

Spring 2022

Bankruptcy Court Liaison Committee Newsletter

Foreword from the Co-Chairs

By Matthew Brash and Mazyar Hedayat, Co-Chairs

Bankruptcy Court Liaison Committee, Northern District of Illinois

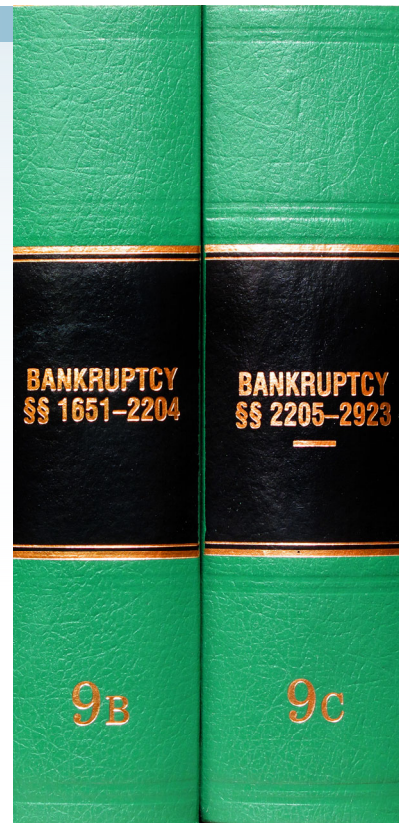
Dear Bankruptcy Colleagues

Matthew and I wanted to start by thanking our committee members, including Attorneys, Court Personnel, Trustees, and Judges, for making 2022 an incredible experience. We also wanted to point out some of the innovations we put into effect: this year we began recognizing, organizing, and actively soliciting updates from subcommittees. From Chapter 7, 13, and 11, to Social Media and Diversity, the result has been the creation of a virtual ecosystem. Every member is a critical contributor of news, insights, case opinions, legislation, local rules, and practical knowledge at every meeting, in every social media post, and ultimately in this Newsletter. And, while we are proud of the committee’s work, we also wanted to pause to acknowledge the loss of giants in 2022, including the Honorable Jack Schmetterer and Trustee Tom Vaughn. We will not be the same for their loss, and it is with due reverence that we include pieces on both in this year’s Newsletter selections. Finally, Matthew and I are proud of our commitment to brevity (the soul of wit). We hope you enjoy reading the 2022 Spring Newsletter as much as we have enjoyed putting it together.

New Trial Attorney with U.S. Trustee’s Office

By Peter Bastianen, Newsletter Committee

Please help us welcome Suhey Ramirez, who has joined the U.S. Trustee’s office in Chicago as a Trial Attorney. Ms. Ramirez comes to the Northern District from the U.S. Trustee’s office in San Jose, California, where she held the position of Trial Attorney from 2019 to 2022. Before that, her experience included trial work in foreclosure and eviction proceedings, review of discovery in large scale litigation, and intellectual property work for start-up companies. She graduated with a B.S. in legal studies from St. John’s University and earned her law degree from Chicago-Kent College of Law. Ms. Ramirez considers herself a public servant at heart. She is passionate about financial literacy and economic development. When not immersed in all things law, she keeps herself plenty busy raising her four-year-old daughter and serving at her local church.



Inside this Issue

Foreword from Co-Chairs.....	1
New Trial Attorney ..	1
Catching Up: Tom Hooper.....	2
Serendipity (Tribute)	3
Schmetterer Stories	5
CARE 2022	5
Opinion Summaries	6
Acknowledgment and Salute	9
Announcements.....	10
Mission Statement	11
BCLC Members.....	12

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A Day in the Life: Catching Up with New Chapter 13 Trustee Tom Hooper

By Peter C. Bastianen, Newsletter Committee

Effective October 1, 2021, Thomas H. Hooper was appointed Chapter 13 Trustee in the Northern District of Illinois for cases filed in Cook County. Before that, he worked as a staff attorney in the Chapter 13 Trustee's offices in the Southern District of Illinois and North Carolina. Thom was kind enough to answer some questions now that he's been on the job approximately six months.

Q: How are things going in general since you took office?

A: It has been a whirlwind, but all parties in interest have been wonderfully supportive. When I transitioned from a debtor attorney to a staff attorney, I recall being impressed by the sheer scope of work performed within a trust operation. Since my appointment, I've been working diligently to implement consistent processes and procedures while attempting to communicate my mindset/position to the bar. To date, I think we've made progress and hope that changes to date will ultimately result in a more efficient process.

Q: Has anything differed from your expectations based on your prior experience in other Trustee offices?

A: Every jurisdiction has its own nuances. To be sure, there are some quirks that caught me off guard. But I am getting up to speed and continuing to ask questions.

