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## ARBITRATION

### Move On: Bankruptcy Court Denies Stay for Arbitration [BKR D MT]

The debtor filed for Chapter 11 bankruptcy. The creditor moved to compel arbitration over a claim allowance dispute pursuant to an arbitration clause in a prepetition agreement. The creditor expressed the need for a quick resolution. The court agreed and offered to expedite the trial; however, the creditor argued that its interest in arbitration was not limited only to the speediness of the trial. The court relied on its prior opinion in *Samson v. LCF Grp., Inc.* (In re Bridger Steel, Inc.), where it had concluded that the issues formed a core component of the bankruptcy proceeding, and arbitration of these core issues would divide the forum and cause conflict with the claim allowance process established in the bankruptcy code. No. 2:23-bk-20019-BPH, 2024 WL 4377452, 2024 Bankr. LEXIS 2386 (Bankr. D. Mont. Sep. 30, 2024) (unpublished opinion). Therefore, the court deemed the claim allowance issue a core proceeding in which enforcing arbitration would negatively affect the goals of the bankruptcy code and could significantly impact other creditors. The court therefore denied the creditor's motion to compel arbitration. The creditor sought a stay pending appeal.

In *Harada Family Dental Care, P.C. v. Strategic Funding Source, Inc.* (In re *Harada Family Dental Care, P.C.*), No. 4:24-bk-40076-BPH, 2025 WL 2738569, 2025 Bankr. LEXIS 2438 (Bankr. D. Mont. Sept. 25, 2025) (unpublished opinion), the court denied the creditor's motion for stay. In determining whether there was a justification for the stay, the court applied the traditional four-part test outlined by the Supreme Court in *Nken v. Holder*: "(1) [w]hether the stay applicant [] made a strong showing that he [was] likely to succeed on the merits; (2) [w]

hether the applicant w[ould] be irreparably injured absent a stay; (3) [w]hether issuance of the stay w[ould] substantially injure the other parties interested in the proceeding; and (4) [w]here public interest lies." 556 U.S. 418, 433 (2009). In applying the traditional test, the court rejected the creditor's argument to automatically require a stay for a bankruptcy case as provided for in *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023). The court addressed each factor, with the burden of proof on the creditor, as the party petitioning for the stay. First, the court explained that the Federal Arbitration Act does not allow arbitration clauses to pass through bankruptcy any differently than other similar clauses that would ordinarily not be allowed. Thus, the court reasoned that the creditor "[was] not likely to prevail on appeal." Second, the court determined there likely was not irreparable injury, as the goal of arbitration is to expedite the process, and the deadlines set by the court would occur sooner than the completion of arbitration. Third, the court stated that a stay pending appeal would likely cause little harm to the debtor; however, the creditor had "little to gain from a stay" other than "mere preference." Fourth, and finally, the court acknowledged that historically federal policy favored arbitration, but current federal policy places arbitration on the same level as any contract. The court also ruled that a stay would go against the public interest, which relies on the bankruptcy system's ability to provide an equitable distribution to all creditors involved and requires a singular system under federal control rather than individualized litigation. Ultimately, the court found that the first, second, and fourth factors weighed heavily against the creditor's stay motion and accordingly denied it.

By Noah Coggan [Ncoggan@ttu.edu](mailto:Ncoggan@ttu.edu)

Edited By Taylor O'Brien [taylobri@ttu.edu](mailto:taylobri@ttu.edu)

Edited By Kristin Meurer [krmeurer@ttu.edu](mailto:krmeurer@ttu.edu)

Edited By Hayden Mariott [hayden.mariott@ttu.edu](mailto:hayden.mariott@ttu.edu)

## BANKRUPTCY

### Chapter 13 Bankruptcy: Bad Faith Leads to Dismissal of Case [D CT]

A bank initiated foreclosure proceedings on a property bequeathed to the debtor by his late wife. The superior court ruled for the bank, and both the highest state court and the United States Supreme Court denied further review. Thereafter, the debtor filed for Chapter 13 bankruptcy, representing himself pro se. During the case, the trustee objected to the confirmation of the debtor's Chapter 13 plan because the debtor lacked regular income, among other deficiencies. The bankruptcy court also granted the bank relief from the automatic stay. The debtor later moved to recuse the presiding judge. The bank and the trustee later filed responses arguing that the debtor's case should be dismissed and requesting that the debtor be barred from filing another bankruptcy case for two years. The debtor failed to attend the hearing regarding his motion for recusal, and the court denied it, dismissing the case altogether. Subsequently, the debtor appealed to the district court, arguing that the bankruptcy court erred in granting the bank relief from the automatic stay, dismissing his Chapter 13 case and related motions, and denying his motion for recusal and request for direct appeal.

