Bankruptcy Law & Practice
MCLE Meeting
DuPage Bar Center - Classroom
5/1/19

11:45 AM – 12PM	Welcome/Introductions *David Newby – Bankruptcy Law Section Chair*
12:00PM-1:00PM	Not Your Everyday, Usual Assets and Objections to Exemptions *Frank J. Kokoszka – Kokoszka & Janczur, P.C.* A discussion on some recent developments in bankruptcy cases, particularly those in DuPage County with potential assets of the estate. These "unusual" assets raise issues in cases including: the reopening of a closed bankruptcy case; what constitutes property of the bankruptcy estate; and, what, if any exemptions apply to such assets ***Frank J. Kokoszka** is a member of the Panel of Chapter 7 Trustee, hearing cases from DuPage and Kane County; Attorney practicing generally in the areas of bankruptcy, creditors' rights and commercial litigation. Received a Bachelor of Arts from Loyola University of Chicago and a Juris Doctor from Duke University School of Law.*
Next Meeting:	Fall 2019
DCBA Events:	5/16/19 – Diversity & Inclusion Seminar & May Happy Hour at Doubletree by Hilton in Lisle 5/28/19 – The Challenge of Work/Life Balance PRMCLE Presentation in Hinsdale 6/7/19 – Presidents Ball & Installation of Officers 6/20/19 – 11th Hour PRMCLE Seminar & Happy Hour – Granite City in Naperville

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Manage Profile -> Professional Development (under content & features) and choose the icon to the left of each meeting to print your certificate directly or choose to have them emailed to you to save to your computer (you <u>MUST</u> be logged in to view this feature)

FRANK JOHN KOKOSZKA
ATTORNEY AT LAW
KOKOSZKA & JANCZUR, P. C.
19 SOUTH LASALLE STREET, SUITE 1201
CHICAGO, ILLINOIS 60603
OFFICE: (312) 443-9600
DIRECT DIAL: (312) 429-7861
Fkokoszka@k-jlaw.com

EXPERIENCE

Kokoszka & Janczur, P.C. (Chicago)
August 1996 to Present
Senior Partner practicing primarily bankruptcy/creditors' rights, commercial litigation and civil litigation. Member of the Panel of Chapter 7 trustees for the U.S. Bankruptcy Court for the Northern District of Illinois. Representing debtors, creditors and trustees in bankruptcy cases. Experience as a Disbursing Agent and Assignee for the Benefit of Creditors. Broad based litigation practice representing defendants and plaintiffs in consumer fraud cases, real estate litigation, breach of contract, creditors' rights, injunctive actions and bankruptcy litigation for both business entities and individuals.

Blau, Kokoszka & Bonavich (Chicago)
November 1992 to August 1996
Managing Partner practicing commercial/civil litigation and bankruptcy.

Malk Harris & Miller (Chicago)
March 1992 to November 1992
Associate in ten attorney general practice firm. Primary associate with responsibility on all of firm's commercial litigation matters and firm's principal bankruptcy attorney.

Winston & Strawn (Chicago)
June 1989 to January 1992
Associate in 35-member Bankruptcy & Business Reorganization Department. All aspects of chapter 11 administration; automatic stay and adequate protection litigation; representing defendants in preference actions; work-out negotiations; sales of commercial assets; cash collateral negotiations; claims objection litigation; commercial collection litigation; creditors' rights litigation.

EDUCATION

Duke University School of Law
Juris Doctor, May 1989
- Duke Law School Scholarship

Loyola University of Chicago
Bachelor of Arts, Honors, Cum Laude, May 1986
Majors: Political Science and English

- Loyola Honor Scholarship (4 years)
- President, Pi Sigma Alpha Honor Society (Senior Year)
- Alpha Sigma Nu Jesuit Honor Society (Junior-Senior Years)
- Blue Key Honor Society (Junior-Senior Years)

SPEECHES, PUBLICATIONS AND HONORS

- 2007 -2019 Chosen among Illinois Super Lawyers (Bankruptcy & Creditors' Rights);
- Speaker/Presenter and Guest Panelist at the International Conference on "Insolvency of Natural Persons- Regulatory Framework and Its Efficiency" in Warsaw, Poland in December, 2017.
- Adjunct Instructor- Business Law, Kendall College (Evanston, Illinois), 2002
- Guest Speaker, Chicago Bar Association Seminar on Commercial Litigation- Trial Techniques
- Guest Speaker - "Representing Defendants in Consumer Fraud Cases" for the Chicago Bar Association Consumer Fraud Committee
- Guest Speaker on legal issues for WPNA-AM (Polish –American) Radio in Chicago
- Guest Speaker on bankruptcy issues for various Advocates Society Law Day Presentations
- Guest Speaker on the topic of "Changes in Bankruptcy Law: What the General Practice Attorney Needs to Know" for the Advocates Society (2004)
- Co-author: "The Aftermath of *PGA Tour, Inc. v. Casey Martin*: Out of the Rough for Disabled Athletes" (CBA Record, November 2002)
- Amicus Poloniae Distinguished Service Award (2000)
- CVLS Distinguished Service Award (1994)
- Guest Speaker, Clerk of the Circuit Court of Cook County Dorothy Brown's Mortgage Foreclosure Education Summit (2008)
- Panel Speaker- CBA Bankruptcy Committee on "7th Circuit Bankruptcy Cases- Year in Review" (2016)

PROFESSIONAL LEADERSHIP AND COMMUNITY INVOLVEMENT

- Appointed to Panel of Chapter 7 Trustees for the Northern District of Illinois (2014-Present)
- Chapter 7 Trustee Advisory Committee for the Northern District of Illinois (2017-Present)
- Chicago White Sox Volunteer Corps, 2010-Present
- Volunteer, U.S. Bankruptcy Court (N.D. Ill.) Volunteer Attorney Panel (2007-Present)
- Volunteer, Bankruptcy Help Desk for the Northern District of Illinois
- Mentor, Chicago Bar Association Attorney Mentoring Program (2013-2014; 2017-2018)
- Co-Chair, CBA Corporate Law Departments Committee (2005- 2010)
- Vice-Chair, CBA Corporate Law Departments Committee (2004-2005)
- Vice-Chair, CBA Sports Law Committee (2002-2004)
- Founding Chair, CBA\YLS Consumer Fraud Committee
- Vice-President, Board of Directors, Carmenae Ensemble Theatre Company (2003-04)

- Chair Emeritus, Amicus Polonae Polish Legal Clinic (CVLS Polish Language Clinic)
- Volunteer Judge, Chicago Regional Moot Court Competition (CBA)
- Volunteer Judge, American Trial Lawyers' Association, Moot Court Competition
- Volunteer Judge, ABA Client Counseling Regional Competition (2016, 2018-2019)
- Volunteer Judge, ABA Moot Court Competition
- Volunteer Judge, ABA 2005-2006 National Negotiation Competition
- Volunteer Judge, CBA Moot Court Competition
- Volunteer Judge, University of Wisconsin Law School Moot Court Competition (2003)
- Volunteer Judge, John Marshall Moot Court Competition in Information Technology and Privacy Law (2010)
- Volunteer Judge, 2014 Regional ABA Representation In Mediation Competition
- Arbitrator (Chair Qualified), Cook County Mandatory Arbitration Program (1994-Present)
- Administrative Hearing Officer- City of Chicago, Department of Administrative Hearings (1997)

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

- Member, American Bankruptcy Institute
- Member, National Association of Consumer Bankruptcy Attorneys (NACBA)
- Member, CBA Bankruptcy Committee
- Member, CBA Commercial Litigation Committee
- Member & Volunteer Attorney, Lawyers for the Creative Arts
- Member, Polish National Alliance
- Member, Association for Conflict Resolution-Chicago Chapter
- Member, National Association of Chapter 7 Bankruptcy Trustees

PROFESSIONAL LICENSES

- Illinois Bar, 1989 to present
- Federal Bar, Northern District of Illinois, 1989 to present
- Federal Bar, Eastern District of Michigan, 1993 to present
- Federal Bar, Central District of Illinois, January, 2008 to present
- Federal Trial Bar, Northern District of Illinois, 1996 to present
- NFL Players Association, Certified Players' Agent, 2002- 2004

LANGUAGES

Speaking Proficiency in Polish

Eleventh Hour PRMCLE Seminar

Thursday June 20th 2019
Granite City Food & Brewery
1828 Abriter Ct, Naperville

DCBA
DuPAGE COUNTY BAR ASSOCIATION
Since 1879

Need additional PRMCLE credits before the June 30th reporting deadline? No Problem!
Join us on Thursday June 20th from 1:30pm-5:00pm and earn 2 credits PRMCLE/1 credit PRMCLE Mental Health & Substance Abuse (pending MCLE Board Approval). Our Monthly Happy Hour will follow the seminar at the same location—Granite City Food & Brewery in Naperville

Pricing

$20 DCBA Member
$10 New Admittee/Government Attorney
$45 Non-Member

1:30pm-2:30pm *"When Helping Hurts: Compassion Fatigue in the Legal Profession"* Speaker: Karen Mills, Strohschein Law Group (1 Credit PRMCLE - Mental Health/Substance Abuse)

2:45pm-3:45pm*"Succession Planning"* Speaker: Mary Andreoni - Sr. Counsel, Ethics Education - Attorney Registration & Disciplinary Commission (1 Credit PRMCLE)

4:00pm-5:00pm*"A Survey on Professionalism: Is Civility a Real Problem?"* Speaker: Mary Robinson - Robinson Law Group LLC (1 Credit PRMCLE)

For full agenda and online registration, visit www.dcba.org

Name ____ **ARDC #** _______________________

Addres____

Phone ________________________________ **Emai**_______________________________________

Registration Fee: _____ $20 Member _____ $10 New Admittee/Gov't Attorney _____ $45 Non-Member

[ ] I enclose my check for $_______________ made payable to the DCBA. Check #_______________

[ ] Please bill my credit card #____

Exp______CVV_____Signature____

Note: Please send completed form with payment to DCBA, 126 S. County Farm Rd, Wheaton, IL 60187 or rrupp@dcba.org

What Are We Missing?
A Town Hall Conversation on Diversity & its Impact on the Legal Profession

Thursday, May 16th 2019

DoubleTree by Hilton Lisle Naperville

3003 Corporate W Dr

Lisle, IL 60532

2:00pm-5:00pm (1:30 Registration)

Moderator: Hon. Vincent F. Cornelius, 12th Judicial Circuit (Will County)

Speakers

Joseph Flynn, Associate Director for Academic Affairs - Northern IL University Center for Black Studies

Jennifer Adams Murphy, Shareholder and Senior Attorney - Wessels Sherman

Alex Karasik, Associate - Seyfarth Shaw LLP

Topics for Discussion

The Past: Where are we and how did we get there?

