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## BANKRUPTCY

### Fiduciary Duty May Exist When Borrowers Hold “In Trust” [BKR WD TX]

The debtor and the creditor entered into a floorplan lending agreement. The agreement granted the debtor a credit line of \$400,000, and the debtor’s car dealership’s assets and properties secured the agreement. Under the agreement, the creditor financed the inventory of the dealership from February 2023 through June 2025 in exchange for proceeds from the vehicle sales. During this time, the credit line limit increased from \$400,000 to \$735,000. Allegedly, the debtors did not turn over the proceeds and filed a voluntary petition under Chapter 7 on June 20, 2025. The schedule D listed the creditor with a claim for \$579,304. The creditor then initiated an adversary proceeding, seeking a nondischargeability determination under 11 U.S.C. § 523(a)(4) and (a)(6) and a judgment of \$232,007.66. The debtor then filed a motion to dismiss the complaint. The court determined whether a borrower-lender relationship obligating the borrower to hold amounts “in trust” created a fiduciary relationship under 11 U.S.C. § 523(a)(4). The court also determined whether the failure to remit those proceeds constituted a “willful and malicious injury” under 11 U.S.C. § 523(a)(6).

In **NextGear Cap., Inc. v. Garcia (In re Garcia)**, 679 B.R. 270 (Bankr. W.D.-Tex. 2026), the court denied the motion to dismiss, holding the evidence insufficient to determine “the context and circumstances of the agreement and the course of performance of the parties.” For a debt to be nondischargeable, a creditor must establish a category listed in § 523(a) by a preponderance of the evidence, and the court would construe the evidence “strictly against the creditor and liberally in favor of the debtor.” *Grogan v. Garner*, 498 U.S. 279, 284 (1991); *Hudson v. Raggio & Raggio, Inc. (In re Hudson)*, 107 F.3d 355, 356 (5th Cir. 1997). First, the creditor alleged that the debt was nondischargeable under § 523(a)(4). The agreement’s “trust provision” created a fiduciary relationship between the creditor and the debtor. However, the

court acknowledged that the Fifth Circuit required an “express or technical” trust. Creating such a trust required the agreement to “(1) create a definable res and (2) impose ‘trust-like’ duties.” *Tex. Lottery Comm’n v. Tran (In re Tran)*, 151 F.3d 339, 342-43 (5th Cir. 1998). However, a “trust-like” relationship required more than the phrase “in trust.” *Bombardier Credit, Inc. v. Theis (In re Theis)*, 109 B.R. 474, 475 (Bankr. M.D. Fla. 1989) (“the phrase ‘in trust,’ [does] not transform a traditional debtor-creditor relationship into a fiduciary relationship.”). Relying on *Davis v. Aetna Acceptance Co.*, 293 U.S. 328, 334 (1934), and *In re Tran*, the court determined that the language by itself was insufficient to establish a fiduciary relationship; however, the court did acknowledge that the language was relevant. Because neither *Davis* nor *Tran* gave a clear analogy, the court turned to the definition of “express trust” under Texas Property Code § 111.004(4). Under Texas law, to establish an express trust, a party “must show the existence of the intended trust property, object, and beneficiary with reasonable certainty.” *In re Estate of Berger*, 174 S.W.3d 845, 848 (Tex. App.-Waco, no pet.). This generally did not exist in a borrower-lender relationship. *Farah v. Mafrige & Kormanik, P.C.*, 927 S.W.2d 663, 675 (Tex. App.-Houston [1st Dist.] 1996, no writ). But the court acknowledged that the language “in trust” alone did not create the fiduciary duty under Texas law either. Thus, the court concluded that on the first issue it lacked sufficient information to create an express trust; however, the court did find it plausible that the relationship could exist, so the court denied the motion to dismiss for the § 523(a)(4) claim. Second, the court considered whether the alleged misappropriation of vehicle’s proceeds constituted “willful and malicious injury” under § 523(a)(6). Under § 523(a)(6), a debt is nondischargeable when the debt is “for willful and malicious injury by the debtor to another entity or to the property of another entity.” 11 U.S.C. § 523(a)(6). This excluded “debts arising from recklessly or negligently inflicted injuries.” *Kawaauhau v. Geiger*, 523 U.S. 57, 64 (1998). The Fifth Circuit had established a test for a § 523(a)(6) claim, which asked: “[W]hether there exists ‘either an objective substantial certainty of harm or a subjective motive to cause harm’ on the part of the debtor.” *Williams v. IBEW Local 520 (In re Williams)*, 337 F.3d

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504, 509 (5th Cir. 2003) (quoting *Miller v. JD. Abrams, Inc.* (In re *Miller*), 156 F.3d 598, 606 (5th Cir. 1998)). Because the complaint alleged that the breach of contract was both “willfully and intentionally determined” and “was substantially certain to harm” the creditor, the court ruled the complaint facially sufficient under § 523(a)(6). Therefore, the court denied the motion to dismiss for the § 523(a)(6) claim as well.

