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LEGAL UPDATE

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BANKRUPTCY

Security Interests are Extinguished When a Loan is Satisfied [BKR WD TX]

The debtors took out a loan from the lender. The lender retained a security interest in the debtors' vehicle. The borrowers later took out a second loan from the lender and used some of the money from the second loan to repay the first loan. Following the execution of the second loan, the lender did not re-title the vehicle with the Texas DMV to obtain a security interest in the debtors' vehicle through the second loan. The debtors subsequently filed for Chapter 13 bankruptcy. The lender filed suit to recover the debtors' vehicle, arguing that it maintained a security interest in the vehicle through the first loan and that perfecting subsequent loans was unnecessary. In addition, the lender argued that res judicata and lack of standing bars the trustee's claim. The trustee argues that the debtor's payment of the first loan and the lender's failure to retitle to obtain a security interest on the second loan resulted in the lender no longer having a security interest in the debtor's vehicle.

In **Viegelahn v. Titlemax of Tex., Inc. (In re Carraman)**, No. 22-51009-MMP, 2024 WL 2704203, 2024 Bankr. LEXIS 1232 (Bankr. W.D. Tex. May 24, 2024), the court held that the lender did not have a security interest in the debtors' vehicle. First, the lender argued that the second loan was either a renewal and "extension and renewal" or a "refinance" of the original loan. However, renewals and extensions merely provide more time for borrowers to repay their loans and do not include advancing additional money beyond what a borrower initially borrowed. Here, the second loan included more money than the first loan; consequently, the second loan was not a renewal and extension of the first loan. Regarding the refinancing argument, even if the second loan was a refinancing of the first loan, the second loan still satisfied the first loan, extinguishing the security interest, unless the first loan included a future advances clause. A future advances clause in a loan explains that a security interest in a loan secures "not only the original loan, but also later advances of money to a borrower." The lender acknowledges that the first loan did not include a future advances clause. The lender argued that language in the second loan anticipating a possible future advance implied a future advance clause, but the court disagreed. The court determined that the second loan, as "a separate extension of value by a creditor to the debtor made after the original security agreement," was a future advance. However, as the second loan did not contain a future advances clause, the initial loan's security interest did not secure the future advance. Next, the lender further argued that they did not have to re-title the vehicle to establish its security interest in the vehicle. The lender relied on Wells Fargo Equip, Fin. V. Rodriguez (In.re Clark Contr. Servs.), 438 B.R. 913 (W.D.Tex.2010), in which the court held that a creditor that failed to re-title vehicles bought from the holder of the security interest in the vehicles did not render the security interest invalid. However, Wells Fargo concerned a single security interest transferring through multiple owners, while the present case concerns a security interest on a new loan which satisfied a previous loan. As such, Wells Fargo is distinguishable from the present case, and its holding did not impact the court's decision. Therefore, the second loan was unperfected because the lender failed to re-title. Alternatively, the lender made two procedural arguments against the borrowers. First, the lender argued that the claim was estopped due to res judicata. The debtors' bankruptcy plan identified the lender as a secured creditor. Matters the parties could have resolved at the confirmation hearing of a Chapter 13 plan are barred from being litigated. Before the court's confirmation of the debtors' bankruptcy plan, the debtors filed an objection to the bankruptcy plan's inclusion of the lender as a secured creditor. After confirmation but before entry of the plan, the court granted the debtors' objection, changing the lender's claim status to unsecured. The court later vacated the order granting the debtors' objection on procedural grounds. The lender argued that the vacation of the objection barred the debtors from filing suit on whether the lender had a security interest in the debtors' vehicle. The borrowers could have resolved the matter pre-confirmation but did not, barring the matter from

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litigation. However, the debtors had no reason to take further action on the matter when the court already granted the debtors' objection to the lender's status as secured creditors. Although the debtors acted with improper procedure, they did raise the issue pre-confirmation and should not be barred from continuing with the issue due to a procedural defect. Second, the lender argued that the trustee of the debtors' estate lacked standing to bring the case for two reasons. First, they argued that the benefit of the debtors' keeping their car would only benefit the debtors, not the estate. For the trustee to have standing to bring a claim concerning property, the benefit of keeping the property must flow to the debtors' estate, not just the debtors. However, avoiding the lender's claimed security interest would "increase distributions to unsecured creditors or at least expedite equivalent distributions to those creditors," benefiting the estate. Second, the lender argued that because the debtors exempted the car from their estate shortly after their required meeting with the lender, the vehicle was not part of the estate. However, under Bankruptcy Code section 544(a)(2), trustees have the power to bring claims regarding property included in the estate "at the time of the commencement of the case." As the debtors' vehicle was part of the debtors' estate when they filed bankruptcy, the trustee had standing to file claims regarding the vehicle. Ultimately, the court granted the trustee's motion for summary judgment and held that the trustee had avoided the security interests on exempted property.