The Present: How is diversity shaping the current landscape in the workplace?

The Future: Where should we go and how do we get there?

2 PRMCLE Hours/1 PRMCLE Diversity & Inclusion (Pending MCLE Board Approval)

With Generous Support From

For full agenda and online registration, visit www.dcba.org/diversity

Name _______________________________ **ARDC #** ____________________

Address ____

Phone ____________________________ **Email** ______________________________

Registration Fee: _____ $20 Member _____ $20 Sponsoring Bar Member

_____ $10 New Admittee/Gov't Attorney _____ $45 Non-Member

[ ] I enclose my check for $______________ made payable to the DCBA. Check #______________

[ ] Please bill my credit card. #____

Exp______CVV_____Signature____

Note: Please send completed form with payment to DCBA, 126 S. County Farm Rd, Wheaton, IL 60187 or jkomornick@dcba.org

Not Your Usual, Everyday Assets and Objections to Exemptions

Presentation to the DuPage County Bar Association Bankruptcy Law MCLE Meeting

Frank J. Kokoszka, Esq.
Chapter 7 Panel Trustee, N.D. of Illinois (DuPage & Kane Counties)
Kokoszka & Janczur, P.C.
19 South LaSalle Street, Suite 1201
Chicago, Illinois 60603
312-443-9600 phone
fkokoszka@k-jlaw.com

I. Background

a. Property of the Estate

- Bankruptcy Code (Code Section 541): generally, all legal or equitable interests of the debtor in property as of the commencement of the case.
- "Every conceivable interest of the debtor, future, nonpossessory, contingent, speculative, and derivative, is [property of the estate] within the reach of § 541." *In re Yonikus*, 996 F.2d 866, 869 (7th Cir. 1993), abrogated on other grounds by *Law v. Siegel*, 134 S. Ct. 1188 (2014).
- Under section 541, all legal and equitable interests of the debtor, wherever located and by whomever held, are property of the estate. Property of the estate also includes any property that the debtor acquires or becomes entitled to acquire within 180 days after the petition date by way of inheritance, property settlement or divorce decree, or life insurance.

b. Trustee's Duties

- Bankruptcy Code section 704(a). The trustee shall:

  1. Collect and reduce to money the property of the estate and close the estate as expeditiously as is compatible with the best interests of parties in interest. § 704(a)(1).
  2. Be accountable for all property received. § 704(a)(2).
  3. Ensure that the debtor performs his or her intentions as to the retention or surrender of property of the estate that secures consumer debts. 11 U.S.C. § 704(a)(3).

- Trustee's Handbook: https://www.justice.gov/ust/file/handbook_for_chapter_7_trustees.pdf/download

1. The trustee, as designee of the United States Trustee, is the presiding officer at the meeting of creditors.
2. The principal duty of the trustee is to collect and liquidate the property of the estate and to distribute the proceeds to creditors.
3. The Trustee is the fiduciary of the debtor's creditors.

c. Debtor's Duties

- Pursuant to Bankruptcy Code section 521(a)(4), "the Debtor **shall**-…surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate…"
- Pursuant to Bankruptcy Code section 521(a)(3) and Bankruptcy Rule 4002(a)(4), the Debtor has a duty to "cooperate with the trustee in . . . the administration of the estate."
- Debtor's duties to cooperate with the Trustee or surrender property of the estate do not end upon entry of discharge.

d. Exemptions

- Bankruptcy Code section 522

- In Illinois, a debtor must use the state exemptions. These exemptions are generally set forth in the Illinois Code of Civil Procedure at:
  735 ILCS 5/12-1001 et seq. (exemptions of personal property) and
  735 ILCS 5/12-901 (homestead exemption), and include necessary wearing apparel, up to $15,000 in value in a homestead property (a married couple owning a home jointly can claim up to $30,000 in value in their homestead exemption), up to $2,400 in value in **a** car, and $4,000 worth of other personal property (the "wild-card" exemption).
- A debtor must list property claimed as exempt on the schedule of exempt property filed with the court. Fed. R. Bankr. P. 4003 (a).
- Only individuals may claim exemptions; corporations and partnerships may not.
- Is "stacking" of exemptions allowed?

.

e. Objections to Exemptions

- a **party in interest** may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under §341(a) **is concluded** or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.
- The objecting party has the burden of proving that the exemptions are not properly claimed.

II. Foreclosure Surplus Funds Cases

a. Debtor's surplus funds after the foreclosure and sale of property- is it estate property?
b. Homestead Exemption- does it apply?

III. Petition to Quash Summons and to Void Judgment

a. How do we categorize this asset?
b. Bankruptcy issues
   1. Motion to Reopen Case (**Attachment A**)
   2. Property of the Estate?
   3. What Exemptions apply?
      - Briefs in *In re Bardo* (**Attachments B, C and D**)
   4. Result in *Bardo* case
c. More Recent Cases
   1. *Israel and Idubina Bonilla* (**Attachment E**)
   2. Judge Hollis' Ruling in *Siddiqui* (**Attachment F**)

IV. Unusual Insurance Proceeds Issues

a. Property of the Estate?
b. What exemptions apply?
   - 735 ILCS 5/12-1001(h): The debtor's right to receive, or property that is traceable to…(3) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent, to the extent reasonably **necessary for the support of the debtor or a dependent of the debtor**;
   - 735 ILCS 5/12-1001(f): **All proceeds payable** because of the death of the insured and the aggregate net cash value of any or all life insurance and endowment policies and annuity contracts payable to a wife or husband of the insured, or to a child, parent, or other person dependent upon the insured, or to a revocable or irrevocable trust which names the wife or husband of the insured or which names a child, parent, or other person dependent upon the insured as the primary beneficiary of the trust, whether the power to change the beneficiary is reserved to the insured or not and whether the insured or the insured's estate is a contingent beneficiary or not;
c. *Tuscola Nat'l Bank v. Stilwell (In re Stilwell)*, 321 B.R. 471 (C.D. Ill., 2005) (**Attachment G)**

V. Discussion on Other Unusual Assets that Trustees Review

a. Notice of Refund (**Attachment H**)
b. Direction to Pay Letter (**Attachment I**)
c. Commissions, Severance Pay, and Bonuses **(Attachment J)**
d. Cryptocurrencies (Bitcoins)
e. Tuition Claw-backs

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	
	)	Chapter 7
Katarzyna Bardo,	)	Case No. 15-14266
	)	Honorable Judge Janet S. Baer
Debtor.	)	

NOTICE OF MOTION

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on the 12th day of May, 2017, at 11:00 a.m. or as soon thereafter as counsel can be heard, I shall appear before the Honorable Janet S. Baer, Bankruptcy Judge, at the Kane County Courthouse, 100 South Third Street, Room 240, Geneva, Illinois 60134 or before any other Judge who may be sitting in her place and present the **Motion to Reopen Chapter 7 Case**, a copy of which is attached hereto and herewith served upon you, and shall pray for the entry of an Order in compliance therewith.

AT WHICH TIME and place you may appear if you so see fit.

/s/John H. Redfield
CRANE, HEYMAN, SIMON, WELCH & CLAR
135 South LaSalle Street, Suite 3705
Chicago, Illinois 60603
(312) 641-6777

CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath deposes and states that a copy of the foregoing Notice and attached Motion, by U.S. First Class Regular Mail on all parties on the attached service list, properly addressed and postage prepaid on the 2nd day of May, 2017, before the hour of 5:00 p.m.

/s/John H. Redfield

SERVICE LIST

Frank J. Kokoszka, Trustee
Kokoszka& Janczur, PC
122 South Michigan Ave., Ste. 1070
Chicago, IL 60603-6270

Katarzyna Bardo
29 W. 025 Geneva Rd.
West Chicago, IL 60185

Afni
Po Box 3068
Bloomington, IL 61702

BB Convergent
800 SW 39th Street
Renton, WA 98057

Credit Managment Central
2707 Rapids Drive POB 4030
Racine, WI 53404

NW COLLECTOR
3601 ALQONQUIN RD.
Rolling Meadows, IL 60008

Kerry A. Walsh
c/o Fidelity National Law Group
10 S. LaSalle St., Ste. 2750
Chicago, IL 60603

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	
	)	Chapter 7
Katarzyna Bardo,	)	Case No. 15-14266
	)	Honorable Judge Janet S. Baer
Debtor.	)	

DEBTOR'S MOTION TO REOPEN CHAPTER 7 CASE

NOW COMES Katarzyna Bardo ("Debtor'), by and through her attorney, John H. Redfield of Crane, Heyman, Simon, Welch & Clar, and as her motion to reopen the above Chapter 7 case, states as follows:

1. On April 22, 2015, the Debtor filed a Voluntary Petition for an Order of Relief under Chapter 7 of the Bankruptcy Code ("Chapter 7 Case").

2. This Court has jurisdiction over this matter subject to 28 U.S.C. § 1334. It is a core matter pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

3. On August 17, 2015, Frank J. Kokoszka, the Chapter 7 Trustee ("Trustee") filed a Report of No Distribution.

4. The Debtor's Chapter 7 Case was closed on August 18, 2015.

5. Pursuant to 11 U.S.C. § 350(b) and Rule 5010 of the Federal Rules of Bankruptcy Procedure, "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause."

6. On or about July, 2016, the Debtor learned that she may have a claim to quash service of summons and vacate the judicial foreclosure sale dated May 19, 2009 of her one-half (½) interest in her former residence located at 22W027 Thorndale Avenue, Medinah, Illinois 60157, in the

Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, under case Number 2008 CH 3652.

7. On or about January 3, 2017, the Debtor filed a Petition to Quash Service and Vacate All Void Orders in the above foreclosure case, which is attached hereto as **Exhibit A** ("Claim").