In **Clark v. Santander Bank, N.A.**, 670 B.R. 367 (D. Conn. 2025), the court affirmed the bankruptcy court's rulings. 11 U.S.C. § 362(d) permits a court to grant relief from the automatic stay for cause, including where a party in interest's property interest is not adequately protected. Section 362(d) provides that cause includes the filing of a bankruptcy in bad faith. Factors relevant in determining whether the debtor filed in bad faith include whether the filing was intended to frustrate secured creditors' legitimate enforcement efforts, whether the debtor filed multiple bankruptcy petitions, and whether the petition was filed on the "eve of foreclosure." Here, the court agreed with the bankruptcy court that the debtor filed for bankruptcy to prevent legitimate foreclosure proceedings. Therefore, it held that evidence of a bad-faith filing was sufficient to grant the bank relief from the automatic stay. Next, the court affirmed the dismissal of the debtor's case because a court may dismiss a case filed in bad faith on an interested party's motion or sua sponte. In determining whether a bankruptcy case is a bad faith filing, the court employed a totality of the circumstances test that considers factors such as serial filings, insufficient income to reorganize, use of the petition to resolve a two-party dispute, and use of the filing solely to obtain the benefit of the automatic stay. The evidence from the bankruptcy court showed that the debtor was unlikely to make regular payments, did not currently possess a source of income, and was ineligible for social security. Additionally, the debtor filed the Chapter 13 petition in bad faith, without making a legitimate

effort to reorganize. Therefore, the district court affirmed the dismissal of the debtor's Chapter 13 case. Addressing the final point of error regarding the debtor's direct appeal and motion for recusal, the court found that the debtor failed to provide any legal or factual basis sufficient to warrant direct appeal. Regarding the motion for recusal, the court found that the debtor filed it "clearly in response to unfavorable rulings" entered by the bankruptcy court, which did not constitute a valid legal reason for recusal. Therefore, the district court affirmed the denial of the debtor's certification of direct appeal and motion for recusal.

By Jace Brown [jace.brown@ttu.edu](mailto:jace.brown@ttu.edu)

Edited By Charlie Cole [charcole@ttu.edu](mailto:charcole@ttu.edu)

Edited By Callighan Ard [caard@ttu.edu](mailto:caard@ttu.edu)

### Chapter 13 Plan Must Provide for Secured Residential Mortgage Claim [BKR ED CA]

The debtor inherited the home from his deceased spouse. Before she died, the deceased spouse obtained a loan from another entity, which was evidenced by a note and secured by a deed of trust. The debtor defaulted on the note, and the creditor initiated foreclosure proceedings on the home, which the creditor ultimately purchased at the foreclosure sale. The day after the foreclosure sale, the debtor filed for Chapter 13 bankruptcy. The creditor was the only one to file a proof of claim, which included a secured claim and delinquency amount. Shortly after filing the bankruptcy, the debtor brought an adversary proceeding, and the bankruptcy court dismissed all causes of action brought against the creditor. In the main bankruptcy proceeding, the debtor objected to the creditor's claim, putting in the proposed plan that the secured claim was "fraudulent, void, and unenforceable." The debtor also sought to confirm his proposed plan, which provided for \$20 monthly payments over the course of 60 months to the trustee, but no plan payments to the creditor. The debtor had a negative disposable income of over \$1,500 per month. The trustee moved for dismissal of the bankruptcy case for failure to propose and confirm a Chapter 13 plan.