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The Statute of Limitations is Tolled During Bankruptcy Cases [BKR ND TX]

The debtor and the debtor's husband took out a loan from the mortgage company. The mortgage company assigned the loan to a trust over which the bank was the trustee. In 2010, the bank sent the debtor a notice of acceleration. The debtor subsequently filed for Chapter 13 bankruptcy. The bankruptcy was converted to Chapter 11, and the debtor confirmed a plan to continue paying the loan and make a lump sum payment. The debtor failed to make payments, and in 2014, the bank filed another notice of acceleration. That year, the debtor again filed for bankruptcy, but the court dismissed the second bankruptcy case. In 2018, the debtor filed another Chapter 11 bankruptcy. Following a series of meetings and hearings, the debtor filed an objection to the bank's claim on the debtor's house, making four claims: "(1) the notices of acceleration were deficient, (2) the bank never abandoned its 2014 Acceleration, (3) the [d]ebtor's two prior bankruptcy cases did not function to toll the statute of limitations, and (4) the [d]ebtor did not ratify the mortgage to extend the four year limitations period." The debtor argued in the alternative that the court "consider an installment contract theory whereby [the bank] would be barred from collecting on any missed payment overdue for longer than four years." The bank responded with a motion for summary judgment, arguing that the statute of limitations had not expired on the 2014 acceleration and that even if it had, the bank "effectively abandoned the 2014 acceleration."
In **In re Wenstrom**, 649 B.R. 492 (Bankr. N.D. Tex. 2023), the court granted the bank's motion for summary judgment. First, the court noted that the bank had a valid note and could enforce it. Second, the court discussed whether the statute of limitations would bar the bank's claim. "Under Texas law, a secured lender has four (4) years to foreclose on real property from the day the lender's cause of action to foreclose accrues." Tex. Civ. Prac. & Rem. Code Section 16.035(a)(b). The statute may be tolled through abandoning acceleration or equitable tolling. While the debtor raised both arguments, the court decided the matter solely on equitable tolling. Under equitable tolling doctrine, the statute of limitations does not run while a person is barred from taking legal action on a cause of action. Here, the bank was barred from foreclosing on the debtor's house during the debtor's 2014 and 2018 bankruptcy cases. The debtor argued that the bank could have taken action by directing its actions towards the debtor's husband, who was not protected by the automatic stay of the debtor's bankruptcy cases. However, while the automatic stay did not protect the debtor's husband, the bankruptcy estate, including the debtor's house, was protected by the automatic stay. The automatic stay protected the bankruptcy estate, not just the debtor's interest in the house, and thus, the statute of limitations was tolled during the debtor's bankruptcy cases. From the 2014 acceleration, when the statute of limitations began to run, through the present case, 2,587 days had passed. The automatic stay from the bankruptcy proceedings protected the bankruptcy estate for 1,264 of those days, leaving 1,323 days in which the bank could have foreclosed on the property, slightly under 100 days before enough days passed to meet the four-year statute of limitations. Because of the equitable tolling· during the debtor's bankruptcy proceedings, the statute of limitations had not run, and the bank could proceed with its suit.

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You Snooze You Lose: A Filing One Day Late Results in Dismissal [BKR ED WI]

The creditor sued the debtor for defamation and obtained a judgment. Afterward, the debtor filed for Chapter 7 bankruptcy and notified all creditors of the deadline to

challenge the dischargeability of debts. The creditor received notice and hired counsel before the deadline. The creditor filed a complaint alleging that the defamation judgment should not be discharged under 11 U.S.C. § 523(a)(6), which "commenced this adversarial proceeding." However, the creditor filed his complaint one day after the deadline. The creditor's counsel informed the court that the untimely filing was due to caring for her hospitalized family and that "she "miscalendared the deadline." The debtor argued that because the creditor missed his deadline, the claims "should be barred." Therefore, the bankruptcy court had to determine whether the creditor's untimely filing required the court to dismiss the complaint and the adversarial proceeding.

