]" the Court explained, and thus, "[t]he text does not permit any narrower interpretation."[221]

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211. *Id.*

212. *Id.* at 1310 (citing Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 440 (1999)).

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.* at 1310–11.

217. *Id.* at 1311; FED. R. BANKR. P. 3019(a).

218. *Braun*, 56 F.4th at 1311.

219. *Id.*

220. *Id.*

221. *Id.*

The Court also referenced its own precedent, explaining that, in the context of Bankruptcy Rule 3019(a), Eleventh Circuit precedent does not differentiate between a class voting for or against a plan.[222]

Finally, the Court addressed the debtors' argument that any error of the bankruptcy court was harmless.[223] The debtors argued that the Shareholders would have rejected the plans and the bankruptcy court deemed the Shareholders as doing so.[224] The Court disagreed.[225] The Court distinguished the situation in the case at bar, explaining that a party changing position as to the plan is different—a second rejection of the plan has little impact, but where a creditor or equity interest holder has previously voted to accept a plan, that party "benefits from the added disclosure and revoting because it can change its vote to reject the plan."[226]

Writing for the circuit, Judge Grant explained, "[t]his case shows exactly why a new disclosure statement can protect a claim or interest holder who previously voted to reject the plans."[227] The court speculated that the Shareholders could have objected to the modification on substantive grounds had the debtors issued a new disclosure statement. The court then discussed several substantive issues with the modified plans.[228] The court noted that the modification failed to comply with § 1123(a)(4),[229] which requires that all claims or interests of a class are treated the same unless otherwise agreed to.[230]

Further, citing § 1129(a)(1),[231] the court held that because the plans as modified failed to comply with § 1123(a)(4), the plans should not have been confirmed.[232] The court explained that the onus is on a bankruptcy court to ensure proper compliance with the requirements of § 1129[233]—and here, the bankruptcy court failed to recognize that the plans discriminated between members of class three.[234]

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222. *Id.* (citing In re New Power Co., 438 F.3d 1113, 1117–18 (11th Cir. 2006)).
223. *Id.*
224. *Id.*
225. *Id.*
226. *Id.* at 1312.
227. *Id.*
228. *Id.*
229. 11 U.S.C. § 1123(a)(4) (2005).
230. *Braun*, 56 F.4th at 1312.
231. 11 U.S.C. § 1123(a)(1) (2010).
232. *Braun*, 56 F.4th at 1312 (citing 11 U.S.C. § 1129(a)(1)).
233. 11 U.S.C. § 1129 (2010).
234. *Braun*, 56 F.4th at 1312.

In closing, the Eleventh Circuit stated that while the plans have been substantially consummated, the bankruptcy court could issue an effective remedy.[235]

VI. *MORTGAGE CORPORATION OF THE SOUTH V. BOZEMAN (IN RE BOZEMAN)*: ANTI-MODIFICATION PROVISION OF § 1322(B)(2) PREVAILS OVER § 1327'S FINALITY PROVISION

The United States Court of Appeals for the Eleventh Circuit addressed the relationship between §§ 1322(b)(2)[236] and 1327[237] in *Mortgage Corporation of the South v. Bozeman (In re Bozeman)*.[238] In 2015, Judith Bozeman executed a mortgage in favor of her home to Mortgage Corporation of the South (MCS) for $14,000 at 19.7% interest for a nine-year term. The following year Bozeman filed for Chapter 13 bankruptcy. MCS filed a proof of claim for $6,817.42 which represented the arrearage owed. Bozeman's Chapter 13 plan listed her debt to MCS as $17,393.04 plus interest and planned to pay MCS through the Trustee. Instead of listing the debt to MCS under the plan section that included debts Bozeman planned to cure and maintain, she listed the debt to MCS as a secured claim to be paid in its entirety through the pendency of the plan. The confirmed plan listed MCS's debt as $17,180 plus 7.57% interest that Bozeman would pay $503 per month to the Trustee for fifty-eight months, $454 of that would be paid to MCS. MCS did not object or file an amended claim and the bankruptcy court confirmed Bozeman's plan on January 14, 2017.[239]

On May 13, 2019, the Trustee filed notice that Bozeman had completed the plan and paid MCS $6,817.42 through the Trustee.[240] The Trustee claimed that the amount paid represented the entire debt owed to MCS and she had no remaining payments. MCS objected, saying that Bozeman had cured the pre-petition arrearage, but had $15,032.73 remaining due on her mortgage. On June 12, MCS moved to lift the automatic stay to foreclose on Bozeman's home. Three months later, Bozeman moved for discharge and requested the court release MCS's lien on the property arguing that, because MCS had listed $6,817.42 owed on its proof of claim, she had paid MCS's claim in full in accordance with her plan. MCS objected to Bozeman's motion saying the plan stated Bozeman

235. *Id*. at 1313. The district court denied the debtors' motion to dismiss the appeal as equitably moot and the debtors raised no challenge to that order. *Id.*

236. 11 U.S.C. § 1322(b)(2) (2022).