In **In re Wilkinson**, No. 24-24334, 2025 WL 3237041, 2025 Bankr. LEXIS 3023 (Bankr. E.D. Cal. Nov. 19, 2025) (unpublished opinion), the bankruptcy court sustained the debtor's objection to the creditor's claim without prejudice but denied the debtor's proposed plan and granted the trustee's motion to dismiss the case. First, the court held the creditor's claim was not in substantial conformity with Rule 3001 because it failed to show "a chain of assignments from the originator of the loan to itself." Further, the creditor failed to present an "itemized statement of the principal amount and any interest," preventing the claim from receiving the Rule 3001 presumption of validity. Fed. R. Ban1cr. P. 3001(c)(2)(A). Next, the court denied the

debtor's proposed plan because it was not feasible under 11 U.S.C. § 1325(a)(6) and failed to provide for the secured claim under § 1325(a)(5). The bankruptcy court found the debtor's plan was not feasible because the debtor possessed (1) no disposable income, (2) provided no income to the creditor, and (3) curing the high delinquency amount was unfeasible. Finally, the court found that cause existed to dismiss the case because it was more than 14 months old, the debtor's plan confirmation had failed, and the trustee's dismissal motion had been pending for more than 14 months. Accordingly, the court sustained the debtor's objection to the creditor's claim without prejudice, denied the debtor's plan, and granted the trustee's motion to dismiss the bankruptcy case.

By Charlie Colecharcole@ttu.edu

Edited By Landon Womack landon.womack@ttu.edu

Edited By Kristin Meurer krmeurer@ttu.edu

Edited By Hayden Mariott hayden.mariott@ttu.edu

## EXEMPTIONS

### Homestead Exemption Protects Insolvent Family from Trustee [BKR ND OK]

The debtors, a husband and wife, were insolvent and filed for Chapter 7 bankruptcy. Before filing, one of the debtor's great-uncles offered to help and wired \$209,200 to their savings account. The debtors used this money to purchase a home (the "homestead") and to make a car loan payment. According to the debtors, the wired funds were a gift. The trustee, however, asserted the wired funds were a loan, which he was entitled to in the bankruptcy case. The debtors then claimed a homestead exemption for the house they purchased with the wired funds. The trustee, still skeptical of the purchase, questioned the accuracy of the debtors' responses to Questions 5, 18, and 20 on the debtors' Statements of Financial Affairs ("SOFA"). The debtors contended they properly disclosed the homestead and misread the form. The trustee objected to this claim and sought relief, claiming the debtors had intent to hinder, delay, or defraud a creditor.

In **In re Ashwood**, No. 24-11378-T, 2025 WL 2806303, 2025 Bankr. LEXIS 2485 (Bankr. N.D. Okla. Sept. 30, 2025), the bankruptcy court for the Northern District of Oklahoma overruled the Trustee's objection to the Debtors' Claim of Homestead Exemption. Under § 522(o), and § 522(p), of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), the debtors may not exempt any amount of interest they acquired in the 1215-day period before filing the bankruptcy petition exceeding [at that time, \$189,050] in value. Amounts under the cap, however, may be protected. The provision exists to prevent and close the "mansion loophole," in which debtors could

protect assets under generous homestead exemptions in states with such exemptions. Together, creditors' rights are protected from defrauding debtors who attempt to exempt otherwise non-exempt assets. The loophole counteracts the purpose of the homestead exemption, which sought to protect families, not to effectuate fraud. With the modern developments, a four-part test determines if the exemption was properly reduced. The first three elements were not contested. The court considered if the proceeds of the disposed of property were used to increase the debtor's interest, with an additional "badge of fraud," which determines the requisite intent to hinder, delay, or defraud a creditor. The Tenth Circuit had laid out several "badges of fraud." The first two -inadequacy of consideration and insider transfer - were not contested. The trustee's claim largely rested on the third badge: intent to keep the transfer secret. The badge was met when the trustee demonstrated that the debtors had attempted to conceal the disposal of the homestead funds at the time of the transfer to a third party. While the account that held the funds was not in the name of either debtor, there was no evidence that the debtors held the funds with the intent to conceal the funds from a third party. The court also found there was no evidence suggesting the debtors had attempted to conceal the funds from any other creditor during the timeframe. The court concluded that the debtors had no obligation to alert creditors to the existence of the funds. The court also concluded that the debtors' misreading of the SOFA was not furtherance of a scheme to defraud creditors. Because the acquisition and interest had been openly disclosed, the trustee was sufficiently notified of their existence. The court also claimed the statement regarding the funds only in response to SOFA Question 5 had been sufficient. The court did not expect the debtors to understand the technicality of all the questions, nor did it expect them, to the best of their knowledge, to know that the funds did not need to be reported in response to that question. Finally, the failure to disclose the bank account under Question 20 had not been fraudulent, despite the need to disclose it. Because the debtors had acted innocently, the omission was not made to perpetrate fraud or otherwise conceal the existence of the funds, so there was no fraud.