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## Stuck in Neutral: Lender’s Contractual Rate Claim Stalls Out in Chapter 13 Plan Fight [BKR SD TX]

The debtor purchased and financed a vehicle transaction through a loan from the creditor who, in exchange, obtained a perfected purchase-money security interest in the vehicle. Less than 910 days after the purchase, the debtor filed for Chapter 13 bankruptcy protection. As of the petition date, the debtor owed the creditor \$26,232.64 under the loan agreement with a contractual interest rate of 13.22%. The debtor filed a Chapter 13 plan proposing to satisfy the claim by making payments at a modified “prime-plus” interest rate of 7.75%. The creditor objected to confirmation on two grounds: (1) the debtor could not modify the contractual interest rate on a “910 claim” under the hanging paragraph of Bankruptcy Code § 1325(a)(9); and (2) paragraph 10 of the Southern District of Texas Uniform Plan and Motion for Valuation of Collateral violated § 1325(a)(5)(B)(i)(I) (bb) because it tied lien release to completion of plan payments rather than to discharge. The hanging paragraph following § 1325(a)(9) prohibits a debtor from bifurcating a claim secured by a purchase-money security interest into secured and unsecured portions if the debtor acquired the vehicle for personal use within 910 days prepetition, while § 1322(b)(2) allows a debtor’s Chapter 13 plan to modify the rights of secured creditors, including payment terms and interest rates. The court considered whether the debtor’s proposed plan satisfied these requirements.

In *In re Rodriguez*, 679 B.R. 282 (Bankr. S.D. Tex. 2026), the court overruled both objections and confirmed the plan. On the interest-rate objection, the court held that while the hanging paragraph of § 1325(a)(9) prevented bifurcation of a 910 claim, § 1322(b)(2) still permitted modification of the payment terms and interest rate on such claims. Applying the “rule of the last antecedent” from *Barnhart v. Thomas*, 540 U.S. 20 (2003), the court reasoned that the phrase “determined under nonbankruptcy law” in § 1325(a)(5)(B)(i)(I)(aa) modified “underlying debt” rather than “payment.” Therefore, non-bankruptcy law fixed the amount of the debt, while federal bankruptcy law governed the payment terms. Following *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), the court held that the prime-plus rate methodology applied to

modified 910 claims, distinguishing *In re Lilly*, 378 B.R. 232 (Bankr. C.D. Ill. 2007) and *In re Harrison*, 394 B.R. 879 (Bankr. N.D. Ill. 2008), because the plan here required full satisfaction of the secured claim before lien release. On the lien-release objection, the court explained that § 1325(a)(5)(B)(i) required lien retention until the earlier of payment of the underlying debt or discharge under § 1328 and held that completion of the plan payments would both trigger discharge under § 1328(a) and fully satisfy the creditor’s secured claim. Citing *In re Blendheim*, 803 F.3d 477 (9th Cir. 2015) and *In re Scantling*, 754 F.3d 1323 (11th Cir. 2014), the court explained that lien release did not depend exclusively on discharge of personal liability. The court distinguished *In re Donnadio*, 608 B.R. 507 (B.A.P. 6th Cir. 2019), where the plan omitted lien-retention language entirely. The court also addressed, as part of the debtor’s overall burden under § 1325, whether the plan protected the creditor’s lien on dismissal or conversion under § 1325(a)(5)(B)(i)(II). Although paragraph 10 lacked explicit survival language, the court found no violation because paragraph 25 rendered the plan ineffective upon dismissal. And under *Wells Fargo Bank, NA. v. Oparaji*, 698 F.3d 231 (5th Cir. 2012), dismissal voided a Chapter 13 plan and restored the parties’ prepetition property rights, meaning the creditor automatically retained its lien.

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## Bankruptcy Trustee May Pursue a General Reverse Veil-Piercing Claim under § 544 [2D CIR]

The Debtor’s Daughter was the sole member of an LLC that owned a mega-yacht. The LLC’s documents did not list a place of business and only listed the Debtor’s home and office addresses. The LLC also possessed no revenue generation, bank accounts, officers, directors, or employees; maintained no records other than those related to the yacht; and served no business purpose other than owning the yacht and a smaller vessel. Prior to the Debtor filing bankruptcy, a state court found that the Debtor controlled the yacht and used a series of corporations and family members to deceive creditors. The Debtor eventually filed for Chapter 11 bankruptcy and did not list the yacht as an asset. The LLC initiated an adversary proceeding to assert ownership of the yacht. The Chapter 11 trustee filed counterclaims asserting that the state court’s findings estopped the LLC from claiming ownership of the yacht and that the LLC represented the debtor’s alter ego, making its assets property of the bankruptcy estate. The bankruptcy court granted the Trustee summary judgment on the collateral-estoppel and alter-ego counterclaims. On appeal, the district court affirmed. The Debtor’s Daughter and the LLC appealed, arguing that (1) the Trustee lacked standing to bring a reverse veil-

piercing claim; and (2) genuine disputes of material fact precluded summary judgment on whether the LLC functioned as an alter-ego of the Debtor.