Q: Is there anything new coming down the pike from your office in the coming months?

A: I am being more pro-active in objecting to claims, particularly to duplicate claims, claims that fail to attach proof of perfection, and claims that fail to attach a writing. I am also seeking direction from the court as to whether an allowed claim is required to share in disbursements under the confirmed plan in light of *Pajian* and amendments to the Rules. The claims allowance process is critical to the accurate and efficient administration of cases. I want to ensure I have something on which to hang my hat prior to making disbursements. As with most of my positions before the court, I'm not seeking a 'win' but rather an answer.

Q: Would you consider putting confirmation notes on your website like Trustee Stearns?

A: My new website, www.chicagoch13.com, is under construction and will contain a number of useful resources including links, calendars, and a staff directory. I hope the bar finds it useful when it is operational, and I welcome any feedback. I have implemented the filing of objections to confirmation to clearly outline my perceived impediments to confirmation. It is our procedure to attempt to have an objection to confirmation filed within seven days of the conclusion of the 341 meeting to give counsel ample time to review and discuss with my office. Moving forward, if I have an objection to a particular motion, I intend to file a formal pleading outlining the basis rather than springing the objection on counsel at hearing. I'd prefer to formally put my position on record to the extent possible.

Q: What are your views on pot plans v. percentage plans?

A: The Code doesn't speak in terms of percentages. Sections 1325(a)(4) and 1325(b) set forth specific calculations for determining the required amount payable to allowed general unsecured claims. It is not possible to properly calculate the required plan payment for a percentage plan given that the total of the allowed claims cannot be known until at least the bar date. If claims come in low, the proposed percent may not satisfy the liquidation analysis or pay all projected disposable income. If claims come in high, the debtor may be paying in more than is otherwise required under the Code. Further, the total of allowed claims may fluctuate based on claim objections/amendments or other actions over the life of the plan. A pot plan appears to me to be what is contemplated by the Code. See also the footnotes of *Witkowski*. My experience has been in administering pot plans and I was at first admittedly confused by the number of 10% and 1% plans I have been administering.

Q: Is there any preferred language you would like to see in proposed orders on common motions.

A: I have requested new language in orders on motions to modify to defer default. Specifically, I am requesting that the debtor set forth the specific schedule of payments over the remaining duration of the plan. It is my position that this puts the debtor, and my office, on clear notice of the remaining obligations under the plan.

Serendipity— A Tribute to Judge Jack B. Schmetterer

By Mark S. Wheeler, Former Newsletter Co-Editor

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Despite appearing before the Senior Bankruptcy Judge for the Northern District of Illinois perhaps hundreds of times over the last 29 years, I was uncharacteristically nervous to interview him. After all, a person could be quite different personally in an interview setting than they appear professionally. On the day I interviewed him, the door from the courtroom to the Judge's office opened and Judge Jack B. Schmetterer entered with a broad smile and a kind greeting. In a demonstration of social grace that wasn't wasted on me, he insisted on putting on his suit coat. And with that the Judge said "Serendipity", which began a nearly eighty minute narrative on his life events covering the period of 1948 to the present day.

Serendipity is a term defined by Merriam Webster as a noun meaning the occurrence and development of events by chance in a happy or beneficial way. Schmetterer graduated from Oak Park High School in 1948 and applied to just one institution, Yale College. Despite very strong academic credentials, he was denied admission to Yale. He shared that fact with one of his high school teachers who took him to visit a Christian minister at one of the large congregations in Oak Park. After they discussed the issue of his admission, the minister wrote a letter to Yale asking them to change their ruling. Apparently the letter worked because soon after he received notification that he was accepted. At this point, the judge paused briefly in thought and said "Only in America could a Jewish kid from Oak Park get admitted to an Ivy League college on the recommendation of a Christian minister..."

While at Yale, Schmetterer immersed himself in the culture of the school and became active in the Yale Political Union Liberal Party. Interestingly, one of his classmates was Edwin Meese who many years later would become Attorney General of the United States during the Reagan Administration. Initially, Schmetterer studied Political Science at Yale, but after his junior year switched to a program major called Scholar of the House. In that program he authored a major paper (Similar to a Thesis...) on the development of political forces against the St. Lawrence Seaway, focusing on government and economics. He then emphasizes how enjoyable his final year of undergrad was and it culminated with a Bachelor of Arts in 1952.