The court found for the debtors on this badge of fraud. The remaining badges all favored the debtors. The debtors did not worsen their creditors' position. Nor did the debtors engage in a pattern or series otherwise indicating fraud. The debtors' purchase of the home was consistent with the established insolvency timeline. The court therefore overruled the trustee's objection.

By Andrew Fielden afielden@ttu.edu

Edited by Annette Addo-Yobo anaddoyo@ttu.edu

Edited By Hayden Mariott hayden.mariott@ttu.edu

## NOTES

### Left on Read: Borrowers Ignore Summary Judgment Motion, Bank Wins [EDTX]

A bank sued several borrowers and guarantors seeking recovery on two promissory notes and a purchasing card agreement after the borrowers defaulted on their respective payment obligations. The first note obligated the borrowers to repay \$2.5 million and was secured by a security interest granting the bank a first-priority security interest in substantially all of the borrowers' assets. Several borrowers guaranteed repayment of that note. The second note, executed later, obligated one borrower to repay \$1.5 million and was secured by a security interest covering that borrower's assets and supported by additional guarantees. The borrowers also entered into a purchasing card agreement requiring repayment of charges incurred under the account, which was guaranteed by two borrowers. After the borrowers failed to make the required payments under the loan documents and the purchasing agreement, the bank demanded payment and subsequently filed suit. Although the court deferred ruling on the bank's motion for summary judgment to allow the borrowers an opportunity to respond, the borrowers ultimately filed no response.

In **Hancock Whitney Bank v. Kingdom Health Holdings, LLC**, No. 4:24-cv-864, 2025 WL 3460934, 2025 U.S. Dist. LEXIS 229097 (E.D. Tex. 2025) (opinion not yet released for publication), the court granted the bank's motion for summary judgment. First, the court addressed the procedural effect of the borrowers' failure to respond. Because the borrowers had filed no response, the court treated the bank's evidence as undisputed. Second, the court held that the bank was entitled to summary judgment on its breach of contract claims because the evidence as to all elements of breach was undisputed, finding that the bank performed its contractual obligations, that the borrowers breached those agreements by failing to make required payments, and that the bank sustained damages as a result of the breach. Third, the court concluded that summary judgment was appropriate to enforce the promissory notes. "To prevail on a motion for summary judgment to enforce a note, a plaintiff must establish that (1) a note exists, (2) the plaintiff is the legal owner and holder of the note, (3) the defendant is the maker of the note, and (4) a certain balance remains due and owing on the note." *Pathfinder Oil & Gas, Inc. v. Great W Drilling, Ltd.*, 574 S.W.3d 882, 890 (Tex. 2019). The bank satisfied these requirements by presenting uncontroverted evidence establishing the notes, its ownership of them, the borrowers' obligations under the notes and guaranties, and the outstanding balances. Fourth, the court held that the bank was entitled to judicial foreclosure through proof of the debt and fixing the lien. The court found that the bank established that the obligations were secured through filed UCC-1 financing statements. Because the borrowers' defaults were undisputed, the court authorized foreclosure on the collateral securing the notes.

Finally, the court addressed the bank's request for attorney's fees. The court found that the loan documents permitted recovery of attorney's fees, and Texas Civil Practice and Remedies Code § 38.001 allows prevailing parties to recover fees in breach-of-contract actions. The court therefore entered judgment in favor of the bank, awarded damages on the notes and guaranties, authorized foreclosure on the collateral securing the debt, and granted attorney's fees.

By Landon Womack [landon.womack@ttu.edu](mailto:landon.womack@ttu.edu)

Edited By Conor Doris [cdoris@ttu.edu](mailto:cdoris@ttu.edu)

Edited By Hayden Mariott [hayden.mariott@ttu.edu](mailto:hayden.mariott@ttu.edu)

### Lost Note Affidavit Satisfies UCC Requirements for Enforcement by Agent [DMA]

A trustee sought a declaratory judgment confirming its right to enforce a lost promissory note by foreclosing on the mortgage securing the note. The borrower signed the note, which was secured by the mortgage, with the lender. The lender's successor then endorsed the note to the bank. However, the bank lost the original note. The bank executed an affidavit attesting its prior possession, stating that the note could not be reasonably obtained, and also stating that the loss of the note did not result from transfer or seizure. The bank later assigned the mortgage to the trustee and granted the trustee authority to enforce the note and mortgage as its agent. The trustee properly served the borrower and the subordinated lienholder, both of whom defaulted by failing to appear.