In **HK Int'l Funds Invs. (USA) Ltd., LLC v. Despina (In re Kwok Ho Wan Kwok)**, 172 F.4th 145 (2d Cir. 2026), the court affirmed the grant of summary judgment to the Trustee. The court first determined that, under 11 U.S.C. § 544(a), a trustee may assert generalized claims belonging to a hypothetical lien creditor. *St. Paul Fire & Marine Ins. Co. v. PepsiCo, Inc.*, 884 F.2d 688, 700 (2d Cir. 1989). The court concluded that Delaware law allowed a hypothetical creditor to assert the type of claim the trustee brought. The court noted the distinction between a “general” claim and a “personal” claim: “If a claim is a general one, with no particularized injury arising from it, and if that claim could be brought by any creditor of the debtor, the trustee is the proper person to assert the claim.” *St. Paul Fire*, 884 F.2d at 701. The court ruled the Trustee’s reverse veil-piercing claim general because the claim increased the pool of assets distributed to all the creditors. In *re Nordlicht*, 115 F.4th 90, 108-09 (2d Cir. 2024). Finally, the court found that no genuine dispute of material fact precluded summary judgment as the LLC was the Debtor’s alter-ego. The court weighed “the traditional factors” for “traditional veil-piercing claim[s]” and then considered whether the corporate form operated to perpetuate fraud or injustice under the Manichaean factors. *Manichaean Cap., LLC v. Exela Techs., Inc.*, 251 A.3d 694, 714 (Del. Ch. 2021). Here, the court concluded that the following undisputed facts supported the LLC being an alter-ego of the Debtor: “[the LLC] had no revenue; it hired no directors, officers, or employees; it neither filed tax returns nor maintained a bank account; it kept no records other than those related to the [yacht]; and it pursued no business.” The court found that the LLC did not provide substantial evidence to refute the mountain of evidence provided by the Trustee to support the LLC being the Debtor’s alter-ego, and thus no material dispute of fact remained that precluded the summary judgment order.

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## Ex-Spouse Granted Relief from Stay for Marital Proceeding; Bank and Wife’s Motions to Lift Automatic Stay Denied [BKR SD NY]

The debtor and his ex-spouse owned a property as tenants by the entirety, with the bank as a secured creditor holding a mortgage on the property. A matrimonial dispute arose, and the court entered orders directing the debtor to pay spousal support, child support, and other costs associated with the property. When

the debtor failed to pay those costs, the property went into foreclosure. The court ordered the debtor to bring the property out of foreclosure and pay all outstanding costs, yet the debtor again failed to pay. The court found the debtor to be in willful contempt for violating previous orders, and scheduled a contempt hearing. Two weeks before the contempt hearing, the debtor filed for Chapter 11 relief, resulting in an automatic stay of all actions in the matrimonial proceeding. The debtor argued that he could sell the property free and clear of his ex-spouse’s interest, while the ex-spouse argued that she owned 100% of the property. The parties filed three different motions: (1) the debtor’s motion to retain a real estate broker to arrange a sale of the property (the “retention motion”); (2) the ex-spouse’s motion for relief from the automatic stay to resume the matrimonial proceeding (the “ex-spouse’s stay relief motion”); and (3) the bank’s motion for relief from the automatic stay to allow it to proceed with foreclosure (the “bank’s stay relief motion”).