Judge Schmetterer's father was a general practitioner in Chicago for many years, so it was only natural that he

applied to law school at both Yale and Harvard. He editorializes that he applied to Yale for several reasons including that he was already familiar with New Haven and the campus layout. He had a part time job teaching undergrads Political Science to help pay for law school, and perhaps the most important consideration the quality of the Italian cuisine in that region. This time no Serendipity was needed as he was accepted at both Yale and Harvard. As you probably guessed, he chose to continue his studies at Yale. He met his first wife Joan prior to graduating from law school and relates with great affection what a wonderful person she was. He shared a story at this point that he took Joan on a date to Ravinia and chuckles that she kept talking while he was trying to hear the performers. Schmetterer graduated from Yale Law School with his LLB in 1955.

In the 1950s the draft was still very much a part of our society, and the judge stated that his draft deferment was running out so he used his last extension to marry Joan before reporting to basic training. Following his basic training he and Joan moved to Ft. Gordon, Georgia.

There he attended military police school because with his law degree the Army thought that was the best place for him. The Schmetterer's had very limited means while stationed in Georgia, and he remembers a time when they went without water for a short time due to uncharacteristically cold weather in the region that caused their pipes to freeze. At this point in the interview I couldn't help but feeling what a pampered upbringing many of us had in later generations without having to face real adversity. In 1957 Joan got a teaching job first at a Catholic School, then at a public school in Georgia. Her supervisors at the segregated school said they understood that she belonged to a different religion, but that she was ordered to bring her class down for a school prayer and because she knew that such a directive was unconstitutional, she refused to bring her class to the prayer and told the administrators that if they wanted them they would need to come get them. The school administrators finally relented and dropped the requirement for her class to attend the prayer. Schmetterer reflects, that at that particular point, she really needed the second income and that they were "as poor as church mice."

Serendipity— A Tribute to Judge Jack B. Schmetterer (Continued)

Schmetterer was discharged from active duty in the Army in 1958 and he and his wife eagerly moved back to the Chicago area. He worked practicing with his dad for 6.5 years when Serendipity struck again. One of Schmetterer's teachers at Yale was appointed as Deputy Attorney General of the United States, so he sent a letter congratulating him on his appointment and the former teacher contacted the U.S. Attorney in Chicago and another career began as a Federal prosecutor. He started in the Civil Division and a man by the name of the U.S. Attorney (USA) office in Chicago. Ironically, Thomas James and a co-worker in the Civil Division, Erwin I. Katz both later became Bankruptcy Judges in the Northern District of Illinois. Schmetterer eventually became the head of the Civil Division following James' departure. He worked on enjoinderment of public workers, but perhaps the most notable case he was involved in happened to be the first Northern school desegregation case, *United States v. School District 151 of Cook County, Ill.*, 301 F. Supp. 201 (N.D. Ill. 1969) when he served as First Assistant U.S. Attorney. The case also had a timely pop culture connection in that the Judge was the Honorable Julius Hoffman, who also adjudicated the Chicago Seven trial that was depicted in a newly released motion picture on the event last year. He was in the USA office during the 1968 Democratic Convention which became notorious for police brutality cases and mob demonstrations. Schmetterer was responsible for prosecuting use of excessive use of force by police officers. Richard Nixon won the 1968 election and Schmetterer stayed on for two years until the new US Attorney was appointed and that signaled his time to leave public service in 1970. The judge went into a private law firm where he was a partner and they handled civil anti trust cases almost exclusively. However, his absence from public service did not last long when the Cook County States Attorney at the time, Ed Hanrahan, called him and offered him the First Assistant Cook County States Attorney position circa 1972. In his new position he was tasked with a herculean effort of reviewing and producing an inventory of all the search warrants issued in Cook County. The purpose of his assignment was to engage prosecutors in the process to obtain search warrants, because at the time, the police were obtaining warrants on their own and many of them were defective. In a worse case scenario a murdered was released due to suppression of evidence that stemmed from a bungled search warrant due to the police mishandling it. In the mid 1970s Schmetterer indicated that the Circuit Judges would sign almost anything that was placed in front of them and had no qualms telling anyone who would listen that that was their psychology, they might sign an search warrant one day and find that it was defective the next. He also

expresses his deep appreciation to his Judicial Assistants, Courtroom Deputies and Secretaries that faithfully served him over the years including Dorothy Clay, his current Judicial Assistant and Matthew Utter, his Courtroom Deputy. He also reflects on the fondness he had for his colleagues like Judge Robert Ginsberg, who he indicates was a genius and possessed a photographic memory. He also mentions the strong leadership of the Court that spanned years under Judge John Schwartz. Judge Schmetterer reflects on the entirety of his life with nothing but positivity, a trait that is both unusual and refreshing. His honesty and refusal to embellish his story indicates that he has always been confident and comfortable in his own skin.