237. 11 U.S.C. § 1327 (1978).

238. 57 F.4th 895 (11th Cir. 2023).

239. *Id.* at 901–02.

240. *Id.* at 903.

acknowledged the $17,180 owed to MCS and she was required to make the full fifty-eight payments. While the parties had several arguments, the court only addressed whether the $6,817.42 Bozeman paid through the Trustee satisfied MCS's lien on her home.[241] The court found it did not.[242]

The court broke its analysis into three parts.[243] The court first ruled that the anti-modification provision invalidated Bozeman's plan.[244] Section 1322(b)(2) allows for a bankruptcy plan to "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence. . . ."[245] Thus, plans may not modify "a claim secured only by a security interest in real property that is the debtor's principal residence" like Bozeman's mortgage with MCS.[246] The court noted there are exceptions to the anti-modification provision, but none applied to Bozeman's situation.[247] The court noted that the Supreme Court of the United States' precedent emphasized that § 1322(b)(2) forbids the modification of the "rights of the holders" of the claim, not the claim itself.[248] Thus, the court addressed whether Bozeman's plan modified MCS's rights as agreed to under the mortgage instrument.[249]

Under the terms of the promissory note and mortgage, Bozeman gave MCS a security interest in the property with the right to foreclose upon default.[250] Bozeman agreed to pay the $14,000 she borrowed plus the 19.7% interest agreed upon.[251] Importantly, the court noted, "under Alabama law, Bozeman's debt could not be satisfied 'until there [was] no outstanding indebtedness or other obligations secured by the mortgage[.]'"[252] Thus the rights are enjoined from modification under § 1322(b)(2).[253]

The court held that the bankruptcy court erred in finding that Bozeman's paying $6,817.42 satisfied MCS's lien.[254] The court relied on

241. *Id.* at 903–05.
242. *Id.* at 905.
243. *Id.*
244. *Id.*
245. 11 U.S.C. § 1322(b)(2).
246. *In re Bozeman*, 57 F.4th at 906.
247. *Id.* at 906–07.
248. *Id.* at 907.
249. *Id.*
250. *Id.*
251. *Id.*
252. *Id.* (quoting Ala. Code § 35-10-26 (2013)).
253. *Id.*
254. *Id.*

the Supreme Court's opinion in *Nobelman v. American Savings Bank*.[255] The Supreme Court ruled in *Nobelman* that bifurcating a mortgage to allow any interest to be secured up to the property's value and the deficiency balance allowed as unsecured violated § 1322(b)(2).[256] The Supreme Court stated that even stripping partially the mortgage holder's lien violated the holder's right to retain the lien until the full debt was satisfied as assented to by the mortgage instrument.[257] The Eleventh Circuit compared *Nobelman* to Bozeman's case and held that the release of MCS's lien before the full satisfaction of the loan as specified in the mortgage instrument violated § 1322(b)(2).[258]

The court went on to note its own precedent supported this outcome.[259] The court has held previously that a confirmed plan which paid partially the debtor's mortgage arrearage and a discharge of *in personam* liability for a mortgage both violated § 1322(b)(2) by modifying the rights agreed to in the original mortgage instruments.[260] Thus, the court held that:

> [W]hile it's true that the sole timely proof of claim that MCS filed during the bankruptcy proceeding sought only $6,817.42 in arrears, nothing about that claim (or the absence of any additional claim) changed the fact that MCS was entitled under the terms of the mortgage and Alabama law to receive full payment on the balance of its loan.[261]

The court then addressed its second finding that Bozeman's election to pay the entirety of the loan instead of curing the arrearages and maintaining the mortgage payments did not exempt her from § 1322(b)(2).[262] The Eleventh Circuit precedent involved "cure-and-maintain" plans and not plans for which the debtor intends to fully provide for the mortgagor's interest, with which Bozeman drew a distinction.[263] The court, however, held that neither the Bankruptcy Code nor Eleventh Circuit precedent offers any reason for differing treatment for full-payment plans.[264] Furthermore, the court highlighted that a full-payment plan, when completed, would satisfy a mortgage loan such