In **In re Moche**, 677 B.R. 592 (Bankr. S.D.N.Y. 2026), the court denied the retention motion, granted the ex-spouse’s stay relief motion, and denied the bank’s stay relief motion. First, considering the retention motion, the court noted that bankruptcy courts have discretion when approving or denying a debtor’s attempt to hire a real estate broker. The court considered factors such as “the protection of the interests of the bankruptcy estate and its creditors, and the efficient, expeditious, and economical resolution of the bankruptcy proceeding.” In *re Vouzianas*, 259 F.3d 103, 107 (2d Cir. 2001). Ultimately, the court ruled the debtor’s retention motions premature because his request overlapped “with issues pending resolution in the Adversary Proceeding.” Because the divorce remained unfinalized and the individuals held the property as a tenancy by the entirety, the court concluded that the debtor lacked authority to sell the property. Next, when considering the ex-spouse’s stay relief motion, the court retained discretion to determine whether cause existed to terminate or modify the stay. The factors courts consider included: “(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; ... (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; ... (7) whether litigation in another forum would prejudice the interests of other creditors; ... (11) whether the parties are ready for trial in the other proceeding; and (12) the impact of the stay on the parties and the balance of harms.” *Sonnax Indus., Inc. v. Tri Component Prods. Corp.* (In *re Sonnax Indus., Inc.*), 907 F.2d 1280, 1286 (2d Cir. 1990). Ultimately, the court found that all factors favored stay relief. Lastly, addressing the bank’s stay relief motion, the court analyzed 11 U.S.C. § 362(d)(1) that allows the automatic stay to be lifted for a “lack of adequate protection of an interest in property.” 11 U.S.C. § 362(d)(1). Ultimately, the court held that because the bank’s outstanding claim amounted to \$400,000, much less than the property’s value of approximately \$2.7 million,

this high of (an equity cushion provided adequate protection. Therefore, the court denied the bank's stay relief motion.

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## **Vacated Does Not Mean Void: Post-Petition Transfers Remain Authorized [6TH CIR]**

The debtor, an automotive-tooling company, filed for Chapter 11 bankruptcy before the case converted to Chapter 7. The bankruptcy court appointed a Chapter 7 trustee (an original trustee) to administer the estate. Soon after, the original trustee entered a fee agreement with the bank, the debtor's primary lender and largest secured creditor. The agreement allowed the original trustee to use funds from the bank's collateral for certain expenses and required the bank to pay the original trustee to review the bank's claim against the estate. Although Bankruptcy Rule 2014 required disclosure of connections to creditors, the original trustee twice attested to his disinterest without disclosing the fee agreement. The original trustee then obtained orders, allowing the bank's \$5.3 million secured claim, lifting the automatic stay, and settling the debtor's pre-petition lender-liability claims against the bank for \$10,000. After the bankruptcy court discovered the conflict, it disqualified the original trustee, denied his law firm's fees, and appointed a successor trustee. Because the bankruptcy court found that the original trustee and his former law firm committed fraud on the court, it vacated the orders. The successor trustee then sought to (1) hold the bank directly or vicariously liable for fraud on the court, (2) avoid the post-petition transfers under § 549(a) of the Bankruptcy Code, and (3) recover for conversion. The bankruptcy court granted summary judgment to the defendants, and the district court affirmed.

In **Vining v. Charles J. Taunt & Associates, P.C. (In re M.T.G., Inc.)**, 164 F.4th 564 (6th Cir. 2026), the Sixth Circuit affirmed. The court first held that the bank held no direct liability for fraud on the court because only an officer of the court can commit that type of fraud. Although bankruptcy trustees and attorneys qualify as officers of the court, the bank constituted a private creditor that owed no comparable duty of disclosure. The court concluded that the original trustee's conduct also did not make the bank vicariously liable. Under Michigan law, an agency relationship required the bank to possess the right to control how the original trustee performed his work. The fee agreement identified tasks but did not dictate the original trustee's methods or require particular outcomes, and the original trustee exercised independent judgment. The bank's attorneys likewise lacked the original trustee's disclosure duty under Rule 2014. The court next held that the successor trustee could not avoid the post-petition transfers under § 549(a) that permits avoidance of transfers not

authorized by the Bankruptcy Code or the bankruptcy court. The court explained that valid court orders authorized the transfers when made, and the bankruptcy court later clarified that it did not vacate those orders with any retroactive effect. The vacatur therefore did not render the orders void ab initio or retroactively strip the transfers of their authorization. The court also noted that avoidance would largely produce the same result because the bank's secured claim exceeded the value of the estate's assets, and avoidance would restore the bank to its position as the estate's largest secured creditor. Finally, the conversion claims failed because the original trustee possessed statutory authority to control and dispose of estate property when he completed the transactions. His later disqualification did not retroactively eliminate that authority or convert the conduct into conversion.

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## **FEDERAL RESERVE**

### **The Bank, the Fed, and the Master Account Application [10TH CIR]**

The Bank, a Wyoming-chartered Special Purpose Depository Institution, provided digital asset banking services and bridged digital assets with the U.S. dollar payment system. The Bank possessed eligibility for a master account with the Federal Reserve Bank of Kansas though not a member of the Federal Reserve. The master account would allow the Bank to access Fed services that are "'indispensable' for a bank's operations." Fourth Corner Credit Union v. Fed. Rsr. Bank of Kansas City, 861 F.3d 1052, 1064 (10th Cir. 2017). The Reserve Bank denied the Bank's application for a master account after new guidelines altered the review standard and procedure for new master account applications. The Bank sued the Federal Reserve Board under 5 U.S.C. §

706(2) and the Reserve Bank under 28 U.S.C. § 1361. The district court held that the claim against the Federal Reserve Board failed for lack of final agency action and that the Reserve Bank retained broad discretion over master-account applications, defeating the Bank's claims. The Tenth Circuit affirmed and then considered a petition for rehearing en banc.