8. The Plaintiff in the foreclosure case has asserted that the above Claim is an asset of the Chapter 7 Case.

9. The court may reopen the Chapter 7 Case to enable the Trustee to administer the above Claim if he so desires.

10. The Debtor seeks leave to amend her Schedules B and C instanter to list the above Claim as a contingent asset per **Exhibit B** attached hereto.

WHEREFORE, Katarzyna Bardo, the Debtor herein, prays for the entry of an Order as follows:

A. Reopening the above Chapter 7 case for the purpose of scheduling the contingent claim instanter; and

B. For such other Order as the Court deems just and proper.

Respectfully submitted,

Katarzyna Bardo, Debtor

By: /s/John H. Redfield
One of his attorneys

DEBTOR'S COUNSEL:
John H. Redfield (Atty. No. 2298090)
Crane, Heyman, Simon, Welch & Clar
135 S. LaSalle, #3705
Chicago, IL 60603
(312) 641-6777
W:\JHR\Bardo\Reopen Case.mot and NOM.wpd

STATE OF ILLINOIS COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

SUTTON FUNDING, LLC **PLAINTIFF** **VS.** **KATARZYNA BARDO; ANDRZEJ BARDO; FORD MOTOR CREDIT COMPANY; UNKNOWN OWNERS AND NON-RECORD CLAIMANTS,** **DEFENDANTS** ______________________________ **KATARZYNA BARDO** **PETITIONER** **VS.** **SUTTON FUNDING, LLC; AMERICAN INTERNET MORTGAGE INC.; FRANK PELLEGRINO; and ZAREEN PELLEGRINO** **RESPONDENTS**	**CASE # 2008 CH 3652** **PROPERTY: 22W027 THORNDALE AVENUE, MEDINAH, ILLINOIS 60157**

DEFENDANT'S PETITION TO QUASH SERVICE AND VACATE ALL VOID ORDERS

Defendant, Katarzyna Bardo, by and through her attorney, Stephen D. Richek and for her petition to quash service and vacate all void orders pursuant to section 2-1401 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1401(f))(West 2014) states as follows:

1. On September 19, 2008, Plaintiff, Sutton Funding, LLC, filed a foreclosure complaint against KATARZYNA BARDO, among others, seeking foreclosure of the real estate located at 22W027 Thorndale Avenue, Medinah, Illinois 60157 (the "Property").

EXHIBIT
A

2. On October 14, 2008, Plaintiff filed an affidavit of to allow service by publication. (Exhibit A)

3. According to the affidavit, Katarzyna Bardo's last known place of residence was the Property.

4. The court file does not contain any evidence that the Clerk of the Circuit Court mailed the publication to Katarzyna Bardo pursuant to 735 ILCS 5/2-206(a). In fact, Plaintiffs Attorney talked with a Clerk Manager and Glen Schumacher who acknowledges there is no Certificate of Mailing.

5. Plaintiff failed to strictly comply with the statute for service by publication.

6. Katarzyna Bardo did not file an appearance or participate in the case.

7. The Court entered an order of default against Katarzyna Bardo on December 8, 2008.

8. The property was subsequently sold at a foreclosure sale on May 19, 2009.

9. On June 2, 2009, the Court entered an order confirming the sale.

10. This Court can take judicial notice of the following public records:

    A. On July 6, 2009 a Sheriff's Deed from Sheriff of DuPage County to Sutton Funding, LLC was recorded in the Du Page County Recorder of Deed's Office as document number R2009-102239.

    B. On January 28, 2010 a Quit Claim Deed from Sutton Funding LLC to Protium REO I LP was recorded in the Du Page County Recorder of Deed's Office as document number R2010-013551.

    C. On January 11, 2011 a Special Warranty Deed from Protium REO I LP to Frank Pellegrino and Zareen Hasan was recorded in the Du Page County Recorder of Deed's Office as document number R2011-006096.

D. On June 25, 2013 a Quit Claim Deed from Frank Pellegrino and Zareen Pallegrino f/k/a Zareen Hasan to Frank Pellegrino and Zareen Pellegrino was recorded in the Du Page County Recorder of Deed's Office as document number R2013-092036.

E. On June 25, 2013 a Mortgage from Frank Pellegrino and Zareen Pellegrino to AMERICAN INTERNET MORTAGE INC. was recorded in the Du Page County Recorder of Deed's Office as document number R2013-092037.

11. The court did not have personal jurisdiction over Katarzyna Bardo as she was never mailed the publication by the clerk of the circuit court. *In re Marriage of Wilson*, 150 Ill. App. 3d 885, 889 (1986)

12. The lack of jurisdiction over Katarzyna Bardo was apparent on the face of the record because there is no mailing certificate by the clerk of the circuit court in the court file.

WHEREFORE, Katarzyna Bardo, moves this Honorable Court to:

A. Quash service for Katarzyna Bardo;

B. Vacate all orders entered in the case as void ab initio;

C. Find that the lack of jurisdiction is apparent on the face of the record;

D. Restore possession of 22W027 Thorndale Avenue, Medinah, Illinois 60157 to Katarzyna Bardo;

E. Find that the documents recorded against the Property after June 2, 2009 are invalid; and

F. Enter any other orders the court deems just and equitable.

Dated: January 3, 2017

Respectfully Submitted,
Katarzyna Bardo

By: ______________________
Stephen D. Richek, One of Defendant's Attorneys

Stephen D. Richek Attorney #: 70977
111 W WASHINGTON, STE 1020,
CHICAGO, IL 60602
Phone: 312-375-6556
Email: strichek@aol.com

STATE OF ILLINOIS COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

SUTTON FUNDING, LLC **PLAINTIFF** **VS.** **KATARZYNA BARDO; ANDRZEJ BARDO; FORD MOTOR CREDIT COMPANY; UNKNOWN OWNERS AND NON-RECORD CLAIMANTS,** **DEFENDANTS**	**CASE # 2008 CH 3652** **PROPERTY: 22W027 THORNDALE AVENUE, MEDINAH, ILLINOIS 60157**
KATARZYNA BARDO **PETITIONER** **VS.** **SUTTON FUNDING, LLC; AMERICAN INTERNET MORTGAGE INC.; FRANK PELLEGRINO; and ZAREEN PELLEGRINO** **RESPONDENTS**	

CERTIFICATE OF SERVICE

I, Stephen D. Richek, an attorney, certify that I served a copy of the **Petition to Quash and Appearance**, to the parties who are entitled to notice, at the address on the attached service list, by causing it to be deposited, enclosed in an envelope, at the United States Postal Service located at 111 W Washington, Chicago, Illinois 60602 before 5:00 PM on _______________, 2017, which address appeared plainly on the envelope with postage fully prepaid and was mailed by Certified Mail Return Receipt Requested.

Dated: January 3, 2017

Respectfully Submitted,

____

Stephen D. Richek Attorney #: 70977
111 W WASHINGTON, STE 1020,
CHICAGO, IL 60602
Phone: 312-375-6556
Email: strichek@aol.com

SERVICE LIST

SUTTON FUNDING, LLC
C/O REGISTERED AGENT
C T CORPORATION SYSTEM
208 SO LASALLE ST, SUITE 814
CHICAGO, ILLINOIS 60604

CERTIFIED NUMBER________________________________

American Internet Mortgage Inc.
C/O REGISTERED AGENT
NATIONAL REGISTERED AGENTS INC
208 SO LASALLE ST, SUITE 814
CHICAGO, ILLINOIS 60604

CERTIFIED NUMBER________________________________

Frank Pellegrino
22W027 THORNDALE AVENUE, MEDINAH, ILLINOIS 60157

CERTIFIED NUMBER________________________________

Zareen Pellegrino
22W027 THORNDALE AVENUE, MEDINAH, ILLINOIS 60157

CERTIFIED NUMBER________________________________

STATE OF ILLINOIS COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

SUTTON FUNDING, LLC **PLAINTIFF** **VS.** **KATARZYNA BARDO; ANDRZEJ BARDO; FORD MOTOR CREDIT COMPANY; UNKNOWN OWNERS AND NON-RECORD CLAIMANTS,** **DEFENDANTS**	**CASE # 2008 CH 3652** **PROPERTY: 22W027 THORNDALE AVENUE, MEDINAH, ILLINOIS 60157**
KATARZYNA BARDO **PETITIONER** **VS.** **SUTTON FUNDING, LLC; AMERICAN INTERNET MORTGAGE INC.; FRANK PELLEGRINO; and ZAREEN PELLEGRINO** **RESPONDENTS**	

NOTICE OF FILING

TO: **SUTTON FUNDING, LLC; American Internet Mortgage Inc.; Frank Pellegrino; and Zareen Pellegrino**

A pleading seeking 2-1401 relief against You has been filed on _________, 2017, with the Clerk of the Circuit Court of Du Page County, Illinois, a copy of which is attached hereto. A judgment by default may be taken against You for this 2-1401 relief unless You file an answer or otherwise file an appearance in the office of the clerk of the court within 30 days after service, receipt by certified or registered mail, or the first publication of the notice, as the case may be, exclusive of the day of service, receipt or first publication.

Dated: January 3, 2017

Respectfully Submitted,
Katarzyna Bardo

By: ________________________
Stephen Richek

Stephen D. Richek Her Attorney

Stephen D. Richek Attorney #: 70977
111 W WASHINGTON, STE 1020,
CHICAGO, IL 60602
Phone: 312-375-6556
Email: strichek@aol.com

STATE OF ILLINOIS COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

SUTTON FUNDING, LLC **PLAINTIFF** **VS.** **KATARZYNA BARDO; ANDRZEJ BARDO; FORD MOTOR CREDIT COMPANY; UNKNOWN OWNERS AND NON-RECORD CLAIMANTS,** **DEFENDANTS**	**CASE # 2008 CH 3652** **PROPERTY: 22W027 THORNDALE AVENUE, MEDINAH, ILLINOIS 60157**
KATARZYNA BARDO **PETITIONER** **VS.** **SUTTON FUNDING, LLC; AMERICAN INTERNET MORTGAGE INC.; FRANK PELLEGRINO; and ZAREEN PELLEGRINO** **RESPONDENTS**	

APPEARANCE

The undersigned, the Stephen D. Richek, enters its appearance on behalf of KATARZYNA BARDO, in the above captioned matter.

____

Stephen Richek

Stephen D. Richek Attorney #: 70977
111 W WASHINGTON, STE 1020,
CHICAGO, IL 60602
Phone: 312-375-6556
Email: strichek@aol.com

I certify that a copy of the within instrument was served to all parties who have appeared and have not heretofore been found by the Court to be in default for failure to plead.