255. 508 U.S. 324 (1993).
256. *Id.* at 328.
257. *Id.* at 329.
258. *In re Bozeman*, 57 F.4th at 907–08.
259. *Id.* at 908.
260. In re Bateman, 331 F.3d 821 (11th Cir. 2003); Dukes v. Suncoast Credit Union (In re Dukes), 909 F.3d 1306 (11th Cir. 2018).
261. *In re Bozeman*, 57 F.4th at 909.
262. *Id.* at 910.
263. *Id.*
264. *Id.* at 911.

that lien release is appropriate, but Bozeman did not fully satisfy the debt owed to MCS.[265] The court noted that Bozeman listed the amount due to MCS as $17,393.04 plus interest, but only paid the arrearage claim on her loan, thus inappropriately modifying MCS's interest.[266]

The court addressed Bozeman's argument that MCS's failure to object to confirmation of the plan makes it enforceable under *United Student Aid Funds, Inc. v. Espinosa*.[267] Bozeman argued that, because *Espinosa* was decided after *Bateman*, *Espinosa* supersedes the decision in *Bateman*.[268] The court disagreed.[269] The Supreme Court in *Espinosa* held that, if a creditor fails to object to plan confirmation, even if confirmed improperly, the plan is binding upon that creditor under § 1327.[270] The court first distinguished procedurally *Espinosa* from *Bateman* and Bozeman's case.[271] Importantly, *Espinosa* was decided many years after the discharge of the debtor on a motion under Rule 60(b)(4)[272] under which the underlying judgment is declared "void."[273] Secondly, the court determined in *Bateman* that a confirmed plan cannot be afforded the res judicata protections of § 1327 when the plan violates § 1322.[274] The court continued its discussion of the relationship between § 1322 and § 1327 highlighting that homestead-mortgage lienholders are offered special protections that other creditors are not.[275] Therefore, while MCS should have objected sooner, the court must protect the lienholder's right under § 1322(b)(2).[276]

VII. *ESTEVA V. UBS FINANCIAL SERVICES INC. (IN RE ESTEVA)*: NO APPELLATE JURISDICTION AFTER PARTIAL FINAL JUDGMENT OF A CLAIM WHERE A PARTY FAILED TO SEEK CERTIFICATION FOR APPEAL

The United States Court of Appeals for the Eleventh Circuit, in *In re Esteva*, ruled on an issue of appellate jurisdiction.[277] The court held that where a party or the parties voluntarily dismiss some of the claims, but

265. *Id.*
266. *Id.* at 911–12.
267. 559 U.S. 260 (2010).
268. *In re Bozeman*, 57 F.4th at 912.
269. *Id.*
270. *Espinosa*, 559 U.S. at 272.
271. *In re Bozeman*, 57 F.4th at 913.
272. FED. R. CIV. P. 60(b)(4).
273. *In re Bozeman*, 57 F.4th at 913.
274. *Id.*
275. *Id.* at 913–14.
276. *Id.* at 914–16.
277. 60 F.4th 664, 668 (11th Cir. 2023).

not the action in its entirety, the order of dismissal is not a final order conferring jurisdiction on the appellate court.[278] Additionally, the Eleventh Circuit evaluated four exceptions[279] and determined that none were applicable.[280]

The debtor-plaintiff Lorenzo Esteva filed a voluntary bankruptcy petition in 2018 after termination by his employers, UBS Financial Services Inc. and UBS Credit Corp.[281] Within the bankruptcy case, Esteva, along with his wife Denise Otero, filed an adversary proceeding against UBS. The adversary proceeding sought to confirm the exempt status of the plaintiffs' UBS account and to confirm that UBS's proof of claim was unsecured. To achieve those means, the complaint asserted four separate counts: (1) declaratory relief that the plaintiffs' account is exempt as property owned in tenancy-by-the-entirety; (2) declaratory relief that UBS holds neither security interest nor any other encumbrance against the plaintiffs' account; (3) turnover of funds within the plaintiffs' account to the plaintiffs; and (4) restitution based on unjust enrichment.[282] The plaintiffs' unjust enrichment claim also "sought disallowance of UBS's proof of claim to the extent it failed to set off against Esteva's unjust enrichment claim."[283]

In opposition, UBS counterclaimed, seeking (1) declaration of a perfected security interest in the plaintiffs' account; (2) avoidance of deposits under the Florida Uniform Fraudulent Transfer Act;[284] (3) contractual setoff; and (4) common law setoff.[285]