In **Custodia Bank, Inc. v. Red. Rsr. Bd. Of Governors**, 169 F.4th 1188 (10th Cir. 2026), the Tenth Circuit granted the appellant's motion for leave to file a reply and the pending motions for leave to file amicus briefs but denied the petition for rehearing en banc. One judge authored a dissent because he believed the issues "warrant[ed] scrutiny and merit our full court's considerations." The issues, he wrote, stemmed from a single issue: Do the Reserve Banks have discretion to deny eligible institutions'

applications for a master account? Emphasizing 12 U.S.C. §248a(c)(2), the judge concluded that eligible nonmembers—including the bank—are entitled to Reserve services and therefore a master account. He dissented from the majority at each step of the analysis. Highlighting 12 U.S.C. § 342 and a restrained statutory interpretation, he remained “unconvinced that [12 U.S.C. § 342] gives the Reserve Banks unconstrained discretion to accept or reject deposits without reason or explanation.” Instead, he interpreted the statute as establishing a principle that their authority to accept the deposits is “words of authorization merely.” *Farmers’ & Merchants Bank of Monroe v. Red. Rsv. Bank of Richmond*, 262 U.S. 649,662 (1923). Second, the discretion granted under § 342 does not necessarily entail account discretion because requiring the Reserve Banks to issue and scrutinize every deposit for every account is “cumbersome.” In addition, the dissent noted that the statute only references deposits and not accounts; therefore, it concluded that reading the statute to include both accounts and deposits for efficiency is an overbroad interpretation. Thirdly, even if § 342 granted the Reserve Banks discretion, the dissent concluded that the Monetary Control Act (MCA) eliminated that discretion. Further, the dissenting judge reasoned that the Toomey Amendment of the MCA only supports transparency to the extent it affects the database requirement and not further. Fourth, the MCA and the Toomey Amendment altered Fed services to mandate access for eligible nonmembers to Reserve Bank payment services. Finally, both the dissent and the majority read the statute as unambiguous and merely disagreed on the meaning. The dissent reasoned that its interpretation reduced the chance of an ambiguity creating a constitutional problem, while the majority’s unconstrained and broad reading worsened the ambiguity and the scope of the bureaucracy outside of Article II Appointments Clause. The dissent also indicated that the Fed’s discretion and the reading by the majority did not meet the MCA’s mandate limiting such discretion.

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## SECURITY INTERESTS

### Melon Drama: Secured Creditor Could Not Intervene in PACA Trust Action [SD TX]

An unpaid produce seller sued a produce buyer under the Perishable Agricultural Commodities Act (PACA) after the buyer failed to pay for produce. The PACA required the buyer to hold the produce, its proceeds, and accounts receivable in trust for unpaid produce sellers until the buyer paid them in full. Meanwhile, a lender asserted a UCC-1 security interest in the buyer’s accounts receivable arising from a separate lending

relationship and claimed that the buyer owed it more than \$7 million. A third-party purchaser owed the buyer at least \$2.7 million for produce but withheld payment because it faced competing demands from the PACA claimants and the lender. The lender moved to intervene in the PACA action under Federal Rule of Civil Procedure 24, arguing that its security interest entitled it to monitor how the court characterized and distributed the PACA trust assets.

In *Forde/ Mktg., LLC v. Melon Corp.*, 817 E Supp. 3d 421 (S.D. Tex. 2025), the court denied the lender’s motion to intervene. Although the lender timely filed the motion, it failed to establish the direct, substantial, and legally protectable interest required for intervention as of right. The lender was not a PACA trust beneficiary and asserted only a contingent UCC-1 interest arising from its separate dispute with the produce buyer. The court explained that the PACA gave unpaid produce sellers priority over secured creditors in inventories and receivables subject to the statutory trust. Allowing the lender to intervene merely to oversee the classification and distribution of trust assets would effectively elevate its secured interest to the same priority as the PACA beneficiaries, undermining the priority scheme Congress created. The lender could instead pursue its UCC claim in the separate arbitration already underway and seek any remaining assets after the PACA beneficiaries received their payment. Additionally, the court denied permissive intervention. The lender’s UCC claim arose from unrelated lending contracts and shared no common question of law or fact with the produce seller’s PACA claim. The court concluded that intervention would delay payment to the PACA beneficiaries prejudice the existing parties, and add little to the factual development of the proceeding because the lender was neither a produce seller nor a produce buyer with an interest in the PACA trust. Accordingly, the lender’s status as an alleged secured creditor did not entitle it to intervene in the PACA proceeding.