On November 8, 2018 Judge Schmetterer was recognized by the Decalogue Society with the Inaugural Ilana Diamond Rovner Lifetime Achievement Award. This was a truly fitting culmination to an outstanding career that was assisted by Serendipity, but Serendipity didn't earn a law degree or serve in the Army, or have a work ethic that allowed it to find opportunities time after time to better positions with more responsibility.

I enjoyed writing this piece as great deal and my appreciation of the past or almost anything that reminds me of my youth continues to increase with age. I've come to view that as a good thing. I have always greatly respected Judge Schmetterer for his fairness and a personal level in completing this project because while I have always held Judge Schmetterer in the highest regard, I found myself appreciating him as normal person. A normal person with an extraordinary story, amazing life, outstanding career and exceptional moral fiber. There is no doubt that I discovered something good that day that occurred by chance and ended in a way that was both happy and beneficial. In other words, it could also be described as Serendipitous.

Jack Schmetterer Stories

By Anon (*Bankruptcy Practitioners*)

While you could say a lot about the late Judge Schmetterer, you could certainly never call him boring, or at a lack for war stories. We have two brief, loving examples of the memories he engendered.

The Fault in Our Stars

My favorite Judge Schmetterer memory involved a motion to extend the stay where the Debtor blamed his entire prior case failure on his girlfriend. Everything was her fault—he couldn't make his payments because of her, she didn't pay the mortgage, she never communicated anything to him. Judge Schmetterer finally quipped "Did he ever consider that perhaps the fault, dear Brutus, is not in our girlfriends, but in ourselves?" He was still slinging Shakespeare at 90.

The Cattle Call

I suppose my favorite story about Judge Schmetterer is the time that I spoke to him at one of the Court's cocktail parties. At the time, his Court Calls were famously long - nearly twice as long as that of most other Judges. In fact, the Judge had to move his confirmations to 2:00 because the motions and set matters took all morning. At that time, Judge Sonderby's call was the fastest and Judge Schmetterer asked me what her secret was. I told him it was because the Trustee resolved as many matters in advance as he could by either withdrawing or continuing matters that didn't have to be heard. Judge Schmetterer liked the idea and, not long after, adopted it. That was the birth of the "Cattle Call," which reduced the Confirmation call to only those matters that had to be heard that day. Today, many of the other Judges have been able to reduce the size of their calls by using some form of this technique. While Judge Schmetterer had his own way of handling his call in ways that other Judges did not emulate, this was one thing that caught on, though it truly started with Judge Sonderby.

I will always remember him fondly. He truly made his mark and helped a lot of people on the way.

CARE 2022

By Gretchen Silver, *US Trustee's Office*

Credit Abuse Resistance Education (C.A.R.E.) is a nationwide, all-volunteer organization that teaches basic financial literacy to high school students and adults. The Chicago chapter of CARE is particularly robust. CARE's volunteers present primarily to high school students throughout the Chicagoland area, both remotely and in-person. CARE also presents to community and professional groups. CARE provides a brief training seminar to volunteers, who may sign up to give presentations at their convenience. At the onset of the Pandemic in 2020, CARE made an abrupt pivot into "virtual" presentations to carry on the vital work of spreading financial literacy. The organization's website, recently updated, and found at www.carechicago.org, houses presentations and quick access to schools and groups wanting to invite CARE to present. Presentations, which run 40 minutes to an hour, cover student loans, credit basics, credit scores and reports, identity theft, budgets and savings, and bankruptcy. CARE also publishes a weekly newsletter through which it solicits volunteers for upcoming presentations. Several volunteer opportunities are currently available in April and May for presentations on various topics. If you are interested in volunteering with CARE, please submit a volunteer application from www.carechicago.org.

Opinion Summaries: Decisions by the Bankruptcy Judges of the Northern District of Illinois, September 2021 to February 2022

Chief Judge Goldgar

In re: Kahh, (unpublished) 20 B 17315, 20 A 00067 (09/07/21). Plaintiff UST filed adversary complaint to deny defendant debtor's discharge under § 727. Debtor moved to dismiss for failure to state a claim. Motion to dismiss denied for failure to cite any authority.

In re: Prate, 634 B.R. 72 (11/05/21). Creditor's motion for stay relief to resume pending state court case denied because maintaining a stay ensured that one court, not two, decides dispute, and because litigation in an adversary complaint filed by creditor in bankruptcy case had advanced further than litigation in state court, so hardship to both parties from lifting stay under § 362(d) outweighed hardship (if any) from keeping it in place. Both sides would be better off if motion to lift stay was denied and stay remained in place, because only bankruptcy court could dispose of all issues no matter who won. Only by maintaining stay would there be no risk of splitting dispute between two courts.