In **Uecker v. Benisheck (In re Benishek)**, No. 23-24120-kmp, 2024 WL 3647768, 2024 Bankr. LEXIS 1787 (Bankr. E.D. Wisc. Aug. 2, 2024) (opinion not yet released for publication), the bankruptcy court found that because the filing was untimely, it must dismiss the complaint and adversarial proceeding. First, the court established that Bankruptcy Rule 4007 governed the timeliness of the filings even though the creditor was not seeking to deny the debtor's entire discharge. The court cited Kontrick v. Ryan, 540 U.S. 443, 448 n.3 (2004), which stated that regardless of whether the complaint sought to partially or entirely deny discharge, "essentially the same time prescriptions apply." Additionally, because the creditor's claim was under Bankruptcy Code section 523(c), Bankruptcy Rule 4007(c) proscribed a 60-day deadline to file a challenge to debt dischargeability. Next, the court discussed whether any exceptions would allow the court to extend the deadline. Bankruptcy Rule 4007(c) allows the court to "enlarge time" if the creditor has "cause" and requests enlargement before the deadline. Here, the creditor did not file a request to "enlarge time" until several months after the deadline passed, and the court denied his motion. Alternatively, the creditor argues that under Bankruptcy Rule 9006(b)(l), the court may allow an untimely request for enlargement of time "where the failure to act was the result of excusable neglect." The court rejected this argument because Bankruptcy Rule 9006(b)(3) limits the court's ability to extend time "only to the extent and under the conditions stated in Bankruptcy Rule 4007(c)." Thus, the creditor would still be required to file the request before the deadline to file a complaint. The court, however, left the door open to future arguments that "equitable tolling" would allow a court to enlarge time after the deadline. However, the creditors did not make that argument, and regardless, the court found "nothing in the record" would support such a claim. Specifically, the court noted that although it was "sympathetic" to the counsel's reasons for missing the deadline, it was insufficient to support an "equitable tolling" claim because "[t]he purpose of Rule 4007(c)... [is] "to expeditiously and definitively resolve the questions of dischargeability." Finally, the court found no allegations of any defect in the notice provided to the creditors and that the debtor followed all bankruptcy rules. Therefore, the creditor's untimely filing resulted in the dismissal of his challenge to the dischargeability of the defamation judgment.

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CFPB

Banks Case Against the Consumer Financial Protection Bureau is Stayed Pending Texas Litigation [ED KY]

An organization of eight banks in Kentucky sued the Consumer Financial Protection Bureau (CFPB), challenging the Small Business Lending Rule, the constitutionality of the CFPB's funding mechanism, and that the rule violated the First Amendment. The Kentucky suit was filed, in August 2023. However, a few months earlier, in April, some plaintiffs in Texas had brought suit against the CFPB for nearly the exact same reasons (the Texas case did not include the First Amendment claim). The court hearing the Texas case decided to stay the litigation due to the pending case before the Supreme Court of the United States regarding the constitutionality of the CFPB's funding mechanism. Now, in the Kentucky case, the CFPB asks for a stay on the proceedings until the Texas litigation is resolved.

In **Monticello Banking Co. v. Consumer Fin. Prot. Bureau**, No. 6:23-cv-00148-KKC, 2024 WL 3723828, 2024 U.S. Dist. LEXIS 141039 (E.D. Ky. Aug. 8, 2024) (opinion not yet released for publication), the court granted the stay requested by the CFPB under the first-to-file rule. The first-to-file rule allows a case to be stayed when a nearly identical case has already been filed elsewhere. When examining this rule, the court considers three factors: "(1) the chronology of events, (2) the similarity of the parties involved, and (3) the similarity of the issues or claims at stake." If all three lend to applying the rule, the court then must determine if any equitable considerations would lend towards the rule not being applied. First, the court examined the order of the events and found that the Texas case was brought before the Kentucky case. Next, the court examined the parties in each lawsuit. It was reasoned that the types of banks and community organizations bringing suit were essentially the same and that they "have such an identity that a determination in one action leaves little or nothing to be determined in the other." Third, the court found the issues to be nearly identical, except for the First Amendment issue, which could be rendered moot depending on the outcome of the Texas litigation. Finally, because the court determined all three factors in the CFPB's favor; it then considered any equitable issues that would prevent the rule from being applied. The court reasoned that the CFPB exercised no

bad faith or inequitable conduct and that there were no unique circumstances that would prevent the first-to-file rule from being implemented. Thus, the court extended the stay in the Kentucky litigation pending the resolution of the Texas case.