In **U.S. Bank Trust Nat'l Ass'n v. Murray**, No. 3:24-cv-30046-JEK, 2025 WL 1071655, 2025 U.S. Dist. LEXIS 52425 (D. Mass. Feb. 27, 2025) (unpublished opinion), the magistrate court recommended that the district court grant the motion for entry of default judgment in favor of the trustee. Because the borrower and the subordinated lienholder had defaulted, the court accepted the verified complaint's allegations as true but still independently verified that the trustee stated a plausible claim for declaratory relief. The court explained that Massachusetts state law allows a party to enforce a "lost, destroyed, or stolen" note with an affidavit if: (1) the party actually possessed the note when the loss occurred; (2) the loss was not the result of any transfer or lawful seizure; and (3) the note could not reasonably be obtained because it was destroyed, it cannot be found, or it is in the wrongful possession of an unknown party that cannot be found or served upon. MASS. GEN. LAWS ch. 106, § 3-309(a). The court looked at the trustee's verified complaint and the bank's affidavit, which was supported by the bank's business records and a true copy of the note, and found that, at the time the bank authorized the trustee to act on its behalf, the bank was entitled to enforce the lost note because all the elements had been met to enforce by

an affidavit. The court further ruled that common-law agency principles permitted the trustee to enforce the note and foreclose as the bank's authorized agent, even without physical possession of the note. Finally, the court found the bank's indemnity agreement supplied the adequate protection required by § 3-309(b) against any risk of multiple enforcement claims, particularly given the note's limited chain of title. Therefore, the court recommended that the district court grant default judgment in favor of the trustee.

By Deanna Dulske [dedulske@ttu.edu](mailto:dedulske@ttu.edu)  
 Edited By Olivia Lewis [oliviale@ttu.edu](mailto:oliviale@ttu.edu)  
 Edited By Kristin Meurer [krmelirer@ttu.edu](mailto:krmelirer@ttu.edu)  
 Edited By Hayden Mariott [hayden.mariott@ttu.edu](mailto:hayden.mariott@ttu.edu)

## FALSE STATEMENTS

### A Partial Truth isn't a Lie: Supreme Court Rules § 1014 Does Not Apply to Misleading Statements [US]

The borrower received three loans from a single bank totaling \$219,000. The bank failed, and the Federal Deposit Insurance Corporation (FDIC) became responsible for collecting on the loans. In conversations with the bank and the FDIC, the borrower claimed he had taken out a \$110,000 loan and did not know where the larger number came from. The borrower did, in fact, take out a \$110,000 loan; however, later the borrower took out two additional loans for \$20,000 and \$89,000, respectively. The FDIC brought claims against the borrower under 18 U.S.C. § 1014, which prohibits “knowingly mak[ing] any false statement or report for the purpose of influencing in any way the action of ...the [FDIC] ...upon any... loan.” The district court found the borrower guilty. The borrower then moved for acquittal, arguing that he could not be found guilty under § 1014 for false statements because the alleged statements are factually true. The district court denied the borrower's motion, finding that “the Seventh Circuit does not require literal falsity in Section 1014 cases.” The district court acknowledged that the borrower's argument would carry more weight in the Sixth Circuit but declined to review whether the borrower's statements were literally false, as the Seventh Circuit had previously decided that § 1014 applies to misleading statements as well. The Seventh Circuit affirmed, and the Supreme Court granted certiorari to determine whether § 1014 criminalizes statements that are misleading but not false.

In **Thompson v. U.S.**, 604 U.S. 408 (2025), the Supreme Court held that §1014 “does not criminalize statements that are misleading but not false” and reversed and remanded for further proceedings. The Supreme Court first examined the plain text of § 1014 and found it requires both: (1) that a statement was made

and (2) that the statement can be characterized as either true or false. The Court clarified that a misleading statement, if not actually false, would not meet the criteria for a conviction under § 1014 because the plain text requires the statement to be false. The Court explained that the correct question in this case was whether the borrower's statements were false, because people can make statements that are misleading but still true, and § 1014 addresses only false statements. Finally, the Court emphasized that it is a court of review and that, since neither the district court nor the Seventh Circuit had addressed the falsity of the statements, the case had to be remanded for further review consistent with its holding.