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### Motorcycle Stolen, Claim Remains Unsecured [BKR ND OH]

In 2022, a thief stole the debtor’s motorcycle from a garage; the motorcycle, valued at approximately \$12,000, secured the creditor’s loan. The debtor later filed for Chapter 7 bankruptcy. He received a discharge of liability for the motorcycle debt, even though he listed the property as an asset on his Schedule A/B Property, valued it at \$0.00, and did not identify any loss of property due to theft. The court granted the debtor’s discharge, and no creditor sought to except any debt. Later that year, the debtor filed for Chapter 13 bankruptcy to avoid a foreclosure on his house. The debtor did not list the motorcycle on his Schedule A/B property, nor did he identify the creditor. The creditor

sought to secure its collateral and object to the motorcycle's \$0.00 valuation. The debtor, in response, filed an objection to the proof of claim. At the hearing to determine whether the motorcycle truly went missing or the debtor hid it, the court ruled the debtor's account credible. The court determined that someone did steal the motorcycle on July 11, 2022 and that the debtor did not know its location. The court also acknowledged that "three years would be a long time to keep it under wraps." The creditor argued that the debtor did not "act in good faith as to his obligations" to the creditor, as the debtor breached his obligations with the motorcycle under the loan agreement. The creditor further argued that the debtor's conduct should provide a factor in determining whether it secured its claim. The ultimate issue regarded what the creditor's collateral was worth.

In **In re Schmidt**, 676 B.R. 572 (Bankr. N.D. Ohio 2025), the bankruptcy court ruled the creditor's claim unsecured because the debtor lacked possession. It also granted the debtor's objection to the proof of claim and valued the creditor's collateral at \$0.00. In determining the value of the creditor's collateral, the court looked to 11 U.S.C. § 506(a) that determines value based on replacement value, defined as "the price a retail merchant shall charge for property." The court held that the debtor, and now the bankruptcy estate, retained an interest in the collateral because even though the motorcycle went missing, the legal title remained in the debtor's name as the owner. The debtor continued to argue that the value of the estate's interest in the property was \$0.00 under § 506(a). However, the creditor argued that the retail value of the motorcycle exceeded the debt, making its claim fully secured under § 506(a). The court sided with the debtor. Under § 506(a)(2), replacement value depended on the debtor's retention of the property. Furthermore, to determine the retail value, the court needed to know the motorcycle's condition and mileage; because the motorcycle was missing, the retail value of the creditor's collateral was only "hypothetical." The creditor cited case law to argue that the unfairness of the debtor's carelessness in leaving his motorcycle and not reporting the theft should preclude the debtor from valuing the creditor's collateral at \$0.00. Nonetheless, the court held that principles of equity and fairness under the Bankruptcy Code had not "aged well in the eyes of the Supreme Court." Therefore, the value of the secured claim in the Chapter 13 case was \$0.00, and the court granted the debtor's objection to the proof of claim.

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## UCC Rules Enforce Signed Contracts and Determine If Inconsistent Collateral Description Prevented Attachment of Security Interest [DE CH]

The payee demanded payment from the payor for unpaid consulting services provided to the payor's company. The payee and payor settled and executed a "Full and Final Release" conditioned upon the payee's receipt of a payment and 1% of the company's shares. The payor drafted a "Warrant to Purchase Shares Common Stock" that provided for up to 1% "at the time of issuance." The payee's counsel redlined the draft, revising the language to purchase up to 1% of the company's stock "at the time of exercise." The payee executed the revised draft and sent it to the payor. The payor signed the warrant without knowledge of the changes. The company recorded the warrant for a fixed number of shares, and the company's board acknowledged and ratified the warrant's issuance in an executed unanimous written consent. The board also authorized a stock split, and the company increased the shares under the warrant after the ten-for-one split's completion. Although an auditor for a potential counterparty of the company identified the variance between the company's capitalization table and the warrant, the company made no changes. The payor also made the payee a loan. The parties signed a promissory note and a Securities Pledge Agreement. The pledge agreement conveyed to the payor a "first priority security interest" in the warrant and all proceeds from it. The payee assigned the warrant to the payor as collateral, and then the payor wired the loan principal to the payee. When the promissory note reached maturity, the payee defaulted on the entire balance. The company then transferred the warrant to the payor's name, and the payor exercised the warrant to obtain his shares of company stock. When the company announced a merger, the payee inquired about her interest in the company's stock because the S-4/Proxy made no mention of her. The company informed her that after she defaulted on the loan, it transferred the warrant to the payor. Following the merger, the payor's shares converted into a new amount of the new company's shares that then traded on the New York Stock Exchange. The conditions to the merger subjected the payor to a lock-up period where he could not trade or dispose of his stock during that time. At the end of that period, the payor sold his shares and obtained the proceeds. The payee sued the payor for a declaratory judgment, non-compliance with the Delaware UCC, and conversion, and the case proceeded to trial. To dispose of all claims between the payor and payee, the court determined: 1) whether the payor lacked notice of the changes to the warrant, thereby rendering the warrant invalid and unenforceable; 2) whether the warrant's "time of issuance" description and the pledge agreement's "time of exercise" description prevented attachment of the security interest because of failure to sufficiently describe the collateral; 3) whether the payor converted the warrant by exercising it and receiving shares