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GUARANTEES

Guarantors Are Fully Responsible for The Loans They Guarantee [5TH CIR]

The guarantor partially owned the borrower company. The borrower company took out a $13 million loan from the lender to acquire property, including the apartment complex. The guarantor signed an indemnity and guaranty agreement, agreeing to indemnify the lender should the borrower's company default on its loan. The lender assigned the loan to the holding company, which in turn assigned the loan to the bank. Subsequently, the borrower filed for Chapter 11 bankruptcy, and the bank foreclosed on the apartment complex. The bank purchased the property for $8 million at a foreclosure sale. The bank then sold the apartment complex for $10.6 million. The bank filed suit against the current borrower for the difference between the unpaid loan amount and the $8 million the bank had purchased the apartment complex for. The district court ruled in favor of the bank. On appeal, the guarantor raised three defenses: one, that the lender did not validly assign the loan to the holding company, raising an issue as to whether the bank could assert an action pursuant to the indemnity and guaranty agreement. Second, the guarantor raised the equitable defenses of breach of the "forbearance agreement, good faith and fair dealing, and negligent loan administration." Third, the guarantor argued that the court erred by not offsetting the $2.6 million difference between the bank's cost of purchasing the property and the bank's subsequent sale of the property from the borrower's obligation to the bank.

In **N. Am. Sav. Bank v. Nelson**, l 03 F.4th 1088 (5th Cir. 2024), the court ruled against the guarantor on all three claims. Regarding the lender lacking authority to assign the loan, the bank noted that the guaranty agreement included language indicating that the guarantor would be bound to indemnify the lender's assigns. The lender validly assigned the loan to the holding company, which in turn validly assigned the loan to the bank. The guarantor did not raise any facts to question the validity of the assignments. Regarding the guarantor's equitable defenses, the guarantor could not raise the defenses due to the borrower company being absent from the suit. Furthermore, the bank was not required to bring the borrower company, against whom the guarantor could raise equitable defenses, into the case. In the indemnity and guarantee agreement, the guarantor had waived "any right to require that an action be brought against [the borrower's company] or any other person." Consequently, the guarantor could not raise any equitable defenses. Finally, the guarantor made two arguments that the bank was required to credit the $2.6 million difference between the foreclosure cost and the sale price of the apartment towards the borrower's loan. His first argument concerned his equitable defense of bad faith and negligent administration, which, as previously established, the court had held the guarantor lacked standing to raise. Second, the guarantor argued that the bank's resale of the property for $10.6 million amounted to a mitigation of damages that the bank must credit to the guarantor to avoid the bank receiving a windfall. The court stated that Mississippi law does not require creditors to mitigate their damages with respect to guarantors. While the guarantor argued that "[t]he general rule applicable for mortgage deficiency judgments, also supports the equitable offsets claimed by the putative guarantor here," the guarantor did not cite any Mississippi law supporting the argument. Therefore, the federal court declined to extend Mississippi law beyond what Mississippi courts had decided and rejected the borrower's argument.

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SECURITY INTERESTS

Do Security Interests in Subsequent Loans Carry Over? [BKR WD TX]

The debtor borrowed from the creditor at an interest rate of 144.76% annually. The debtor entered into a loan agreement, signed a promissory note and gave the debtor a security interest in her vehicle. The loan documentation did not have a "future advance" clause. The Texas Department of Motor Vehicles (DMV) identified the lien date as the date of the loan and issued the vehicle's certificate of title showing the creditor as a lienholder. The debtor then entered into eight additional loan agreements with the creditor. Each subsequent loan carried new documentation, interest rates of 140% and matured one month after the date of the loans. More importantly, each subsequent loan satisfied the balance of the loan immediately preceding it. However, after each subsequent loan, the creditor did not file new loan documents with the DMV, "which would have identified [the creditor] as the lienholder... [and] identified a new lien date." The debtor then filed for Chapter 13 bankruptcy. The Chapter 13 trustee initiated an adversary proceeding seeking summary judgment, asserting that the creditor's failure to record its security interests after each loan permitted the trustee to avoid the security interest created by each loan. The trustee asserted

that none of the subsequent loans were secured because the creditor's security interest in the first loan was terminated when it funded the second loan since it used the second loan to satisfy the first loan and its security interest. The creditor maintained that perfecting any subsequent loans was unnecessary because each one "merely 'extended and renewed' the [f]irst loan." Therefore, the creditor contended that the security interest in the vehicle "remain[ed] in effect as originally perfected." In addition, the creditor claimed that res judicata prevented the trustee from bringing an action in light of provisions in the debtor's Chapter 13 plan. Lastly, the creditor argued that the trustee did not have standing to bring the action due to the security interest action not being for the benefit of the estate because the trustee had allowed the debtor to remove the vehicle from the bankruptcy estate by exempting it.