The plaintiffs moved for summary judgment on their first three counts and on all counterclaims.[286] As to the plaintiffs' restitution claim, the plaintiffs sought partial summary judgment "because [that count] sought disallowance of UBS's proof of claim, [and the] [p]laintiffs asked the bankruptcy court to find that the proof of claim was unsecured."[287] The bankruptcy court granted summary judgment in its entirety—issuing a "partial final judgment" resolving all claims other than the plaintiffs'

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278. *Id.*

279. Those exceptions, discussed *infra.*, are: (1) the collateral order doctrine; (2) the practical finality doctrine; (3) the marginal finality doctrine; and (4) the doctrine of cumulative finality, also referred to as the "Jetco exception." *Id.* at 672.

280. *Id.* at 668.

281. *Id.*

282. *Id.* at 669–70.

283. *Id.*

284. FLA. STAT. § 726.105 (1997).

285. *In re Esteva,* 60 F.4th at 670.

286. *Id.*

287. *Id.*

restitution claim.[288] The bankruptcy court intended to set the restitution claim for trial by separate order.[289] After entry of summary judgment, UBS failed to seek certification for immediate appeal and the bankruptcy court likewise granted no certification for immediate appeal.[290]

UBS, despite its failure to seek certification, appealed the bankruptcy court's judgment to the district court, which affirmed the judgment and dismissed UBS's appeal.[291] Following the district court's dismissal, UBS appealed the judgment to the United States Court of Appeals for the Eleventh Circuit.[292] On the eve of the parties' oral argument at the appellate court, the parties filed a stipulated dismissal of the plaintiffs' restitution claim in the bankruptcy court and jointly moved to supplement the record on appeal to include the stipulated dismissal.[293]

Acting *sua sponte*, the court inquired into subject matter jurisdiction and determined it had none.[294] The court explained that under its prior precedent, the circuit court has no "jurisdiction to review an appeal of a bankruptcy court order which is not final."[295] In determining whether the appeal was from a final order, the court examined UBS's notice of appeal and determined that no final decision had been entered.[296] The court stated "[t]o be final . . . an adversary proceeding decision must resolve all of the claims brought by all of the parties—anything less and 'no appeal may be taken . . . absent Rule 54(b)[297] certification.'"[298] Thus, the court held that at the time UBS filed its notice of appeal, the plaintiffs' restitution claim remained pending in the bankruptcy court—which, without a certified question, divested the circuit court of subject matter jurisdiction.[299]

The parties argued that the bankruptcy court's order was final as it resolved "discrete disputes"—such as, whether UBS held a valid lien on the plaintiffs' account—within the larger bankruptcy proceeding.[300] The

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288. *Id.*
289. *Id.*
290. *Id.*
291. *Id.*
292. *Id.*
293. *Id.*
294. *Id.*
295. *Id.* at 671 (citing Providers Benefit Life Ins. Co. v. Tidewater Grp., Inc. *(In re Tidewater Grp., Inc.)*, 734 F.2d 794, 796 (11th Cir. 1984)).
296. *Id.*
297. FED. R. CIV. P. 54(b).
298. *In re Esteva*, 60 F.4th at 671 (citing Dzikowski v. Boomer's Sports & Rec. Ctr., Inc. *(In re Boca Arena, Inc.)*, 184 F.3d 1285, 1287 (11th Cir. 1999)).
299. *Id.*
300. *Id.*

Eleventh Circuit rejected their position.[301] The court, distinguishing the issue before it from Supreme Court of the United States precedent, explained that the parties' argument failed because the appeal arose from an adversary proceeding rather than from the main bankruptcy case, and the bankruptcy court's order failed to resolve all claims against all parties.[302]

The court then analyzed whether any of the judicially created exceptions to the final judgment rule were applicable to the case at bar.[303] The court first described three exceptions: The collateral order doctrine; the practical finality doctrine; and the marginal finality doctrine.[304] Before explaining why none applied, the court stated that it disfavors the exceptions and "do[es] not apply [them] lightly."[305] The court stated that appeals before entry of a final judgment are "inherently disruptive, time-consuming, and expensive," and also noted that appeals enlarge a court's workload and may require a court to consider a moot issue.[306] Further, such appeals undermine a district court's management of a case and may "open the door to 'abuse by litigants seeking to delay resolution of a case.'"[307]