In re: Kahh, (unpublished) 20 B 17315, 20 A 00067 (01/12/22). Plaintiff UST filed adversary complaint to deny debtor's discharge under § 727. Debtor filed an answer and 18 affirmative defenses. UST filed a motion to strike all 18 affirmative defenses. Motion to strike granted with respect to 2 affirmative defenses because those defenses were improper. Motion denied without prejudice with respect to other 16 affirmative defenses because motion to strike provided insufficient analysis.

Judge Barnes

In re: Reed, 2021 Bankr. LEXIS 2455, 2021 WL 4028730 (09/03/21). Plaintiff creditor filed adversary complaint against defendant debtor to declare debt owed plaintiff nondischargeable pursuant to §§ 523(a)(2)(A) and (a)(4). Following trial, judgment entered in favor of plaintiff creditor. Plaintiff proved by a preponderance of evidence that debt was created by debtor's actual fraud when she used a power of attorney after death of joint account holder (plaintiff's spouse) to remove funds without informing bank that account holder had died, and that debtor took funds while knowing she had no right to do so and lied to police. Plain-

tiff creditor did not prove that debtor committed larceny for purposes of § 523(a)(4), but debt was nondischargeable due to finding under § 523(a)(2)(A).

In re: Ferguson, 2021 Bankr. LEXIS 3026, 2021 WL 5029387 (10/29/21). Chapter 7 trustee filed adversary complaint objecting to debtor's discharge under § 727. Following trial, judgment entered in favor of chapter 7 trustee. Trustee made a prima facie showing that debtor had funds sufficient to pay debts in full. Debtor failed to sufficiently explain dissipation of funds despite claiming that funds were lost gambling. He provided no records from either casino at which he primarily gambled, no tax forms or additional documentation beyond bank statements, and not even a basic accounting of gambling wins and losses (beyond simply what was withdrawn in cash). This rendered it impossible to determine whether funds were really lost gambling or were hidden away to avoid creditors. Debtor's discharge denied.

In re: Cordova, 2021 Bankr. LEXIS 3335 (12/06/21). City of Chicago impounded debtors' vehicles for failure to pay parking tickets. Debtors filed chapter 13 cases proposing plans to repay city and demanded that city return vehicles citing Seventh Circuit's Thompson decision. City refused citing Supreme Court's Fulton decision. Debtors filed class action adversary complaint against city for violating automatic stay and turnover provisions. City moved to dismiss for failure to state a claim. Motion to dismiss granted in part and denied in part. Dismissal of debtors' claims under § 362(a)(4) and (6) denied as a matter of law because Supreme Court made clear in Fulton that its ruling was limited to § 362(a)(3). Debtors' claims under § 362(a)(4) and (6) were not frivolous as there existed grounds upon which relief may be granted for conduct violating automatic stay. Dismissal of debtors' § 362(a)(7) claim granted because debtors' alleged nothing more than city's refusal to return vehicles, which was not a setoff. Dismissal of debtors' § 542(a) claim denied because city had an express statutory obligation to return estate property, and whether city had an adequate protection defense remained to be seen.

Judge Cassling

In re: Ferro, 632 B.R. 656 (09/21/21). Plaintiff creditor filed adversary complaint against defendant chapter 7 debtor. Debtor ordered to answer plaintiff creditor's interrogatories 2 through 14 because interrogatories were clear and appropriately narrow to facts germane to case. Moreover,

Case Summaries (Continued)

interrogatories were proper under specific facts of case, because arbitrator specifically found that debtor's acceptance of payments from creditor's customers was wrongful.

In re: Dordevic, 633 B.R. 553 (09/22/21). Chapter 7 trustee filed adversary complaint against debtor's mother pursuant to §§ 541 and 542 alleging that debtor was true equitable owner of mother's 50% membership interest in Florida corporation. Following trial, judgment entered in favor of chapter 7 trustee. Trustee met his burden, and was entitled to exercise his rights, because mother paid nothing for nominal ownership of 50% membership interest in company and did nothing to advance business interests of company. Additionally, court heard testimony that debtor placed mother in position of nominee in order to avoid alerting immigration authorities of debtor's 50% membership interest in company. Debtor was true equitable owner of mother's interest which could therefore be administered by chapter 7 trustee for benefit of creditors.

In re: Shakir, 633 B.R. 817 (10/05/21). Chapter 7 Trustee recorded lis pendens against certain real properties owned by debtor. Debtor filed a motion to quash lis pendens. Motion to quash denied. Trustee asserted entitlement to two forms of equitable relief, each of which involved and, in some cases, affected subject real properties against which lis pendens were recorded. Nothing more was required by lis pendens statute, which authorizes filing of a lis pendens for any lawsuit that otherwise supports such filing, whether filed in bankruptcy court or district court. Illinois statute 735 ILCS 5/2-1902 clearly enlarges rather than restricts filing of lis pendens in connection with insolvency proceeding. Trustee's lis pendens would be authorized under Illinois law whether analyzed under 735 ILCS 5/2-1901 or 735 ILCS 5/2-1902, as each would independently support trustee's lis pendens under circumstances of case.