In **Viegelahn v. TMX Credit Inc. (In re Mireles)**, No. 22-50970-MMP, 2024 WL 2704041, 2024 Bankr. LEXIS 1229, (Bankr. W.D. Tex. May 24, 2024) (opinion not yet released for publication), the United States Bankruptcy Court for the Western District of Texas determined the validity of the creditor's security interest held in the debtor's vehicle. The court stated that refinancing occurs "when an existing obligation that was subject to this subpart is satisfied and replaced by a new obligation undertaken by the same consumer." 12 C.F.R. § 1026.20(a). It concluded that a refinancing must satisfy and replace an existing debt. The court held that because the second loan satisfied the first loan, it extinguished its security interest and terms, requiring the creditor to perfect the security interest in the second loan because the documentation in the first loan did not include a "future advance" clause. Because the creditor did not have a "future advance" clause in the security agreement, all future advances the creditor made to the debtor did not automatically continue to be secured by the original security interest. The court disagreed with the creditor that a future advance clause may be implied from the security agreement, as the language did not suggest that future advances are to be secured by the existing security agreement. The court concluded that the subsequent loans had been "future advances" because they met the definition of "a separate extension of value by a creditor to the debtor after the original security agreement." Next, the court held that the creditor needed to comply with re-titling requirements when it made the subsequent loans because the process of re-titling is the only method that meets the notice goals of Texas' security interest perfection process; so titles must be accurate for reliability. Additionally, the court held that the res judicata does not bar the trustee from avoiding the security interest. While the court agreed with the creditor that the trustee had pre-confirmation notice of the creditor's avoidable security interest, the trustee was not bound by res judicata because she timely acted on that notice by having already brought an action to avoid the security interest confirmation of· the debtor's plan. Finally, the court concluded that even if a debtor has exempted property, trustees have standing to avoid security interests on that property. Thus, the trustee had standing to bring the action. Therefore, the court denied the creditor's Motion for Summary Judgment and granted the trustee's Motion for Summary Judgment.

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A Car Dealer's Wrongful Repossession Will Cost a Pretty Penny in Damages [WD VA]

A debtor purchased a car from a car dealership in March, 2021. The dealership also financed the debtor's purchase of the car, making the dealership the creditor in the transaction. The debtor made regular monthly payments on the car until July 2021, when she executed a written agreement with the creditor. The agreement specified that the creditor would accept landscaping work as payment for the July, August, and September payments. The debtor and creditor entered into this agreement on September 16, 2021, after the work had been accepted. Then, a few days later, on September 25, the creditor sent a third party to the debtor's home to repossess the car, even though the debtor's account was current according to the agreement from just days prior. While attempting to repossess the car, the third-party repossessor called the police to restrain the debtor. She was eight months pregnant at the time and was vehemently opposing the repossession, claiming that she was current in her payments and the creditor had no right to take her vehicle. The repossessor showed the police a handwritten note from the creditor and eventually took the car, damaging the debtor's land and vehicle. It was later revealed that the creditor knew the debtor was current on her payments, but the creditor had gotten into an argument with the debtor's boyfriend about drug money and was taking the car to punish the creditor's boyfriend. The debtor then brought suit against the creditor claiming a violation of (1) the Fair Debt Collection Practices Act (FDCPA), (2) the Truth in Lending Act (TILA), (3) Conversion, and (4) the Virginia Uniform Commercial Code (VUCC).