By Noah Coggan [Ncoggan@ttu.edu](mailto:Ncoggan@ttu.edu)  
 Edited By Jace Brown [jace.brown@ttu.edu](mailto:jace.brown@ttu.edu)  
 Edited By Kristin Meurer [krmelirer@ttu.edu](mailto:krmelirer@ttu.edu)  
 Edited By Hayden Mariott [hayden.mariott@ttu.edu](mailto:hayden.mariott@ttu.edu)

## SECURITY INTERESTS

### Debtor's Multiple Partnerships Created a Genuine Dispute Over Competing Security Interests [AR APP]

The creditor, the assignee, and the bank claimed competing security interests in the property. The creditor appealed a summary judgment order holding that the bank's security interest in the farm's net proceeds was of higher priority than the creditor's interest. The creditor also appealed, arguing that the circuit court abused its discretion in striking an amended complaint. The debtors, not parties in this suit, operated a farm on leased land. The bank made several loans to the debtor's family partnership for farming equipment and was named as the secured party in the UCC financing statements. The debtor took out a separate loan from the creditor to purchase crop inputs. This loan was supported by guaranty agreements personally guaranteeing “all present and future account indebtedness.” This loan was also perfected and secured with UCC financing statements naming a partnership that the creditor claimed was distinct from the family partnership (the partnership), as the debtor. Both financing statements listed farm crops and equipment as collateral. A third creditor, after assignment of a promissory note, claimed a purchase-money security interest in specific farm equipment. That dispute was addressed in a companion case. The debtor allegedly failed to pay its debts, leading to claims among the creditors, the bank, and the assignee as to whose security interests were superior and who held priority among the liens. The assignee moved for summary judgment on the basis that its purchase-money security interest was superior to the bank's interest on certain pieces of equipment, and the bank filed a cross-motion. The bank asserted that its interest superseded the assignee's interest and the creditor's claims as a matter of law because the parties named the

partnership in the financing statements, which the bank claimed was merely a trade name of the family partnership. After the circuit court granted summary judgment in favor of the bank, the creditor appealed, arguing that the two partnerships differed, creating a genuine issue of material fact that precluded summary judgment. The creditor also filed an amended complaint, which the circuit court struck. On appeal, the creditor argued that striking the amended complaint was an abuse of the circuit court's discretion.

In **Helena Agri-Enterprises, LLC v. Simmons Bank**, 725 S.W.3d 43 (Ark. App. 2025), the court reversed in part and remanded in part. First, it held that the creditor had presented sufficient evidence to create a genuine issue of material fact as to whether the debtor partnership identified in its financing statements was a separate legal entity from the family partnership. The court found that “reasonable minds might differ” on whether the two partnerships were the same because the other partnership's name and other aspects of its formation could create a reasonable inference that the partnerships were separate entities. Additionally, the court concluded that the evidence indicating the partnerships had different partners and structures, as well as the debtor's history of conducting business in only one of the entities, could create an inference that the partnerships were separate. The court noted that, to resolve the issue of fact, it would be necessary to weigh the parties' credibility, and that, when this is the case, summary judgment is inappropriate. Next, due to the undue delay before the filing of the amended complaint, the court held that the circuit court did not abuse its discretion in striking it. The court therefore reversed and remanded the summary judgment order and affirmed the striking of the amended complaint.

By Andrew Fielden [afielden@ttu.edu](mailto:afielden@ttu.edu)  
 Edited By Taylor O'Brien [taylobri@ttu.edu](mailto:taylobri@ttu.edu)  
 Edited By Callighan Ard [caard@ttu.edu](mailto:caard@ttu.edu)  
 Edited By Hayden Mariott [hayden.mariott@ttu.edu](mailto:hayden.mariott@ttu.edu)

## SETOFF

### A Bank Could Not Assert Setoff Rights Over Funds Held for Another [CD CA]

The transferor attempted to send over a million dollars to the intended recipient through an intermediary's account, unaware that the intermediary's account had been closed and had ceased money transmission activities. The bank processed the wire transfer and noted the intended recipient's account was closed, but did not return the funds to the transferor. The bank instead applied the funds to an outstanding debt of the account holder. In response, the transferor demanded the return of the funds. The

bank then filed suit seeking a declaratory judgment of its right to the funds. The transferor counterclaimed for: (1) declaratory judgment, (2) conversion, (3) unjust enrichment, (4) money had and received, (5) violation of California's Money Transmission Act, (6) violation of California's Commercial Code, (7) violation of California's Unfair Competition Law (UCL), Business and Professions Code, (8) imposition of a constructive trust, and (9) injunctive relief.