____

Fill in this information to identify your case and this filing:

Debtor 1	Katarzyna Bardo		
	First Name	Middle Name	Last Name
Debtor 2 (Spouse, if filing)			
	First Name	Middle Name	Last Name
United States Bankruptcy Court for the:	NORTHERN DISTRICT OF ILLINOIS		
Case number	15-14266		

■ Check if this is an amended filing

Official Form 106A/B
Schedule A/B: Property

12/15

In each category, separately list and describe items. List an asset only once. If an asset fits in more than one category, list the asset in the category where you think it fits best. Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Each Residence, Building, Land, or Other Real Estate You Own or Have an Interest In

1. **Do you own or have any legal or equitable interest in any residence, building, land, or similar property?**

■ No. Go to Part 2.

☐ Yes. Where is the property?

Part 2: Describe Your Vehicles

Do you own, lease, or have legal or equitable interest in any vehicles, whether they are registered or not? Include any vehicles you own that someone else drives. If you lease a vehicle, also report it on *Schedule G: Executory Contracts and Unexpired Leases.*

3. **Cars, vans, trucks, tractors, sport utility vehicles, motorcycles**

■ No

☐ Yes

4. **Watercraft, aircraft, motor homes, ATVs and other recreational vehicles, other vehicles, and accessories**
Examples: Boats, trailers, motors, personal watercraft, fishing vessels, snowmobiles, motorcycle accessories

■ No

☐ Yes

5 **Add the dollar value of the portion you own for all of your entries from Part 2, including any entries for pages you have attached for Part 2. Write that number here...=>** **$0.00**

Part 3: Describe Your Personal and Household Items

Do you own or have any legal or equitable interest in any of the following items?

Current value of the portion you own?
Do not deduct secured claims or exemptions

6. **Household goods and furnishings**
Examples: Major appliances, furniture, linens, china, kitchenware

☐ No

■ Yes. Describe.....

Furniture	**$700.00**

7. **Electronics**
Examples: Televisions and radios; audio, video, stereo, and digital equipment; computers, printers, scanners; music collections; electronic devices including cell phones, cameras, media players, games

■ No

☐ Yes. Describe.....

8. Collectibles of value
Examples: Antiques and figurines; paintings, prints, or other artwork; books, pictures, or other art objects; stamp, coin, or baseball card collections; other collections, memorabilia, collectibles

■ No
☐ Yes. Describe.....

9. Equipment for sports and hobbies
Examples: Sports, photographic, exercise, and other hobby equipment; bicycles, pool tables, golf clubs, skis; canoes and kayaks; carpentry tools; musical instruments

■ No
☐ Yes. Describe.....

10. Firearms
Examples: Pistols, rifles, shotguns, ammunition, and related equipment

■ No
☐ Yes. Describe.....

11. Clothes
Examples: Everyday clothes, furs, leather coats, designer wear, shoes, accessories

☐ No
■ Yes. Describe.....

Clothing	**$500.00**

12. Jewelry
Examples: Everyday jewelry, costume jewelry, engagement rings, wedding rings, heirloom jewelry, watches, gems, gold, silver

■ No
☐ Yes. Describe.....

13. Non-farm animals
Examples: Dogs, cats, birds, horses

■ No
☐ Yes. Describe.....

14. Any other personal and household items you did not already list, including any health aids you did not list

■ No
☐ Yes. Give specific information.....

15. Add the dollar value of all of your entries from Part 3, including any entries for pages you have attached for Part 3. Write that number here **$1,200.00**

Part 4: Describe Your Financial Assets

Do you own or have any legal or equitable interest in any of the following? | **Current value of the portion you own?** Do not deduct secured claims or exemptions.

16. Cash
Examples: Money you have in your wallet, in your home, in a safe deposit box, and on hand when you file your petition

☐ No
■ Yes..........

Cash	**$100.00**

17. Deposits of money
Examples: Checking, savings, or other financial accounts; certificates of deposit; shares in credit unions, brokerage houses, and other similar institutions. If you have multiple accounts with the same institution, list each.

☐ No
■ Yes.......... Institution name:

17.1.	US Bank checking	$1,000.00

18. **Bonds, mutual funds, or publicly traded stocks**
Examples: Bond funds, investment accounts with brokerage firms, money market accounts
■ No
☐ Yes.................. Institution or issuer name:

19. **Non-publicly traded stock and interests in incorporated and unincorporated businesses, including an interest in an LLC, partnership, and joint venture**
■ No
☐ Yes. Give specific information about them...................
Name of entity: % of ownership:

20. **Government and corporate bonds and other negotiable and non-negotiable instruments**
Negotiable instruments include personal checks, cashiers' checks, promissory notes, and money orders.
Non-negotiable instruments are those you cannot transfer to someone by signing or delivering them.
■ No
☐ Yes. Give specific information about them
Issuer name:

21. **Retirement or pension accounts**
Examples: Interests in IRA, ERISA, Keogh, 401(k), 403(b), thrift savings accounts, or other pension or profit-sharing plans
■ No
☐ Yes. List each account separately.
Type of account: Institution name:

22. **Security deposits and prepayments**
Your share of all unused deposits you have made so that you may continue service or use from a company
Examples: Agreements with landlords, prepaid rent, public utilities (electric, gas, water), telecommunications companies, or others
■ No
☐ Yes. .... Institution name or individual:

23. **Annuities** (A contract for a periodic payment of money to you, either for life or for a number of years)
■ No
☐ Yes............ Issuer name and description.

24. **Interests in an education IRA, in an account in a qualified ABLE program, or under a qualified state tuition program.**
26 U.S.C. §§ 530(b)(1), 529A(b), and 529(b)(1).
■ No
☐ Yes............ Institution name and description. Separately file the records of any interests.11 U.S.C. § 521(c):

25. **Trusts, equitable or future interests in property (other than anything listed in line 1), and rights or powers exercisable for your benefit**
■ No
☐ Yes. Give specific information about them...

26. **Patents, copyrights, trademarks, trade secrets, and other intellectual property**
Examples: Internet domain names, websites, proceeds from royalties and licensing agreements
■ No
☐ Yes. Give specific information about them...

27. **Licenses, franchises, and other general intangibles**
Examples: Building permits, exclusive licenses, cooperative association holdings, liquor licenses, professional licenses
■ No
☐ Yes. Give specific information about them...

Money or property owed to you?

Current value of the portion you own?
Do not deduct secured claims or exemptions

28. **Tax refunds owed to you**

■ No

☐ Yes. Give specific information about them, including whether you already filed the returns and the tax years.......

29. **Family support**

Examples: Past due or lump sum alimony, spousal support, child support, maintenance, divorce settlement, property settlement

■ No

☐ Yes. Give specific information......

30. **Other amounts someone owes you**

Examples: Unpaid wages, disability insurance payments, disability benefits, sick pay, vacation pay, workers' compensation, Social Security benefits; unpaid loans you made to someone else

■ No

☐ Yes. Give specific information..

31. **Interests in insurance policies**

Examples: Health, disability, or life insurance; health savings account (HSA); credit, homeowner's, or renter's insurance

■ No

☐ **Yes.** Name the insurance company of each policy and list its value.

Company name:	Beneficiary:	Surrender or refund value:

32. **Any interest in property that is due you from someone who has died**

If you are the beneficiary of a living trust, expect proceeds from a life insurance policy, or are currently entitled to receive property because someone has died.

■ No

☐ Yes. Give specific information..

33. **Claims against third parties, whether or not you have filed a lawsuit or made a demand for payment**

Examples: Accidents, employment disputes, insurance claims, or rights to sue

■ No

☐ Yes. Describe each claim.........

34. **Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims**

☐ No

■ Yes. Describe each claim.........

Petition to Quash Service of Summons and Vacate all Void Orders in the Circuit Court of the Eighteenth Judicial Circuit, State of Illinois, County of DuPage	**Unknown**

35. **Any financial assets you did not already list**

■ No

☐ Yes. Give specific information..

36. **Add the dollar value of all of your entries from Part 4, including any entries for pages you have attached for Part 4. Write that number here**.. **$1,100.00**

Part 5: Describe Any Business-Related Property You Own or Have an Interest In. List any real estate in Part 1.

37. **Do you own or have any legal or equitable interest in any business-related property?**

■ No. Go to Part 6.

☐ **Yes.** Go to line 38.

Debtor 1 **Katarzyna Bardo** Case number *(if known)* **15-14266**

Part 6: Describe Any Farm- and Commercial Fishing-Related Property You Own or Have an Interest In.
If you own or have an interest in farmland, list it in Part 1.

46. **Do you own or have any legal or equitable interest in any farm- or commercial fishing-related property?**
- ■ No. Go to Part 7.
- ☐ Yes. Go to line 47.

Part 7: Describe All Property You Own or Have an Interest in That You Did Not List Above

53. **Do you have other property of any kind you did not already list?**
Examples: Season tickets, country club membership
- ■ No
- ☐ Yes. Give specific information.........

54. **Add the dollar value of all of your entries from Part 7. Write that number here** **$0.00**

Part 8: List the Totals of Each Part of this Form

55.	**Part 1: Total real estate, line 2**			**$0.00**
56.	**Part 2: Total vehicles, line 5**	**$0.00**		
57.	**Part 3: Total personal and household items, line 15**	**$1,200.00**		
58.	**Part 4: Total financial assets, line 36**	**$1,100.00**		
59.	**Part 5: Total business-related property, line 45**	**$0.00**		
60.	**Part 6: Total farm- and fishing-related property, line 52**	**$0.00**		
61.	**Part 7: Total other property not listed, line 54**	+ **$0.00**		
62.	**Total personal property.** Add lines 56 through 61...	**$2,300.00**	Copy personal property total	**$2,300.00**
63.	**Total of all property on Schedule A/B.** Add line 55 + line 62			**$2,300.00**

Fill in this information to identify your case:

Debtor 1	Katarzyna Bardo		
	First Name	Middle Name	Last Name
Debtor 2 (Spouse if, filing)			
	First Name	Middle Name	Last Name
United States Bankruptcy Court for the:	NORTHERN DISTRICT OF ILLINOIS		
Case number (if known)	15-14266		

■ Check if this is an amended filing

Official Form 106C

Schedule C: The Property You Claim as Exempt

4/16

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. Using the property you listed on *Schedule A/B: Property* (Official Form 106A/B) as your source, list the property that you claim as exempt. If more space is needed, fill out and attach to this page as many copies of *Part 2: Additional Page* as necessary. On the top of any additional pages, write your name and case number (if known).