In re: Dordevic (unpublished), 20 B 09807 (11/16/21). UST motion to examine attorney's fees granted. Chapter 7 Debtor's attorney ordered to disgorge all fees for failure to file appropriate fee disclosures as required by Fed. R. Bankr. P. 2016(b).

In re: Irfan Moten (unpublished), 21 B 03418, 21 A 00096 (02/28/22). Plaintiff, a former employee of debtor defendant's restaurant, filed three count amended adversary complaint to declare approximately \$380,000 debt owed to plaintiff employee, resulting from alleged underpayment of wages and attorney's fees and costs incurred in a district court lawsuit, nondischargeable pursuant to §§ 523(a)(2)

and (a)(4). Defendant employer moved to dismiss for failure to state a claim. Motion granted in part and denied in part. §§ 523(a)(2)(A) and (a)(4) claims survive dismissal because plaintiff employee alleged facts sufficient to state plausible claims, and pled fraud with particularity. §523(a)(2)(B) claim dismissed because timecards fabricated by defendant employer were not statements respecting his restaurant's financial condition.

Judge Cleary

In re: Golden Fleece Bevs., 2021 Bankr. LEXIS 3518 (11/24/21). Substitute counsel for chapter 11 subchapter 5 debtor requested authorization to incur post-petition debt to pay substitute counsel's post-petition retainer. Request granted over UST objection because plain language of 11 U.S.C. §§ 328 and 363(b) applies in all of chapter 11, including subchapter 5, authorizes debtor to use property of estate outside ordinary course of business to pay a post-petition retainer to its professionals, and facts in this case supported request.

In re: Smith (unpublished), 21 B 12101 (02/17/22). Chapter 13 debtor stipulated to nondischargeability of unsecured debt owed to Federal Emergency Management Agency ("FEMA"). Debtor's plan proposed to pay unsecured creditors 10% of claims, but separately classified FEMA's unsecured claim to pay 100%. Chapter 13 trustee objected to plan alleging it unfairly discriminated between creditors in same class in violation of § 1322(b)(1). Trustee's objection sustained based on In re: Crawford, 324 F.3d 539, 542 (7th Cir. 2003).

In re: Tracy Drake, 2022 Bankr. LEXIS 470, 2022 WL 548016 (02/23/22). Debtor failed to pay real estate taxes and taxes were sold to a tax purchaser. Days before deadline to redeem sold taxes, Debtor filed chapter 13 and proposed plan to repay tax purchaser in full with interest at 0.50%. Tax purchaser objected to proposed interest rate. Objection sustained. In order to satisfy requirements of §1325(a)(5)(B), proper interest rate on portion of tax purchaser's claim for sold taxes was 18.00% pursuant to 35 ILCS 200/21-15. Remainder of tax purchaser's claim could be paid at interest rate appropriate under Supreme Court's Till decision (prime rate + risk adjustment).

Case Summaries (Continued)

In re: Gonzalez (unpublished), 21 B 01498 (12/17/21). Creditor Bank filed Motion to Vacate Chapter 13 Confirmation Order under Fed. R. Bankr. P. 60(b)(1), (3) and (6) alleging that it did not receive adequate notice of Debtor's plan. Motion denied because Bank received both actual notice and notice that complied with the Bankruptcy Rules and simply mishandled the notice it received. Further, although the Bank did not argue that the confirmation order was void under Fed. R. Bankr. P. 60(b)(4), that argument would have been rejected because notice to the Bank was sufficient to satisfy Constitutional due process.

Judge Cox

In re: Kowalski, 633 B.R. 822 (10/13/21). Plaintiff chapter 7 trustee filed adversary complaint against defendant bank for violating automatic stay because bank cashed cashier's checks for debtor and his sister (an attorney) that debtor purchased pre-petition. U.S. Attorney indicted debtor, his sister, and others for bankruptcy fraud and other crimes. Debtor's sister asserted fifth amendment right against self-incrimination in a deposition. Trustee moved to set a trial date on adversary prior to resolution of criminal matter, arguing that debtor's sister's assertion of fifth amendment rights was irrelevant because court had previously made findings and conclusions based on her testimony in a prior adversary which was law of the case. Trustee also argued that relevant factors to determine whether to stay adversary weighed against defendant bank. Motion to set trial date denied. Law of the case doctrine did not apply because debtor and his sister were principal witnesses to cashier's check transactions and defendant bank did not have opportunity to question debtor or his sister. Adversary was stayed until conclusion of a criminal proceeding because both proceedings centered around transactions involving same cashier's checks, criminal proceeding was ongoing so further discovery could be needed, and countervailing interest of protecting debtor and his sister's fifth amendment rights was higher than bankruptcy interest.