The court disposed of the collateral order doctrine and the marginal finality doctrine in two short paragraphs and focused on the practical finality doctrine.[308] The practical finality doctrine, the court explained, may be invoked where a party is subjected to irreparable harm if appellate review is delayed.[309] Under the practical finality doctrine, an interlocutory order deciding the right to property in contest and requiring that property to be delivered immediately may be reviewed before conclusion of the case.[310]

Here, the court held that a remedy of monetary damages would suffice to make UBS whole.[311] The court acknowledged that while in some cases, a party's insolvency or likelihood to pay may give rise to a finding of irreparable harm and open the door to application of the practical finality

301. *Id.*
302. *Id.* at 671–72 (citing Bullard v. Blue Hills Bank, 575 U.S. 496 (2015); Ritzen Grp., Inc. v. Jackson Masonry, LLC, 598 U.S. 35 (2020)).
303. *Id.* at 672.
304. *Id.*
305. *Id.*
306. *Id.* (citing Prado-Steiman ex rel. Prado v. Bush, 221 F.3d 1266, 1276 (11th Cir. 2000)).
307. *Id.*
308. *Id.*
309. *Id.* at 673.
310. *Id.*
311. *Id.*

doctrine, the record failed to indicate that either Esteva was insolvent or unable to pay the monetary damages.[312] Further, the court stated the fact "[t]hat Esteva filed a petition for voluntary bankruptcy, standing alone, does not establish his insolvency."[313]

The court then evaluated one final exception, the doctrine of cumulative finality, and explained why that too was inapplicable to the case at bar.[314] The doctrine of cumulative finality, or the "Jetco exception," allows appeal of an interlocutory order if the order would have been appealable under Rule 54(b) and if final judgment was entered without filing a new notice of appeal.[315] To fully consider the exception, the court granted the parties' motion to supplement the record so that the court may have notice of the parties' stipulation for voluntary dismissal.[316]

The court explained that while the doctrine of cumulative finality has not yet been applied to a bankruptcy case in the Eleventh Circuit, the court determined the doctrine should apply to appeals from adversary proceedings.[317] In support of its position, the court, quoting past precedent, stated, "adversary proceedings generally are viewed as 'standalone lawsuits,' and we apply the requirements of Rule 54(b) and the final judgment rule to those cases the same 'as if the dispute had arisen outside of bankruptcy.'"[318] Without issuing a finding, the court "assume[d] for purposes of this appeal" that the cumulative finality doctrine applies to appeals from adversary proceedings.[319]

The court then analyzed the cumulative finality doctrine in the context of the parties' appeal and determined the parties' stipulation for dismissal was invalid upon filing.[320] Because the stipulation for dismissal was invalid, the court ruled the parties failed to meet the procedural requirements of the cumulative finality doctrine.[321] The court cited Federal Rule of Civil Procedure 41(a)(1)(A)[322] for the proposition that a

312. *Id.*

313. *Id.* (citing In re Marshall, 300 B.R. 507, 510 (Bankr. C.D. Cal 2003) *aff'd sub nom.* Marshall v. Marshall *(In re Marshall)*, 721 F.3d 1032 (9th Cir. 2013); Connell v. Coastal Cable T.V., Inc.*, (In re Coastal Cable T.V., Inc.)*, 709 F.2d 762, 764 (1st Cir. 1983)).

314. *Id.*

315. *Id.*

316. *Id.* at 673–74.

317. *Id.* at 674.

318. *Id.* (citing *In re Boca*, 184 F.3d at 1286).

319. *Id.*

320. *Id.* at 674–75.

321. *Id.*

322. FED. R. CIV. P. 41(a)(1)(A).

claim cannot be dismissed voluntarily.[323] The text of the statute, the court explained, plainly reads, "the plaintiff may dismiss an action without court order."[324] The court discussed the dictionary definitions of the words "action" and "claim," and ruled that the two could not be conflated to hold the same meaning.[325] Because "action" is understood to mean a lawsuit or the entire controversy, while "claim" refers to a particular demand or issue, the court held, "Rule 41(a)'s[326] reference to voluntary dismissal of 'an action' refers to 'the whole case' instead of particular claims."[327]

Additionally, the court cited its own precedent, noting that "our case law has unambiguously concluded that Rule 41(a) does not allow a plaintiff to voluntarily dismiss fewer than all of the claims brought in an action."[328] The court determined that its past precedent in *Perry v. Schumacher Group of Louisiana*[329] was procedurally identical to the case before the court, and in *Perry*, the court recalled, its panel determined a stipulation purporting to voluntarily dismiss one count of an amended complaint was invalid.[330] Thus, the court held the parties' instant stipulation similarly invalid.[331]