For each item of property you claim as exempt, you must specify the amount of the exemption you claim. One way of doing so is to state a specific dollar amount as exempt. Alternatively, you may claim the full fair market value of the property being exempted up to the amount of any applicable statutory limit. Some exemptions—such as those for health aids, rights to receive certain benefits, and tax-exempt retirement funds—may be unlimited in dollar amount. However, if you claim an exemption of 100% of fair market value under a law that limits the exemption to a particular dollar amount and the value of the property is determined to exceed that amount, your exemption would be limited to the applicable statutory amount.

Part 1: Identify the Property You Claim as Exempt

1. **Which set of exemptions are you claiming?** *Check one only, even if your spouse is filing with you.*

■ You are claiming state and federal nonbankruptcy exemptions. 11 U.S.C. § 522(b)(3)

☐ You are claiming federal exemptions. 11 U.S.C. § 522(b)(2)

2. **For any property you list on *Schedule A/B* that you claim as exempt, fill in the information below.**

Brief description of the property and line on *Schedule A/B* that lists this property	Current value of the portion you own Copy the value from *Schedule A/B*	Amount of the exemption you claim *Check only one box for each exemption*	Specific laws that allow exemption
Furniture Line from *Schedule A/B*: **6.1**	**$700.00**	■ **$700.00** ☐ 100% of fair market value, up to any applicable statutory limit	**735 ILCS 5/12-1001(b)**
Clothing Line from *Schedule A/B*: **11.1**	**$500.00**	■ **100%** ☐ 100% of fair market value, up to any applicable statutory limit	**735 ILCS 5/12-1001(a)**
Cash Line from *Schedule A/B*: **16.1**	**$100.00**	■ **$100.00** ☐ 100% of fair market value, up to any applicable statutory limit	**735 ILCS 5/12-1001(b)**
US Bank checking Line from *Schedule A/B*: **17.1**	**$1,000.00**	■ **$1,000.00** ☐ 100% of fair market value, up to any applicable statutory limit	**735 ILCS 5/12-1001(b)**
Petition to Quash Service of Summons and Vacate all Void Orders in the Circuit Court of the Eighteenth Judicial Circuit, State of Illinois, County of DuPage Line from *Schedule A/B*: **34.1**	**Unknown**	■ **$15,000.00** ☐ 100% of fair market value, up to any applicable statutory limit	**735 ILCS 5/12-901**

3. **Are you claiming a homestead exemption of more than $160,375?**
(Subject to adjustment on 4/01/19 and every 3 years after that for cases filed on or after the date of adjustment.)

■ No

☐ Yes. Did you acquire the property covered by the exemption within 1,215 days before you filed this case?

☐ No

☐ Yes

EXHIBIT "B"

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	Chapter 7
	)	
Katarzyna Bardo,	)	No. 15- 14266
	)	(DuPage County Case)
	)	
	)	Hon. Janet S. Baer
Debtor.	)	United States Bankruptcy Judge
	)	
	)	July 7, 2017 @ 11:00 a.m.

NOTICE OF MOTION

To: See Attached Service List

PLEASE TAKE NOTICE that on **Friday, July 7, 2017 at 11:00 a.m.** or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Janet S. Baer**, U.S. Bankruptcy Judge, in Courtroom 240, Kane County Courthouse, 100 South Third Street, Geneva, IL 60134 or before such Judge that may be sitting in her place and shall then and there present the **TRUSTEE'S OBJECTION TO CLAIM OF OBJECTION**, a copy of which is attached and herewith served upon you.

AT WHICH TIME AND PLACE you may appear if you so wish.

/s/ Frank J. Kokoszka
Frank J. Kokoszka, Esq.
KOKOSZKA & JANCZUR, P.C.
ARDC No. 6201436
19 South LaSalle Street, Suite 1201
Chicago, Illinois 60603
(312) 443-9600 x7861 (phone)
(312) 254-3156 (efax)

CERTIFICATE OF SERVICE

Frank J. Kokoszka certifies that he caused to be served a true copy of the above and foregoing notice and attached pleading upon those listed on the attached service list through the ECF System which sent notification of such filing via electronic means or via First Class mail, as indicated, on June 12, 2017.

/s/ Frank J. Kokoszka
Frank J. Kokoszka

SERVICE LIST
RE KATARZYNA BARDO

AFNI
PO Box 3068
Bloomington, Il 61702

Katarzyna Bardo
29 W. 025 Geneva Road
West Chicago, IL 60185

BB Convergence
800 SW 39th Street
Renton, WA 98057

Credit Management Central
2707 Rapids Drive POB 4030
Racine, WI 53404

Kerry Walsh
Fidelity National Law Group
10 South LaSalle, Suite 2750
Chicago, Illinois 60603

Office of the U.S. Trustee
219 S. Dearborn Street
Room 873
Chicago, IL 60604
(Via ECF Electronic Notice)

Counsel for Debtor:
John H. Redfield
Crane, Heyman,
135 South LaSalle Street, Suite 3705
Chicago, Il. 60603
(Via ECF Electronic Notice)

NW Collector
3601 Algonquin Road
Rolling Meadows, Il 60008

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE KATARZYNA BARDO DEBTOR	Chapter 7 No. 15-14266 Judge Janet S. Baer (DuPage County Case)

TRUSTEE'S OBJECTION TO DEBTOR'S CLAIM OF EXEMPTION

Frank J. Kokoszka, as Chapter 7 Trustee, states the following as his objection pursuant to Fed. R. Bankr. P. 4003 to the Debtor's claim of exemption in the Debtor's Property listed under Question 34 of the Debtor's Amended Schedule A/B, and in support thereof states as follows:

1. On May 2, 2017, Debtor filed a Motion to Reopen Chapter 7 Case (the "Motion to Reopen"). As set forth in the Motion to Reopen, Debtor sought to reopen the Case because:

> on or about July 2016, Debtor learned that she may have a **claim** to quash service of summons and vacate the judicial foreclosure sale dated May 12, 2009 of her one-half (1/2) interest in her former residence…On or about January 3, 2017, the Debtor filed a Petition to Quash Service and Vacate All Void Orders in the above foreclosure case…("Claim"). (emphasis added)

A copy of the Claim was attached as Exhibit A to the Motion to Reopen. (See, Exhibit A to Docket Entry #14)

2. The Motion to Reopen sought the desired relief of reopening the Chapter 7 Case "to enable the Trustee to administer the above Claim if he so desire" and for leave for the Debtor

"to amend her Schedules B and C instanter to list the above Claim as a **contingent asset**." (Motion to Reopen, ¶¶ 9, 10) (emphasis added)

3. On May 12, 2017, this Court entered an Order granting Debtor's Motion to Reopen.

4. On May 16, 2017, the Debtor filed her Amended Schedule A/B, listing the Claim under category "34. Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims" as follows: "Petition to Quash Service of Summons and Vacate all Void Orders in the Circuit Court of the Eighteenth Judicial Circuit" with a "unknown value."

5. On May 16, 2017, the Debtor also filed her Amended Schedule C alleging an Exemption in the amount of $15,000.00 in the Claim pursuant to 735 ILCS 5/12-901.

6. On May 18, 2017, the Office of the U.S. Trustee filed with the Clerk of the Court a Letter of Appointment appointing Frank J. Kokoszka as the Chapter 7 Trustee herein.

7. Section 522 of the Bankruptcy Code provides for parties in interest to object to exemptions claimed by the debtor. 11 U.S.C. § 522. Bankruptcy Rule 4003(b) further provides that "a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under §341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later."

8. Debtor's asserted exemption pursuant to 735 ILCS 5/12-901, referred to as the "homestead exemption" does not apply to the Claim.

9. 735 ILCS 5/12-901states in pertinent part that: "Every individual is entitled to an estate of homestead to the extent in value of $15,000.00 of his or her interest in a farm or lot of

land and buildings thereon, a condominium, or personal property, owned or rightly possessed by lease or otherwise and occupied by him or her as a residence."

10. The asset upon which the Debtor seeks to assert the "homestead exemption" does not fall anywhere into the plain language of the "homestead exemption." The fact that the Debtor herself in her filings before this Court refers to the asset as a "Claim" and rather than an interest in real property or personal property (such as in a land trust) is telling if not determinative in this case. The Debtor is not listing or disclosing the real property commonly known as 22W027 Thorndale Avenue, Medinah, Illinois 60157 as Property of the Estate. Instead the Debtor is listing a "cause of action."

11. In addition for the homestead exemption to apply, the property (whether real or personal) **must be occupied by the debtor as a residence**. See, *In re Erich Lantz and Cindy Lantz*, 444 B.R. 850 (Bankr. N.D. Ill. 2011): "While the general homestead exemption does not refer to intent, it contains an express requirement that the property 'be occupied' by the debtor 'as a residence.' (Cite omitted) From this, Illinois courts have held that a 'right to a homestead may be lost by voluntary abandonment without any intention of returning." Debtor has not lived in the real property since at least 2009.

12. Creditors will be prejudiced if the Debtor is allowed to assert the homestead exemption in the Claim.

13. The Trustee's objection is timely under Fed. R. Bank. P. 4003(b), as it was filed within 30 days of the filing of the Amended Schedules. Notice of this Motion is being provided to all known creditors of the estate.

WHEREFORE, Frank J. Kokoszka, Trustee, prays that the Court sustain the Trustee's objection and deny the Debtor's claim of the homestead exemption and grant such other and further relief as is proper and necessary.