In re: Kowalski, (unpublished) 18 B 09130 (11/12/21). Request for \$150,000.00+ administrative expense claim made by state court domestic relations receiver for discovering assets denied because assets discovered by receiver did not bring any value into bankruptcy estate.

Judge Doyle

Peterson v. Colony Am. Fin. Lender LLC, (unpublished) 17 B 09308, 19 A 00576 (12/21/21). Plaintiff Chapter 7 Trustee filed second amended three count adversary complaint seeking to avoid allegedly fraudulent transfers of real property by debtor to two defendants pursuant to various provisions of Bankruptcy Code and Illinois Uniform Fraudulent Transfers Act. Defendant moved to dismiss for failure to state a claim. Motion granted in part and denied in part.

Judge Hunt

In re: Alcantar, (unpublished) 19 B 24926 (09/10/21). Chapter 7 Trustee filed adversary complaint against debtor to recover nearly \$140,000.00 transferred by debtor to his spouse approximately a month before he filed bankruptcy. Debtor then requested to convert to chapter 13. Request to convert denied because debtor had not moved to vacate chapter 7 discharge, had not shown he was eligible for chapter 13, and had not shown that request to convert to chapter 13 was made in good faith.

Judge Lynch

In re: Faccone, 2022 Bankr. LEXIS 317, 2022 WL 354305 (02/07/22). Chapter 7 debtor claimed a personal property exemption under 735 ILCS 5/12-1001(f) as to his rights in a financial contract with an insurance company. Chapter 7 trustee and a creditor objected to exemption. Exemption disallowed because contract was not a life insurance policy, did not constitute proceeds of a life insurance policy, and was not an annuity contract payable to a spouse, child, parent, or other person dependent on debtor.

Judge Thorne

In re: Argon Credit LLC, 632 B.R. 300 (09/02/21). Plaintiff consumers filed adversary complaint against defendant Fund Recovery Services, LLC ("FRS") under California consumer protection statutes and breach of contract, alleging that FRS violated California law when it collected on consumer loans extended to plaintiffs by debtor Argon Credit, LLC. FRS moved to dismiss for lack of standing under 12(b)(1) and (6). Motion granted in part and denied in part. Count II breach of contract claim dismissed without prejudice because plaintiff consumers failed to allege that they performed or that

tiff consumers failed to allege that they performed or that their non-performance was excusable. Count I and III consumer protection statute claims survived dismissal because plaintiff consumers alleged facts sufficient to establish constitutional and statutory standing to sue based on a reasonable inference that loan agreements were either entirely void or partially invalid and FRS had no right to collect by falsely representing that plaintiff consumers owed a specified sum of money they did not owe.

In re: Robinson, 633 B.R. 357 (09/13/21). Chapter 7 debtor, as a successor in interest to beneficial interest in land trust holding title to property, was personally liable to creditor under terms of a promissory note signed by debtor's predecessor in interest. Moreover, even if debtor was not personally liable, creditor's mortgage interest in debtor's residence was claim against property of debtor's bankruptcy estate protected by automatic stay. Based on the record, there was sufficient equity in property to adequately protect creditor, so there was no cause to modify stay.

In re: Argon Credit LLC, 634 B.R. 770 (12/08/21). Defendant Fund Recovery Services, LLC's ("FRS") motion to dismiss plaintiff consumers' amended adversary complaint for lack of subject matter jurisdiction, or to abstain, was denied because, notwithstanding chapter 7 trustee's abandonment of a portfolio of consumer loans that included loans extended to plaintiff consumers, resolution of dispute between plaintiff consumers and defendant FRS affected size of FRS's unsecured claim which had a potential effect on size of distributions to debtor Argon Credit LLC's other unsecured creditors. Accordingly, dispute was related to debtors' bankruptcy case, and court had subject matter jurisdiction under 28 U.S.C.S. § 1334. Abstention would not serve interest of justice as, other than arbitrations which were closed due to FRS's intransigence, no related proceedings had been initiated in state court or any other forum, and bankruptcy court's jurisdiction did not stymie proceedings before another court poised to administer the law.