The court concluded its decision by offering the parties two alternatives—the court explained that the parties could still have their appeal certified under Rule 54(b) following its dismissal.[332] Additionally, the court suggested the parties could also amend their complaint under Federal Rule of Civil Procedure 15(a)[333] to remove the still-pending unjust enrichment claim.[334]

VIII. UNITED STATES TRUSTEE REGION 21 V. BAST AMRON LLP (IN RE MOSAIC MANAGEMENT GROUP, INC.): REMEDIES FOR OVERPAYMENT OF

323. *In re Esteva*, 60 F.4th at 675.
324. *Id.* (citing FED. R. CIV. P. 41(a)(1)(A)).
325. *Id.* at 675.
326. FED. R. CIV. P. 41(a).
327. *In re Esteva*, 60 F.4th at 675 (citing Perry v. Schumacher Grp. Of La., 891 F.3d 954, 958 (11th Cir. 2018)).
328. *Id.* at 676.
329. 891 F.3d 954 (11th Cir. 2018).
330. *In re Esteva*, 60 F.4th at 677.
331. *Id.* at 677–78.
332. *Id.* at 678.
333. FED. R. CIV. P. 15(a).
334. *In re Esteva*, 60 F.4th at 678.

UNITED STATES TRUSTEE FEES POST SIEGEL

The United States Court of Appeals for the Eleventh Circuit addressed the remedy for the overpayment of United States Trustees fees after the Supreme Court of the United States's opinion in *Siegel v. Fitzgerald*.[335] The United States Trustee (UST) program operates in all districts in the United States except for six located in North Carolina and Alabama.[336] In those districts, a Bankruptcy Administrator (BA) oversees Chapter 11 cases.[337] In 2017, Congress amended the Bankruptcy Judgeship Act[338] to increase certain fees for Chapter 11 debtors payable to the UST cases in districts with the UST program but did not equally increase the fees in the districts with the BA program.[339] The fees, therefore, were higher for filers in UST districts in comparison to filers in the six districts covered by the BA program.[340]

Mosaic Management Group, Inc., the Debtor, filed Chapter 11 bankruptcy in a district which employs the UST program.[341] In 2017, the bankruptcy court confirmed the Debtor's plan which, among other provisions, created a trust of the Debtor's assets and appointed an Investment Trustee.[342] In 2019, the Investment Trustee filed a motion to determine the fees payable to the UST and sought reimbursement for the difference between its current liability and its lower potential liability in a BA district.[343] The Investment Trustee claimed in its arguments that Congress violated the uniformity requirement of the Bankruptcy Clause set forth in the Constitution.[344] The Eleventh Circuit, on direct appeal, held, in part, that Congress had not violated the uniformity requirement in its amendment to the Bankruptcy Judgeship Act.[345] Shortly after, the Supreme Court ruled in *Siegel* that the fee disparity was violative of the Constitution, abrogating the Eleventh Circuit's decision in Mosaic Management.[346] The Supreme Court, however, did not decide what would constitute an appropriate remedy.[347] The Supreme Court then granted

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335. 596 U.S. 464 (2022).
336. In re Mosaic Mgt. Group, Inc., 22 F.4th 1291, 1295 (11th Cir. 2022).
337. *Id.*
338. 28 U.S.C. § 1930 (2017).
339. In re Mosaic Mgt. Group, Inc., 71 F.4th 1341, 1344 (11th Cir. 2023).
340. *Id.*
341. *Id.* at 1343.
342. *In re Mosaic Mgt. Group, Inc.*, 22 F.4th at 1295.
343. *In re Mosaic Mgt. Group, Inc.*, 71 F.4th at 1343–44.
344. *Id.*
345. *In re Mosaic Mgt. Group, Inc.*, 22 F.4th at 1327.
346. Siegel v. Fitzgerald, 596 U.S. 464, 468 (2022).
347. *Id.* at 481.

the Debtor's writ of certiorari and vacated the court's opinion, remanding this case to the Eleventh Circuit for further consideration and to establish a remedy.[348]

The Debtors requested a refund for their unconstitutional overpayment to the Trustee.[349] Congress, in 2020, ended the preferential treatment to filers in BA districts, but the Debtors had paid the increased fee from 2018 to 2020.[350] The Court granted the refund over objection from the UST.[351]