Respectfully submitted,

Frank J. Kokoszka,
Chapter 7 trustee herein

/s/Frank J. Kokoszka
Frank J. Kokoszka

Kokoszka & Janczur, P.C. (ARDC # 6201436)
19 S. LaSalle Street, Suite 1201
Chicago, Illinois 60603
(312) 443-9600 phone
(312) 254-3156 efax
trustee@k-jlaw.com

EXHIBIT "C"

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	
	)	Chapter 7
Katarzyna Bardo,	)	Case No. 15-14266
	)	Honorable Judge Janet S. Baer
Debtor.	)	

DEBTOR'S RESPONSE TO TRUSTEE'S OBJECTION
TO DEBTOR'S CLAIM OF EXEMPTION

Katarzyna Bardo ("Debtor'), by and through her attorney, John H. Redfield of Crane, Heyman, Simon, Welch & Clar, hereby responds to the Trustee's Objection to Debtor's Claim of Exemption, by stating as follows:

The only asset of the bankruptcy estate is a claim against the Debtor's former mortgagee, Sutton Funding, LLC, alleging that its foreclosure against the Debtor's residence at 22W027 Thorndale Avenue, Medinah, Illinois 60157 ("Property") is null and void because the Debtor was not properly served with process. If the Trustee is successful, title to the Property will revert back to the Debtor as if there was no foreclosure. The foreclosure action was commenced in 2008 under case number 2008CH 3652 in DuPage County.

The Trustee's Objection to the Debtor's homestead claim of exemption of $15,000 pursuant to 735 ILCS 5/12-901 is based on two grounds. The first being that the Debtor did not have title to the Property on the petition date of April 22, 2015 ("Petition Date"). Second, the Trustee contends that the Debtor is not entitled to the homestead exemption because she was not in possession of the Property on the Petition Date. The Trustee's legal conclusions are incorrect on both grounds.

If the Trustee is successful in having the foreclosure orders declared void due to lack of proper service, the title to Property will be in the Debtor's name continuance from 2008 to the present. Therefore, the Court will have found that the Debtor never lost title as a result of void foreclosure orders resulting in the Debtor having title on the Petition Date. The reason the asset was scheduled as a contingent asset on Schedule B is because the asset is contingent on the state court declaring that the service of process was in fact improper and the foreclosure orders and judgments are void.

In the case of *In re Smith,* 811 F.3d 228 (7th Cir. 2016), the Debtor lost her residential real estate as a result of a tax sale and tax deed recorded with the County Recorder of Deeds on April 15, 2005. On April 13, 2007, the debtor in *Smith,* filed for relief under Chapter 13 of the Bankruptcy Code. The Debtor successfully avoided the tax deed as being a fraudulent transfer because it was transferred for not reasonably equivalent value. The Debtor was awarded her homestead exemption of $15,000 as a result of the fraudulent transfer avoidance even though she did not have title on the Petition Date. The avoidance relates back to the date of the Deed.

In re Smith; supra, is analogous to the instant case. If the Trustee is able to have the transfer to the mortgagee, declared void, then the Debtor will be declared the titleholder to the Property on the Petition Date and currently. The debtor, in *Smith, supra*, was able to claim her homestead exemption in the real property after the fraudulent transfer was avoided even though she did not have title to the real property on the petition date. The Debtor, in the instant case, will also have a homestead exemption if the foreclosure is declared void. The instant case is stronger than the *Smith* case because if the foreclosure is declared void, it will mean the Debtor never lost title. In *Smith, supra,* the debtor lost title but the avoidance related back to the transfer date. Therefore, if the trustee is successful in his litigation, the Debtor will have an interest in the Property and a homestead exemption as in the *Smith* case.

The case of *In re Owens,* 269 B.R. 794 (Bankr.N.D.Ill. 2001) deals with the loss of a homestead exemption by means other than conveyance or release, namely, abandonment. *In re Owens,* p. 797. The question in the instant case is whether the Debtor "abandoned" her homestead exemption, which is a factual question of intent. The Trustee has taken the position that because the Debtor was not in possession of her residence, on the Petition Date, she has no homestead exemption. Illinois exemption statutes are to be liberally interpreted in favor of the Debtor. *In re Baker,*768 F.2d 191, 196, 7th Cir. 1985).

Owens, supra, p. 799 stated that "it is not necessary that a claimant personally reside upon the homestead in order to hold it under the statute. *Kawszewicz v. Kawszewicz*, 385 Ill. 461, 470, 53 N.D.2d 386, 390 (1944)." The factual question is whether the claimant intended to abandon his or her homestead exemption. The mere fact that the Debtr is not in possession of his or her homestead real property is not conclusive as to whether the homestead exemption is abandon.

In the instant case, the loss of possession by the Debtor was involuntary because the foreclosing mortgagee forcibly obtained possession from the Debtor. The requisite intent to abandon the homestead exemption is not present in the instant case. *See Owen, supra*, p. 799. If the Trustee is successful in voiding the foreclosure, the Debtor will have the right to possess of the Property continuously from the date of her eviction.

The Debtor did not voluntarily intend to abandon her homestead. The mere fact that the Debtor did not have possession of her residence at the Petition Date does not constitute a voluntary and intentional abandonment of her homestead exemption. The Trustee's Objection to the Debtor's Claim of Homestead Exemption over simplifies the issue and does not address the issue of whether the Debtor voluntarily and intentionally abandoned her homestead exemption.

CONCLUSION

Based on the above, the Trustee's Objection to the Debtor's Homestead Exemption should be denied.

Respectfully submitted,

Katarzyna Bardo, Debtor

By: /s/John H. Redfield
One of his attorneys

DEBTOR'S COUNSEL:
John H. Redfield (Atty. No. 2298090)
Crane, Heyman, Simon, Welch & Clar
135 S. LaSalle, #3705
Chicago, IL 60603
(312) 641-6777
W:\JHR\Bardo\Resp to Tr's Obj to Claim.RSP.wpd

EXHIBIT "D"

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE KATARZYNA BARDO	)	Chapter 7
	)	
Debtor.	)	No. 15-14266
	)	
	)	Judge Janet S. Baer
	)	(DuPage County Case)
	)	

TRUSTEE'S REPLY IN SUPPORT OF HIS
OBJECTION TO DEBTOR'S CLAIM OF EXEMPTION

Frank J. Kokoszka, in his capacity as Chapter 7 Trustee (the "Trustee"), states the following in reply to the *Debtor's Response to Trustee's Objection to Debtor's Claim of Exemption* (Doc. 24) and in support of his *Objection to Debtor's Claim of Exemption* (Doc. 19):

The Trustee proffers two arguments in his Objection, and with respect to the first argument, Debtor devotes much of her brief to attacking a strawman. The Trustee's first argument was not that "the Debtor did not have title to the Property on the petition date." (Resp. p. 1.) Instead, the Trustee's first argument was that the interest in property claimed by Debtor does not fall within the plain language of the homestead exemption. (Objection p. 5 of 6.) The purported "cause of action" (more accurately a **defense** to a cause of action) does not qualify under the statutory language: "interest in a farm or lot of land and buildings thereon, a condominium, or personal property[.] . . ." 735 ILCS 5/12-901. In re Smith, 811 F.3d 228 (7th Cir. 2016), and Debtor's discussion of it, fails to respond to that argument and offers nothing to help Debtor's position on it.

With respect to the Trustee's second argument—that Debtor has long since ceased occupying the property, which is expressly required by the homestead exemption—Debtor cites In re Owens, 269 B.R. 794 (Bankr. N.D. Ill. 2001), in support of her position that her failure to occupy the property since 2009 does not preclude her successful assertion of the exemption. (Resp. p. 2-3.) As acknowledged by the court in that case, Owens involved unique and compelling circumstances not present here:

> The Court declines to find an effective abandonment of the homestead on **the unique facts and evidence** here. Debtors who, for compelling personal reasons, care for sick and disabled family members for an indefinite period of time should not automatically lose or abandon their homestead exemption.

(emphasis added) Id. at 799. The debtor in Owens had been living out of state for only about a year and a half pre-petition, during which time she was taking care of her seriously ill, elderly mother. Id. at 796. During her absence, the debtor first lived with her mother, then moved in with a brother, but at no point did she establish a new homestead. Id. at 798. The unrebutted testimony of the debtor (a licensed nurse) was that as soon as her mother no longer required her care, she would return to the property she claimed as her homestead. Id. The debtor further testified that she intended to retire there. Id.

But it was more than just the debtor's words that supported her intent to return. In her year-and-a-half absence, she returned to the property five times; her son and his family lived on the property; all of her furniture, appliances, and personal belongings remained on the property; and on top of all that, **she continued paying the mortgage on the property**. Id. The debtor even retained contact with her former employer during her absence so that she could go back to work there when she finished caring for her mother and returned to the property. Id. at 799.

Here, by contrast, Debtor had not lived in the property for about six years pre-petition (compared to Owens's year and a half) and a total of eight years now. Debtor lost the property in a foreclosure action, whereas Owens continued paying her mortgage. Owens periodically returned to the property and maintained her personal belongings (as well as family members) there, whereas there is not so much as a suggestion by Debtor here that she has done the same.

Owens itself affirms the occupancy requirement. The court there noted that "occupancy may be constructive as well as actual." 269 B.R. at 799. In Owens, all the aforementioned conduct by the debtor led to the unquestionable conclusion that she intended to return; even in her physical absence she maintained a presence at the property through her furniture and belongings, her family, and of course her mortgage payments. Id. This was a constructive, but very real, occupancy. Here, there was neither actual nor constructive occupancy. Granted, as Debtor points out, her failure to maintain some kind of presence at the homestead similar to Owens was likely "involuntary because the foreclosing mortgagee forcibly obtained possession." (Resp. p. 3.) Be that as it may, nothing in the exemption statute excepts erstwhile mortgagors whose interests were foreclosed from its occupancy requirement. See 735 ILCS 5/12-901.

Debtor is correct that Illinois' exemption statutes should be interpreted liberally in favor the debtor (Resp. p. 3 (citing In re Barker, 768 F.2d 191, 196 (7th Cir. 1985)), but such liberality of course has its limits. Deleting the express occupancy requirement from the homestead exemption statute is well outside those limits.

Wherefore, Frank J. Kokoszka, as chapter 7 trustee, respectfully requests that this Honorable Court hereby sustain his objection to the Debtor's claim of the homestead exemption and grant such other relief as is proper and necessary.

Respectfully submitted,

Frank J. Kokoszka,
Chapter 7 Trustee

/s/Frank J. Kokoszka
Frank J. Kokoszka

Frank J. Kokoszka (ARDC # 6201436)
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EXHIBIT E

FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re: **ISMAEL L. BONILLA AND IDUBINA BONILLA**, Debtors.	Chapter 7 Bankruptcy No. 10-15897 Honorable Janet S. Baer - Geneva

NOTICE OF FILING

PLEASE TAKE NOTICE that on March 26, 2019, I filed the attached **Debtors' Response to Motion to Re-open Case** on the Clerk of Court's electronic filing system, a copy of which is attached hereto and hereby served upon you.