in the merger; and 4) whether the lock-up period applied to the payee.

In **Cannon v. Romeo Sys.**, No. 2021-0171-PAF, 2025 WL 2848069, 2025 Del. Ch. LEXIS 251 (Del. Ch. Oct. 7, 2025) (unpublished opinion), rev'd sub nom. In re Patterson, No. 505, 2025, 2026 WL 1066033, 2026 Del. LEXIS 162 (Del. Apr. 17, 2026), aff'd in part, rev'd in part sub nom. Patterson v. Cannon, No. 505, 2025, 2026 WL 1894081, 2026 Del. LEXIS 237 (Del. June 29, 2026), the court held the warrant for 1% of the company's common stock at the time of exercise enforceable but ruled that the security interest had not attached. The court also awarded damages to the consultant on its conversion claim against the payor, holding that the post-merger lock-up period did not apply to the shares referenced in the warrant. In its analysis, the court first rejected the payor's request for an adverse inference against the payee because the payee did not testify at trial. It based its denial on the payor's failure to seek the payee's testimony despite her availability at trial. Next, the court interpreted Delaware law to determine whether the warrant constituted a valid contract. Of the elements of a contract—“(1) the parties intended that the contract would bind them, (2) the terms of the contract are sufficiently definite, and (3) the parties exchange legal consideration” the parties disputed the first. The payor contended that no “meeting of the minds” occurred because he did not intend to enter into a fixed percentage, rather than a fixed share, warrant. The court ruled that the manifested, not subjective, intent of a party controlled contract formation. Thus, the court concluded that the payor's act of executing the warrant on behalf of the company served as strong evidence of his intent to create a binding contract, and it ruled that “failure to read a contract provides no defense against enforcement of its provisions.” Additionally, the court rejected the payor's argument that § 157 of the Delaware General Corporate Law made the warrant invalid and unenforceable. Because the payor served as CEO and sole director when he signed the written warrant, the court determined that the warrant satisfied the § 157 requirements. The court also denied the payor's argument that the payee waived her right to claim more than the fixed number of shares in the pledge agreement, holding that the payor did not meet the “exacting,” high burden to prove that the payee intended to waive her rights. Further, it overruled the payor's estoppel argument, concluding that the payor possessed the means to obtain knowledge of the facts by reading the warrant and therefore could not reasonably rely on the payee to notify him of changes made to the draft.

The court next ruled that under UCC Article 9, a security interest did not attach to the warrant, agreeing with the payee that the pledge agreement did not reasonably identify the warrant as collateral. Under 6 Del. C. § 9-203, “a security interest is enforceable against the debtor” and thus attached to the collateral “only if: (1) ‘value has been given’; (2) ‘the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party’; and (3) ‘the debtor has signed a security

agreement that provides a description of the collateral.’” The court looked to 6 Del. C. § 9-108 to resolve the dispute over the third element. Section 9-108 tests sufficiency by whether the description “reasonably identif[ies] what is described” and defines that standard by elements including: “(1) specific listing; ... (4) quantity; ... or (6) ... any other method, if the identity of the collateral is objectively determinable.” The court used an “objective third-party standard” and concluded that the pledge agreement insufficiently described the collateral. The court first held that describing the warrant as fixed-share did not reasonably identify the fixed-percentage warrant. From that conclusion, it held that “no security interest attached to the collateral, and the security interest is not enforceable” against the payee. The payor raised the affirmative defense of equitable estoppel, arguing that it prevented the payee from disputing the validity of the security interest. The court ruled the defense inapplicable under 6 Del. C. § 1-103, concluding that while principles of equity may supplement the UCC, they may not supplant it.