The Court outlined the jurisprudence of remedies for constitutional violations like those that occurred in this case: it had the choice to either, "1) nullify the burden (the fee increase); or 2) extend the burden (the fee increase) to those initially excluded (the BA districts)."[352] While relying on legislative intent to craft the appropriate remedy, the court stated it must "'measure the intensity of commitment' to the 'main rule, not the exception'" and "consider the degree of potential disruption of the statutory scheme that would occur by extension as opposed to abrogation."[353]

The Debtors argued that a refund, or nullifying the effect of the statute, was appropriate.[354] The Supreme Court held a similar remedy was appropriate in *Iowa-Des Moines National Bank v. Bennett*.[355] The Supreme Court had determined that similarly situated taxpayers taxed unequally were entitled to a refund of the difference.[356] The Trustee disagreed, stating that Congress had extended the statute in 2020 to equalize the fees by increasing the fees in BA districts demonstrating clear legislative intent and relief should be granted prospectively.[357] In addressing the unequal treatment between 2018 and January 2021 when Congress's extension was enacted, the Trustee believed that, to the extent possible, the court should apply the increased fees retroactively, which the court referred to as the "clawback[.]"[358]

The court first addressed the clawback proposal, swiftly rejecting it.[359] The court stated it has no authority or jurisdiction to enforce or

348. Bast Amron LLP v. U.S. Tr. Region 21., 142 S. Ct. 2862 (2022).

349. *In re Mosaic Mgt. Group, Inc.*, 71 F.4th at 1345.

350. *Id.*

351. *Id.* at 1353–54.

352. *Id.* at 1345–46.

353. *Id.* at 1346.

354. *Id.* at 1347.

355. 284 U.S. 239 (1931).

356. *Id.* at 247.

357. *In re Mosaic Mgt. Group, Inc*., 71 F.4th, at 1347.

358. *Id.* at 1347–48.

359. *Id.* at 1348.

retroactively collect additional fees from debtors in BA districts.[360] The entities that may have the ability to do so, the court stated, have not.[361] Furthermore, the court noted that many cases have reached substantial consummation or have closed, thus the authority for those entities to enact a clawback is unclear.[362]

Then the court turned to the U.S. Trustee's alternative argument—that the court should find prospective relief sufficient and deny the Debtor's request for a refund.[363] The trustee based this argument on dicta in the Supreme Court case *McKesson* and its progeny,[364] stating that the Debtor had the opportunity to withhold the contested increase in payments while it challenged the increase's constitutionality.[365] The court noted that the Supreme Court had later rejected this as an exclusive remedy in *Reich v. Collins*,[366] and *Newsweek, Inc. v. Florida Department of Revenue*,[367] unless it was clearly an option for the affected parties from the outset.[368] Further, the court stated that *Reich* and *Newsweek* are so factually and procedurally similar to the instant case that it should adopt the remedy of refunds employed by the Supreme Court in both of those cases.[369] The court noted that, because Congress implemented the higher fees in 2020 for all districts, legislative intent is clear that Congress wanted to extend the burden; however, much like in *Reich* and *Newsweek*, the court ruled that the importance of maintaining due process prevailed over the preservation of legislative intent.[370] The trustee notes that the Supreme Court has allowed a prospective remedy in *Sessions v. Morales-Santana*[371] but the facts of that case—concerning the citizenship rights for babies born in the United States to unwed mothers—are so factually distinguishable especially compared to the *Reich* and *Newsweek* decisions that the Court disposed with the trustee's comparison readily.[372]

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360. *Id.*
361. *Id.*
362. *Id.*
363. *Id.*
364. Sessions v. Morales-Santana, 582 U.S. 47, 77 (2017).
365. *In re Mosaic Mgmt. Group, Inc.,* 71 F.4th at 1348.
366. 513 U.S. 106 (1994).
367. 522 U.S. 442 (1998).
368. *Id.* at 1349.
369. *Id.* at 1350.
370. *Id.* at 1350–51.
371. 582 U.S. 47 (2017).
372. *In re Mosaic Mgt. Group, Inc.*, 71 F.4th at 1352.