Date: March 26, 2019

ISMAEL L. BONILLA AND
IDUBINA BONILLA,

By: */s/ Zane L. Zielinski*
One of their attorneys

Zane Zielinski (6278776)
Daniel J. Nickel (6278133)
Giovanni A. Raimondi (6300622)
THE LAW OFFICE OF
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CERTIFICATE OF SERVICE

Zane Zielinski, an attorney, hereby certifies that on March 26, 2019, pursuant to Local Rule 9013-1(D), he caused a true and correct copy of the foregoing **Notice** and **Debtors' Response to Motion to Re-open,** to be filed with the Clerk of the Bankruptcy Court using the CM/ECF system, which will electronically notify the parties below who are listed to receive electronic service, and that he served all parties on the service list below via the manner indicated.

/s/ Zane Zielinski

SERVICE LIST

Registrants Served Through the Court's Electronic Notice For Registrants:

US Trustee, Adam G. Brief	Adam.Brief@usdoj.gov
James G Uzzell	wiselawyer7@gmail.com
Nathan B Grzegorek	NGrzegorek@plunkettcooney.com
Steven C Lindberg	bankruptcy@fallaw.com
Toni Townsend	toni.townsend@mccalla.com

**THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re: **ISMAEL L. BONILLA AND IDUBINA BONILLA**, Debtors.	Chapter 7 Bankruptcy No. 10-15897 Honorable Janet S. Baer - Geneva

DEBTORS' RESPONSE TO MOTION TO RE-OPEN

ISMAEL L. BONILLA AND IDUBINA BONILLA (the "Debtors"), by their attorney, Law Office of Zane Zielinski P.C., responds to the Motion to Re-open Case filed by the United States Trustee (the "US Trustee") and state the following in support thereof:

PRELIMINARY STATEMENT

This is one of more than twenty closed bankruptcy cases that have similar issues related to whether the cases should be reopened, and then examined by a re-appointment of a chapter 7 trustee. In this Response, Debtors' counsel has attempted to address the open issues and how it may impact many other similar cases pending in the Circuit Court of DuPage County.

Succinctly, the Debtors believe this bankruptcy case does not need to be re-opened because their schedules gave adequate disclosure, therefore the "asset" was abandoned under section 554 of the Bankruptcy Code when the case was closed. Moreover, any potential recovery in the Debtors' state court action might be less than the Debtors' homestead exemption, in which case administration of the bankruptcy case is not necessary.

BACKGROUND

1. After discussion between the US Trustee's office and Debtors' counsel, the US Trustee has moved to re-open (the "Motion") this case (the "Bankruptcy Case") on the basis that there exists a restitution claim (the "Restitution Claim") that the Debtors are entitled to assert

against the mortgagee who foreclosed on their real estate prior to the original petition date. Idubina Bonilla was wrongfully deprived of her property due to incorrect actions of the mortgage company.

2. The Debtors request that this Court deny the Motion because they disclosed the foreclosure proceeding and that the creditor bank repossessed the property prior to their filing for bankruptcy. As the Restitution Claim is directly related to and a part of the Debtor's disclosure in the statement of financial affairs, the Trustee potentially abandoned the claim when he filed a no asset report, as provided for under section 554 of the Bankruptcy Code.

FACTUAL BACKGROUND

3. Prior to their bankruptcy filing, in 2009, the Debtor, Idubina Bonilla, owned and held a mortgage on real property located at 2528 75th Street, Woodridge, Illinois 60517 (the "Property").

4. On April 6, 2009, the mortgagee, MB Financial Bank, N.A. ("MB"), filed a mortgage foreclosure action (the "Foreclosure") against both Debtors in DuPage County in connection with the Property, *JWS Loans, Assignee of MB Financial Bank N.A. v. Ismael Bonilla, et al.,* Case No. 2009 CH 1830. MB obtained a judgment and repossessed the Property in October 2009.

5. On January 12, 2010, an order approve sale ("OAS") was entered in the Foreclosure. The OAS constituted the final order in the Foreclosure.

6. On April 10, 2010, the Debtors filed their chapter 7 petition in the Bankruptcy Court. Doc. 1.

7. In the Bankruptcy Case, the debtors' schedules disclosed the Property, specifically in their Statement of Financial Affairs and that the Foreclosure had reached final disposition:

5. Repossessions, foreclosures and returns

None ☐

List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
MB Financial **6201 W. Dempster** **Morton Grove, IL 60053**	**October 2009**	**3-bedroom, 2-bath house, 2527 75th Avenue, Woodridge IL**

Doc. 1, p. 28, Statem. of Fin. Affairs.

8. After reviewing the schedules and investigating the estate’s assets and claims, the chapter 7 trustee, David Grochocinski, filed the following no distribution report on October 15, 2010:

> . . . I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. . . .
>
> Doc. 31. Chapter 7 Trustee's Report of No Distribution.

9. On October 18, 2010, the Case was closed and trustee was discharged. Doc. 32.

10. After the closure of the bankruptcy case, the Debtors learned that the underlying judgment in the Foreclosure was void because, among other reasons, the state court never issued a proper summons for the defendant (and co-debtor herein), Idubina Bonilla, a necessary party to the Foreclosure.

11. The Debtor thereafter filed, with the aid of counsel, a petition to quash service pursuant to 735 ILCS 5/2-1401(f). Exhibit 1, Amended Petition to Quash Service, filed in the Foreclosure proceeding.

12. There are similarly situated cases where other debtors have asserted similar bases to quash the purported service. Once the state court grants the quash, restitution is owed

them. These cases are proceeding in state court and have been presented in the Bankruptcy Court.

13. At least one judge in this District's Bankruptcy Court, the Honorable Pamela S. Hollis, denied a similar motion to re-open (Exhibit 2, hearing transcript at 8) a bankruptcy case, and stated at hearing that these types of cases should not be re-opened (*Id.*).

14. The case involved a similar claim by a debtor, discovered after the bankruptcy case was closed, relating to a void judgment of foreclosure against the debtor's property. *Id.* at 3. The debtor was contesting the judgment of foreclosure in state court. In that case, the US Trustee appeared at the hearing on said motion and agreed that the case should not be re-opened. *Id.* at 2, 8. In that case, the court stated:

> THE COURT: . . . I'm wondering why does this [case] need to be re-opened? [p.2].
> MS. [GRETCHEN] SILVER [FOR U.S. TRUSTEE]: That was my question. [p.2].
> . . .
> THE COURT: . . . It's all state court matters. I'm not sure why you are here other than – the only reason I can see why you would be here is to somehow say to the old trustee, hey, we left this off. But in a way, I don't think you did anything improper. Because at the time you filled out the schedules, if I understand correctly, you didn't know about the defect. [pp. 5-6].
> . . .
> THE COURT: [] I don't know what [the bankruptcy court] would have to do with it. [p.6].
> . . . I don't see how it becomes an asset because of a procedural defect. I'm going to deny your motion to re-open, okay? I don't think it's necessary. I don't want to encourage this kind of stuff. Because if it were re-opened, all I would do is abstain and send it back to state court for you to fight. I don't think the trustee is going to come into this case and want to be dragged in to administer [it]. [p.7].
> . . .
> THE COURT: I'm not going to drag trustee into this based on procedural developments that occurred after the schedules were filed. . . . I don't think it's necessary for you to amend the schedules. The US trustee knows about it. If they want to give the panel trustee a call, they can, but I don't think the panel trustee is going to want to go near this. [p.8].
> MS. SILVER [FOR U.S. TRUSTEE]: My initial reaction was very

> similar, especially after seeing the response. [p.8].
> . . .
> THE COURT: [Motion to Re-open is] Denied. [p.8].

Exh. 2, Hearing Transcript at 2, 5-8. Hearing on November 8, 2018, 10:00 am, *In Re: Naveed A. Siddiqui*, Case No. 12 B 09971 (the "*Siddiqui* bankruptcy case"), the Hon. Pamela S. Hollis. Pages 2, 5-8.

ARGUMENT

A. The Trustee abandoned the Claim and the Debtors disclosed the foreclosure proceeding.

15. As more fully explained above, it is not disputed that the Debtors disclosed the Foreclosure proceeding and that MB had obtained a judgment and repossession prior to Debtors filing for bankruptcy. See ¶ 5 herein.

16. Moreover, it is not disputed that the chapter 7 trustee filed a no distribution report after which the Case was closed and the trustee was discharged. See ¶¶ 6-7 herein. Also, the Debtors received a discharge. Docs. 28-29.

17. Regarding abandonment by the Trustee, the Bankruptcy Code's Section 554 provides:

> **§ 554 - Abandonment of property of the estate**
>
> (c) Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.
>
> 11 U.S.C. 554(c).

18. It is well established that upon entry of no-asset report, a bankruptcy trustee effectively abandons any interest the estate has in a debtor's property. *See e.g., In re Amoakohene*, 299 B.R. 196 (N.D.Ill. 2003). *See also Morlan v. Universal Guar. Life Ins. Co.*, 298 F.3d 609 (7th Cir. 2002) (property that has been scheduled, but not otherwise administered

at the time of the closing of a case, is deemed abandoned); *In re Liburd-Chow*, 434 B.R. 863 (N.D.Ill. 2010) (when Chapter 7 trustee filed no-asset report and debtor's discharge was thereafter granted, trustee inferentially abandoned trustee's right, and debtor obtained her right, to bring adversary proceeding against vendor of real property).

19. Therefore, any right in the Property, and any right to undue the “transfer” of the Property was abandoned back to the Debtor. For example the Trustee could have sought to avoid the pre-petition Transfer of the Property under any and all applicable grounds.

B. In other cases involving a similarly situated claim, the Bankruptcy Court in the Northern District of Illinois has denied a motion to re-open the case.

20. In the *Siddiqui* bankruptcy case, it was brought to the Bankruptcy Court’s attention that a debtor had a similar claim against a bank mortgagee who wrongfully obtained a judgment in foreclosure.

21. As detailed above, Judge Hollis denied a motion to re-open a similar case and in that case, the US Trustee even agreed with the Judge Hollis’s comments that the bankruptcy case should not be re-opened and indeed, that “I don’t think the panel trustee is going to want to go near this.” Exh. 2 at 8.