In **Preferred Bank v. RBC Royal Bank (Bahamas) Ltd.**, No. 2:25-cv-00619-SB-JCx, 2025 WL 3456144, 2025 U.S. Dist. LEXIS 234838 (C.D. Cal. Nov. 25, 2025) (unpublished opinion), the court held that the bank wrongfully withheld funds from the transferor. The court explained that, under California common law, the bank could not use the funds to offset the debt and was required to return them to the transferor. Under the common law, when funds are deposited into an account for another, and the bank knows or has knowledge that the funds are held by the depositor, the bank may not apply those funds to the depositor's individual debt. *Chang v. Redding Bank of Com.*, 29 Cal. App. 4th (1994). Therefore, the court analyzed whether the funds belonged to the account holder, because if they did, the bank could have applied the funds to the debt. The court concluded that the transferor's wire transfer gave the account holder only the right to possess the funds in trust, not ownership of them. Furthermore, the court looked to the history of previous transfers involving both parties and found that the account holder would promptly transfer the funds to the intended transferee. The court also analyzed whether the bank had actual or constructive notice of any third-party interest in the funds. If the bank had notice, it could not have applied the funds to the debt. The court held that the bank had at least inquiry notice that the funds were held in trust for the intended transferee, in the form of an instruction attached to the wire transfer. The instruction informed the bank that the funds belonged to a client of the account holder. The bank's argument against the inquiry notice was that it did not review the wire instructions, but the court rejected this argument and stated that the bank “cannot claim ignorance of the details.” Additionally, the court rejected the bank's argument that the UCC displaced California common law and solely governed the transaction. The court held that the UCC did not create setoff rights and did not displace common law. In addition, the court rejected the transferor's separate claim under California Commercial Code § 11402(c), concluding that the provision did not apply. The transferor prevailed on summary judgment for declaratory relief, constructive trust, conversion, and money had and received. The statutes that the bank cited, the court held, only regulated the application of the setoff rights and were therefore inapplicable. The court granted the transferor summary judgment on its claim that it had a right to receive the funds. Next, the transferor sought summary judgment for a constructive trust and had to show: “(1) the existence of a res (property or

some interest in property); (2) the right to that res; and (3) the wrongful acquisition or detention of the res by another party who is not entitled to it.” *Mattel, Inc. v. MGA Ent., Inc.*, 616 F.3d 904 (9th Cir. 2010). Despite the bank’s argument that the transferor’s gross negligence precluded equitable relief, the court concluded that the transferor established the three elements necessary for a constructive trust. To obtain summary judgment for unjust enrichment, California law requires a showing that a benefit was conferred by “mistake, fraud, coercion, or request.” The court held that the transferor failed to satisfy those requirements and denied summary judgment. The court also concluded that the transferor met the elements for conversion: (1) plaintiff must plead a right to possession of the money at the time of the conversion, (2) wrongful acts or disposition of the money, and (3) resulting damages. Additionally, the court held that the transferor was entitled to prevail on a claim of money had and received by construing the cause of action broadly and concluding that it was not limited to instances of fraud. The transferor was not entitled to summary judgment under the unfair competition law because a violation of the common law, by itself, was not sufficient to support a claim. Furthermore, the court granted prejudgment interest to fully compensate the transferor for its loss at a rate of seven percent because the bank had wrongfully withheld the funds. The court also granted postjudgment interest. Therefore, the transferor’s motion for summary judgment was granted for declaratory relief, constructive trust, conversion, and money had and received, and prejudgment and postjudgment interest, and the bank’s competing declaratory-relief claim was dismissed with prejudice.

Edited By Callighan Ard [caard@ttu.edu](mailto:caard@ttu.edu)

Edited By Hayden Mariott [hayden.mariott@ttu.edu](mailto:hayden.mariott@ttu.edu)

By Olivia Lewis [oliviale@ttu.edu](mailto:oliviale@ttu.edu)

Edited By Landon Womack [landon.womack@ttu.edu](mailto:landon.womack@ttu.edu)



**Tracy Kennedy**  
NDBA General Counsel

## 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.

To contact Tracy Kennedy, NDBA General Counsel, call 701.772.8111 or email at [tracy@dakotalawgroup.com](mailto:tracy@dakotalawgroup.com).