In **Shelton v. Marshall**, No. 5:22-cv-042, 2024 WL 1184444, 2024 U.S. Dist. LEXIS 48327 (W.D. Va. Mar. 19, 2024) (opinion not yet released for publication), the court entered a default judgment against the creditor on all four causes of action. The creditor failed to respond to any pleadings and later failed to attend the default judgment hearing held by the court. Thus, the court entered judgment against the creditor and examined the facts to determine the damages to be awarded to

the debtor. First, the court discussed the FDCPA. The court found that the creditor had violated the act by wrongfully repossessing the vehicle. Furthermore, the court held that the creditor's egregious behavior leading up to and during the repossession warranted an extra award of emotional distress damages in addition to actual, statutory, and attorney's fees awards. Second, the court imposed damages under TILA. The court determined that the creditor had misled the debtor with confusing disclosures. This resulted in the award of statutory damages and costs. Third, the court found that the creditor's wrongful repossession amounted to conversion, entitling the debtor to actual damages and punitive damages that were three times the actual damages amount because of the creditor's malice. Finally, the court held that the creditor violated multiple provisions of the VUCC. The creditor's wrongful repossession and malicious conduct amounted to a breach of the peace. In addition, under the Uniform Commercial Code, the creditor had been obligated to sell the vehicle because the debtor had paid more than 60% of the purchase price. The debtor would then recover the excess proceeds from the sale. However, the creditor took the vehicle as "full satisfaction of the debt." Therefore, the court imposed additional statutory damages on the creditor. Ultimately, the court imposed significant damages on the creditor for its wrongful repossession and egregious conduct.

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Up a Creek with No Paddle: A Creditor Inadvertently Loses its Security Interest in a Debtor's Boats by Signing a Bankruptcy Settlement [BKR UT]

A debtor operated a boat-sharing business that ultimately went bankrupt. Beforehand, some creditors had loaned the debtor upwards of $2.9 million, with the debtor using the boats as collateral. At that time, the debtor promised the creditors that it would obtain a proper loan from a bank and pay the creditors back using the loan from the bank. The debtor received $3.9 million from the bank, and also used the boats as collateral for that loan. However, when the debtor received the money from the bank, it failed to pay off the creditors. The creditors brought a suit against the debtor, which was stayed when the debtor filed a Chapter 11 bankruptcy case. In the bankruptcy proceedings, the bank transferred its interest in the boats to a revocable trust. Ultimately, the bankruptcy proceedings resulted in a plan that included a settlement, and an asset purchase agreement. Under the plan, the trust would purchase all the debtor's assets, and as a condition of that purchase, any claims of the debtor or the creditors would be released against the trust and the bank. The debtor and the creditors agreed to this settlement. However, the original secured creditors then brought a third-party claim against the trust in an attempt to recover the collateral. This claim included three causes of action: (1) an avoidance action under the Utah Uniform Voidable Transactions Act ("Avoidance Action"); (2) a declaratory judgment action regarding the creditor's interest in the boats ("Declaratory Judgment Action"); and (3) a negligence claim against the bank ("Negligence Action").

In **Inland Boat Club, LLC v. Lee (In re Inland Boat Club, LLC)**, No. 22-21879, 2024 WL 1337044, 2024 Bankr. LEXIS 769 (Bankr. Utah Mar. 28, 2024) (opinion not yet released for publication), the court dismissed both the Avoidance Action and Declaratory Judgment Action with prejudice and dismissed the Negligence Action without prejudice. In beginning its analysis, the bankruptcy court first considered whether it has subject matter jurisdiction to review the causes of action. A bankruptcy court will have jurisdiction over proceedings that "arise under," "arise int or are "related to" a bankruptcy proceeding. Celotex Corp. v; Edwards, 514 U.S. 300; 307 (1995). The court determined that both the Avoidance Action and the Declaratory Judgment Action "arise under" the bankruptcy code because they both involve interpretation of the settlement plan, asset purchase agreement, and the confirmation order. In addition, the bankruptcy court has subject matter over its own rulings in a bankruptcy case. However, the court determined it does not have jurisdiction over the negligence claim because the cause of action was not "created by the bankruptcy code," but rather it involved "a dispute that existed outside of the [d]ebtor's bankruptcy case," and will not impact the debtor's bankruptcy case. Next, the court analyzed the Avoidance Action and Declaratory Judgment Action. It reasoned that both actions should be dismissed because the creditors and the debtor released all claims against the bank and trust as part of the settlement agreement. Thus, the first two causes of action were dismissed due to the settlement agreement and the third is dismissed without prejudice for lack of proper jurisdiction.

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Role of NDBA General Counsel

NDBA's general counsel serves as the attorney for the association. Although Tracy is pleased to be able to serve as a resource for NDBA members in responding to their questions, she is providing general information, not legal advice. Banks must obtain legal advice from counsel who has been retained by the bank to represent the bank's interests in a specific matter.

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