The Eleventh Circuit, therefore, granted refunds to the Debtors, joining the United States Courts of Appeals for the Second[373] and Tenth Circuits[374] in finding refunds appropriate for similarly situated debtors following the *Seigel* decision.[375]

IX. *In re Fundamental Care*: Disinterestedness Under § 327(a) and Rule 2014

The United States Court of Appeals for the Eleventh Circuit issued a substantial opinion in *In re Fundamental Care*.[376] While the case and opinion are factually intensive, the court summarily dealt with the major issue of the case in which it held that the Trustee's appointed special litigation counsel complied with § 327(a)[377] and Rule 2014's[378] requirements.[379] Section 327(a) of the Bankruptcy Code states:

> the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties.[380]

The counsel for the plaintiffs, also the opposing counsel to the special litigation counsel, complained that the special litigation counsel previously represented a company which owned one of the nursing homes in an unrelated matter.[381] The court held the company did not actually own the nursing home, just leased the real property on which the nursing home was located.[382] Further, the representation was unrelated to the special litigation.[383] The counsel for the plaintiffs also argued that the failure of the special litigation counsel to disclose this previous representation violated their duty under Rule 2014.[384] Rule 2014 states

373. In re Clinton Nurseries, Inc., 53 F.4th 15 (2d Cir. 2022) (amending and reinstating 998 F.3d 56, 69–70 (2d Cir. 2021)).

374. In re John Q. Hammons Fall 2006, LLC, No. 20 3203, 2022 LEXIS 22859 (10th Cir. 2022) (reinstating 15 F.4th 1011, 1025–26 (10th Cir. 2021)).

375. *In re Mosaic Mgt. Group, Inc.*, 71 F.4th at 1353–54.

376. In re Fundamental Long Term Care, Inc., 81 F.4th 1264 (11th Cir. 2023).

377. 11 U.S.C. § 327(a) (1986).

378. Fed. R. Bankr. P. 2014

379. *Fundamental*, 81 F.4th at 1268.

380. *Id.*

381. *Id.*

382. *Id.* at 1322.

383. *Id.* at 1326.

384. *Id.* at 1312–13.

that an application for employment under § 327(a) "shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee."[385] The court held that the special litigation counsel's failure to disclose its pre-petition connection to the previously represented company was not negligent and did not violate Rule 2014.[386]

X. RELEVANT NON-BANKRUPTCY CASES

The Supreme Court of the United States also decided *Tyler v. Hennepin County, Minnesota, et al.*[387] and *Biden v. Nebraska, et. al.*[388] Neither case directly addresses bankruptcy, but both cases have substantial implications for bankruptcy cases.

In *Tyler*, the Supreme Court held that, in a tax sale, a government's retention of the excess value of property beyond the debt owed to that government violates the Takings Clause of the Constitution.[389] Geraldine Tyler owed $2,300 in unpaid taxes and $13,000 in interest and penalties.[390] Hennepin County seized Tyler's property and sold it for $40,000, satisfying the $15,000. The county retained the additional $25,000.[391] The county argued that, under Minnesota law, Tyler forfeited the interest in her home when she fell behind on the property taxes.[392] The Court held that this practice is unconstitutional, and governments can only retain the proceeds of a tax sale to the point of the debt, but the additional proceeds must be remitted to the formerly delinquent tax payer and former property owner.[393]

In *Biden v. Nebraska*, the Biden Administration's extension of the Higher Education Relief Opportunities for Students Act of 2003 (HEROS Act)[394] was struck down by the Court.[395] The HEROS Act gives the

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385. FED. R. BANKR. P. 2014.

386. *Id.* at 1328; On January 3, 2024, the Sixth Circuit ruled that the UST did not have to refund the increased fees because the UST is entitled to sovereign immunity. That opinion is In re Teter, 90 F.4th 493 (6th Cir. 2024).

387. Tyler v. Hennepin Cnty., Minnesota, 598 U.S. 631 (2023).

388. Biden v. Nebraska, 600 U.S. 477 (2023).

389. U.S. CONST. amend. V.

390. *Tyler*, 598 U.S. at 635.

391. *Id.*

392. *Id.* at 646.

393. *Id.* at 647–48.

394. 20 U.S.C. § 1098bb (2003).

395. *Biden*, 600 U.S. at 482.

Secretary of Education the power to "waive or modify any statutory or regulatory provision applicable to the student financial assistance programs . . . in connection with a war or other military operation or national emergency."[396] The Secretary of Education used the HEROS Act to reduce the student debt of borrowers making less than $125,000 by $10,000 or $20,000 if they had been issued Pell Grants.[397] Six states challenged the scheme.[398] The Court held that cancelling student loan debts exceeded the scope of the statute's allowance that the Secretary can "waive or modify" existing provisions of student loan programs.[399]

396. 20 U.S.C. § 1098bb(a)(1)(2003).
397. *Biden*, 600 U.S. at 486–89.
398. *Id.* at 488–89.
399. *Id.* at 505–07.