The court then addressed the payee's claim that the payor converted the warrant when he led the company to transfer it to him despite his lack of a valid security interest and when he then exercised the warrant to receive stock. Because the court ruled that the payor did not hold a valid security interest, it ruled that the payee proved the following elements of conversion: (1) the payee “held a property interest in the allegedly converted property”; (2) the payee “had a right to possess that property”; and (3) the payor “exercised dominion wrongfully by exercising the [w]arrant without [the payee's] consent.” The payor raised four defenses. First, the court ruled that the payee did not need to demand her rights to the warrant because the payor “did not have lawful possession” of it. Thus, the payee's failure to demand the return of the warrant did not invalidate her conversion claim. The court then decided damages for the conversion, applying the measure of “the highest intermediate value between notice of the conversion and a reasonable time thereafter during which the stock could have been replaced.” The court decided the “reasonable time thereafter” as a question of law. It adopted a “context-specific approach,” concluding that the lock-up period did not apply to the damages calculation. The court found that the terms of the warrant did not bar the payee from selling the shares after a merger, nor did the payee's subjective belief as to whether it applied to her, or the unsupported hypothetical that the payee would have had to sign a lock-up agreement. For damages, the court adopted a calculation by the payee's expert as an appropriate measure and then deducted the amount already paid. Additionally, the court held the payor liable for the full value of the warrant, not just the portion that he exercised. Last, the court awarded pre- and post-judgment interest as a matter of right. Thus, the judgment completely favored the payee.

## Editor's Note:

On appeal, the Delaware Supreme Court en banc affirmed the chancery court's holding regarding the warrant's validity and enforceability as a contract but reversed the judgment on the non-attachment of the security interest and conversion. It concluded that the pledge agreement did sufficiently describe the collateral by reasonably describing it "by type, quantity, issuer, holder, and underlying equity security." The court noted the UCC comment that the description need not "be 'exact and detailed,'" and it found that the payee only possessed one warrant from the company that matched the pledge agreement in all details but one. Thus, the court found the collateral had been reasonably identified and the security interest attached. Because the security interest attached, the court concluded that the payor lawfully possessed the warrant and reversed the conversion judgment.

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## WIRE FRAUD

### It Is (Not) Anyone's Guess: Bank Owed No Duty to Noncustomer [5TH CIR]

A payor maintained its operating account with one bank (the originating bank) and directed it to send two wire transfers to vendors. Unknown third parties (the beneficiaries) diverted both transfers into accounts they held at a second bank (the receiving bank). The payor alleged that the receiving bank opened the accounts without verifying the beneficiaries' Social Security or tax-identification numbers and without obtaining required documentation, in violation of industry standards, the bank's internal procedures, and federal regulations. Three years later, the payor sued the receiving bank for negligence, gross negligence, and violation of Article 4A of Florida's Uniform Commercial Code. The district court dismissed all claims with prejudice under Federal Rule of Civil Procedure 12(b)(6), holding that the receiving bank owed no duty of care to the payor because the payor was not its customer. The payor appealed but did not pursue its Article 4A claim.

In **Gemstone Foods, L.L.C. v. JPMorgan Chase Bank, N.A.**, No. 26-60049, 2026 WL 1507876, 2026 U.S. App. LEXIS 15551 (5th Cir. May 29, 2026) (per curiam) (unpublished opinion), the Fifth Circuit affirmed the district court. Under Mississippi law, the existence of a duty is a question of law, and negligence and gross negligence claims necessarily fail in the absence of a duty. The court held that *Midwest Feeders, Inc. v. Bank of Franklin*, 886 F.3d 507 (5th Cir. 2018), controlled. In *Midwest Feeders*, the Fifth Circuit predicted that the Mississippi Supreme Court would not impose a duty of reasonable care on a bank in favor of

a noncustomer harmed by fraud committed through the bank. The payor attempted to distinguish *Midwest Feeders* because the unknown third parties here opened sham accounts and diverted wire transfers, whereas *Midwest Feeders* involved misuse of a legitimate account and check-kiting. The court found those factual differences immaterial because *Midwest Feeders* rested on the absence of a direct relationship between the bank and the noncustomer. Under the Fifth Circuit's rule of orderliness' the panel could not depart from *Midwest*.

*Feeders* absent an intervening change in Mississippi law, and the payor identified none. The court also rejected the payor's alternative theories for creating a duty. Industry standards and internal bank policies could bear on breach if a duty already existed, but they could not create one independently. Likewise, the Bank Secrecy Act and its Customer Identification Program regulations did not provide a private right of action or establish a duty of care owed to private parties per se. Finally, the payor relied on *Elkin Valley Baptist Church v. PNC Bank, NA.*, 748 F. Supp. 3d 293 (W.D. Pa. 2024), which predicted under Pennsylvania's duty analysis that a bank could owe a duty to a noncustomer harmed by cybercrime. The Fifth Circuit declined to follow *Elkin Valley* because it applied Pennsylvania law and would not displace the Fifth Circuit's existing prediction of Mississippi law. Accordingly, because the receiving bank owed the payor no duty, the court affirmed dismissal of the negligence and gross-negligence claims.

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