Republic Bank of Chicago v. Poulos, 2022 Bankr. LEXIS 397, 2022 WL 471373 (02/16/22). Creditor filed adversary complaint pursuant to § 523(a)(2)(A) objecting to discharge of debt owed to it by debtor defendant. Both sides filed motions for summary judgment. Plaintiff's motion was denied because it failed to establish by preponderance of evidence that defendant made a false representation. Specifically, plaintiff did not show that defendant's use of line of credit violated underlying contract and provided no other compelling reasons to believe that defendant intended to defraud plaintiff. Defendant's cross-motion was granted on all but \$26,000.00 of plaintiff's \$149,000.00 claim based on "lowest intermediate balance" tracing method.

Acknowledgement and Salute

In 2022 the Office of the Bankruptcy Clerk said farewell to several of its members. The BCLC gratefully acknowledges their contributions and wishes them well:

Haley Poindexter
Financial Specialist

Charles McMullen
Financial Technician

Venita Brown
Case Administrator – Team Leader

Marilynn Camacho
Case Administrator – Team Leader

Corrina Turner
Case Administrator

Gwendolyn Rance
Training Specialist

Debra Pruitt-Oliver
Case Administrator

Bon Voyage!

ANNOUNCEMENTS

If anyone has ideas for rules changes or possible modification of administrative procedures that they believe would improve the efficiency of the court functioning please submit those to the BCLC portal on the court's website or by emailing either co-chair.

Stay in touch! Follow the Liaison Committee on **LinkedIn** to receive all the latest news and announcements:
<http://www.linkedin.com/company/ilnb-bclc>

The BCLC formed a diversity committee last year and will be seeking to increase the diversity of our committee with the new members beginning their terms in August 2022. With that in mind please consider applying or nominating someone you know beginning June 1, 2022. You may send a letter of application and resume or CV to any of the attorney members via email who will pass it on to either of the co-chairs.

Mission Statement

The Bankruptcy Court Liaison Committee for the Northern District of Illinois was formed to assist the Bankruptcy Court and its practitioners to create a more efficient and collegial environment throughout the entire Northern District of Illinois. To further that purpose, the Liaison Committee publishes a periodic newsletter, develops local practice questionnaires, and sponsors educational programs and social events to encourage interaction among judges and practitioners. Additionally, section 2.01 of the Committee's bylaws provides that practitioners may relay issues, concerns, or complaints about bankruptcy judges or the bankruptcy court to the Committee – anonymously – through the co-chairs or any other committee member. The information will then be anonymously presented to the appropriate bankruptcy judges for review and consideration under 28 U.S.C. § 154(b), which provides that the chief judge of the bankruptcy court “shall ensure that the business of the bankruptcy court is handled effectively and expeditiously.”

Practitioners wishing to share any issues, concerns, or complaints with the Committee may contact any of its Members anonymously via mail, email, phone, or on the Bankruptcy Court's website at: <http://www.ilnb.uscourts.gov/bankruptcy-court-liaison-committee>.

United States Bankruptcy Court For The Northern District of Illinois

Chief Judge A. Benjamin Goldgar

Judge Janet S. Baer

Judge Timothy A. Barnes

Judge Donald R. Cassling

Judge David D. Cleary

Judge Jacqueline P. Cox

Judge Carol A. Doyle

Judge LaShonda A. Hunt

Judge Thomas M. Lynch

Judge Deborah L. Thorne

2021-2023 Bankruptcy Court Liaison Committee

Honorable A. Benjamin Goldgar (Chief Judge)

Honorable Janet S. Baer

Honorable David D. Cleary

Honorable Thomas M. Lynch

Jeffrey P. Allsteadt
Clerk of Court

Sharon Zurowski
Chief Deputy Clerk

Jean M. Dalicandro
Operations Manager

Matthew Brash (Co-Chair) Term 2020-2022
Newpoint Advisors Corporation

James A. Brady Term 2020-2022
Legal Aid Chicago

Mazyar Hedayat (Co-Chair) Term 2020-2022
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John R. Luze Term 2020-2022
Kirkland & Ellis

Paul M. Bach Term 2021-2023
Bach Law Offices, Inc.

Israel Moskovits Term 2020-2022
The Semrad Law Firm, LLC

Peter C. Bastianen Term 2021-2023
Codilis & Associates, P.C.

Brigid Ndege Term 2021-2023
Lewis Brisbois Bisgaard & Smith LLP

Desirae Bedford-Rochelle, Term 2021-2023
Recovery Law Group

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Rupa K. Sanghani Term 2021-2023
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Gretchen Silver (Permanent)
Office of the U.S. Trustee Region 11

Charles F. Kinzer Term 2021-2023
Geraci Law LLC

Sean P. Williams Term 2020-2022
Levenfeld Pearlstein, LLC

William "Bill" A. Williams Term 2021-2023
Jenner & Block LLP