22. Judge Hollis’s ruling and discussion of the issues is quoted at length in the foregoing paragraph 11. See ¶ 11 herein.

CONCLUSION

Debtors' counsel and the US Trustee discussed the matter prior to the filing. Ultimately, the state courts in DuPage County have encountered difficulty in determining whether a restitution claim, in these circumstances, belongs to the debtor or to the bankruptcy estate. The Debtors' counsel submits that this Response will be helpful to the Bankruptcy Court in ruling on the instant Motion to Re-open and other similar cases that may be presented to this Court in the future.

WHEREFORE, the Debtors, ISMAEL L. BONILLA and IDUBINA BONILLA, pray this Court to deny the United States Trustee's motion to re-open the case and to grant such other and further relief as this Court deems just and fair.

Date: March 26, 2019

ISMAEL L. BONILLA AND
IDUBINA BONILLA,

By: */s/ Zane L. Zielinski*
One of their attorneys

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EXHIBIT F

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NAVEED A. SIDDIQUI,	)	12 B 09971
	)	
	)	Chicago, Illinois
	)	November 8, 2018
Debtor.	)	10:00 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE PAMELA S. HOLLIS

APPEARANCES:

For the Debtor:	Ms. Jessica Tovrov;
For BAC Home Loan:	Ms. Kathryn A. Campbell;
For Jumsoon Kang and Kung No Son:	Mr. Nathan B. Grzegorek;
For the U.S. Trustee:	Ms. Gretchen Silver.

Court Reporter: MARY C. KELLY, CSR
United States Courthouse
219 South Dearborn Street
Room 661
Chicago, Illinois 60604

THE CLERK: Naveed Siddiqui, 12 B 9971.

MS. TOVROV: Good morning, Your Honor. Jessica Tovrov for the debtor.

THE COURT: Good morning.

MR. GRZEGOREK: Good morning, Your Honor. Nathan Grzegorek on behalf of Kyung No Son and Jumsoon Kang.

THE COURT: Okay. Good morning.

MS. CAMPBELL: Good morning, Your Honor. Kathryn Campbell from McGuire Woods on behalf of BAC Home Loan Services and Fannie Mae.

THE COURT: Okay. Good morning.

MS. SILVER: Good morning. Gretchen Silver from the U.S. Trustee's Office.

THE COURT: Okay. Before anybody says anything, I'm wondering why does this need to be reopened?

MS. SILVER: That was my question.

THE COURT: And the other thing is that it didn't look like you gave the original panel trustee notice, probably the only one who would be interested that there might be some asset involved, and, you know, it would be good that they would at least know about it so they could be heard on it.

MS. TOVROV: When did --

THE COURT: I'm sorry. Did you -- I mean, when I looked, I didn't see a panel trustee.

MS. TOVROV: I thought that the panel trustee would be automatically noticed by the court.

THE COURT: Oh. You mean really?

MS. SILVER: Through ECF?

MS. TOVROV: Yes.

THE COURT: Well, you have a closed case. I don't know how that works. When you come in and the case is closed and you want to reopen it, I'm not sure what happens. I have no idea. It would be wise, you know, given what you're attempting to do here.

But I don't really know why this should be opened and why the trustee should be dragged into it. I guess what you're saying is there was invalid service.

MS. TOVROV: Right. Correct.

THE COURT: So what? The foreclosure is no good?

MS. TOVROV: Void. That's our position.

THE COURT: But where does the mortgage go? The mortgage doesn't go away.

MR. GRZEGOREK: That's exactly right,

Your Honor.

THE COURT: You still have a mortgage.

MR. GRZEGOREK: That's exactly right, Your Honor.

We have a petition to reopen a 6-year-old bankruptcy to schedule the assets of an admittedly undetermined value.

And Your Honor is exactly right. The mortgage --

THE COURT: I have the feeling there's not much equity. I don't know. If the mortgage still exists. I mean, maybe Ms. Tovrov is trying to be very careful. I don't know.

When you think about it, you know, she's saying, well, we saw this defect, so we didn't think it was an asset at the time because there was a mortgage. Now because of this defect, we think it's an asset. Well, I don't know how it becomes an asset just because there is a defect in service. It's not like the mortgage goes away.

MS. SILVER: Well, Your Honor, are you aware there was a response to this filed --

THE COURT: No.

MS. SILVER: -- by the bank?

THE COURT: No. No.

And I'll tell everybody again, --

MS. TOVROV: Neither was I.

THE COURT: -- as I always tell them, we get no notices of filing because we have thousands of cases. So unless I happen to be preparing and catch it on the docket, I don't know what's filed.

Sometimes I say to people if you really want me to try to read it ahead of time, call chambers and say you filed, and maybe I'll happen to have time to go look for it. But we do not get notices of filing. So unless I set a briefing schedule, I am not normally going to see whatever response the bank files.

MS. SILVER: Because I think -- and obviously the bank will represent its position -- but that this property was sold to third parties in 2012. I mean, if this is going to be pursued, this is a state court action.

THE COURT: As I said, it's all state court matters. I'm not sure why you're here other than -- the only reason why I could see why you would be here is to somehow say to the old trustee, hey, we left this off. But in a way, I don't think you did anything improper. Because at the time you filled out the schedules, if I understand correctly, you didn't know about the defect.

MS. TOVROV: Correct.

THE COURT: Yes.

MS. TOVROV: However, it --

THE COURT: And it's just a defect in service. It's just a procedural thing.

MR. GRZEGOREK: Well, but what they're arguing, Your Honor, in the state court proceeding is that the defect in service existed and was apparent on the face of the record for third parties throughout the pendency of the foreclosure and thereafter.

And by the way, my clients are the ones that currently own the property.

And they're arguing that because of the service defect, albeit hyper-technical, all orders entered against Mr. Siddiqui are void, and, therefore, the property should be returned to him. And that's -- that's, I think, why they're bringing this petition.

THE COURT: But I don't know what I would have to do with it.

MS. TOVROV: Your Honor, primarily I wanted to amend the schedules to reflect what we now believe to be accurate.

However, because if Mr. Siddiqui had an interest in it, therefore, does the trustee? And if I failed to serve the trustee, then that's a big error. But certainly the trustee --

THE COURT: It's a huge error if that was your only point. The U.S. Trustee knows about it. But I don't see how it becomes an asset because of a procedural defect.

I'm going to deny your motion to reopen, okay? I don't think it's necessary. I don't want to encourage this kind of stuff. Because if it were reopened, all I would do is abstain and send it back to state court for you to fight. I don't think a trustee is going to come into this case and want to be dragged in to administer something that is subject to a mortgage.

You know, even if you void all that, which, you know, I'm not pronouncing one way or the other on those merits, it's still subject to a mortgage, so there is nothing here for the estate.

MS. TOVROV: Well, I --

THE COURT: You think that disappears?

MS. TOVROV: No, I don't think it disappears. But, you know, as I believe I set out in the motion, we don't know the value of the estate. We don't know. And we know that there is opposition to this.

THE COURT: Well, okay.

MS. TOVROV: We don't know the value of how much is on the mortgage.

THE COURT: I'm not going to drag the trustee into this based on procedural developments that occurred after the schedules were filed.

MS. TOVROV: Okay.

THE COURT: I don't -- you know, I don't think it's necessary for you to amend the schedules.

The U.S. Trustee knows about it. If they want to give the panel trustee a call, they can, but I don't think the panel trustee is going to want to go near this.

MS. SILVER: My initial reaction was very similar, especially after seeing the response.

THE COURT: All right. Okay. Thank you.

MS. TOVROV: Thank you.

THE COURT: Denied.

MS. SILVER: Thank you, Your Honor.

THE CLERK: Everyone please rise.

Court is in recess until 10:30.

(Which were all the proceedings had in the above-entitled cause, November 8, 2018, 10:00 a.m.)

I, MARY C. KELLY, CSR, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.(f)

EXHIBIT G

321 B.R. 471

**In re Margaret STILWELL, Debtor.
Tuscola National Bank, Community Banks of Shelby County, Appellants,
v.
Margaret Stilwell, Debtor, Appellee.**

No. 04-CV-2258.

United States District Court, CD. Illinois, Urbana Division.

March 10, 2005.

Timothy O. Smith, Danville, IL, for Appellant Tuscola National Bank.

Mariann Pogge, Springfield, IL, for Appellant Community Banks of Shelby County.

Rodney Louis Smith, Brankey & Smith, P.C., Charleston, IL, for Appellee.

ORDER

McCUSKEY, Chief Judge.

This is an appeal from an Order entered by the United States Bankruptcy Court

[321 B.R. 472]

for the Central District of Illinois (Bankruptcy Case No. 03-93877) brought pursuant to 28 U.S.C. § 158(a). Following this court's careful review, this court affirms the Order of the Bankruptcy Court.

FACTS

The Debtor, Margaret Stilwell, filed her voluntary petition under chapter 7 of the Bankruptcy Code on November 25, 2003. In Schedule C of her Bankruptcy Petition, the Debtor claimed an exemption in all proceeds from two life insurance policies on the life of her deceased husband. On February 26, 2004, Community Banks of Shelby County (Community Banks), a secured creditor of the Debtor, filed its Objection to Claims of Exemption and argued that the life insurance proceeds should be exempt only "to the extent reasonably necessary for the support of the debtor or a dependent of the debtor." On February 27, 2004, Tuscola National Bank, another secured creditor of the Debtor, filed its Objection to Claimed Exemption and also argued that the Debtor should not be allowed a 100% exemption for the $650,000 in life insurance proceeds. The Chapter 7 Trustee, Marsha L. Combs-Skinner, and another creditor also filed objections to the claimed exemption. On March 15, 2004, the Debtor filed her Response to Objection to Claim Exemptions and a Memorandum of Law in Support of her Claimed Exemptions. The Debtor cited *In re Bateman,* 157 B.R. 635 (Bankr.N.D.Ill.1993) and *In re Bird,* 288 B.R. 546 (Bankr.C.D.Ill.2002) in support of her position that she was entitled to an exemption in the insurance proceeds.

The parties entered into a Stipulation of Facts regarding the claimed exemption for the life insurance proceeds. The parties stipulated that the Debtor's husband, James Stilwell, died on May 2, 2003. Stilwell was survived by the Debtor and their four children, Jamie Stilwell, Heidi Stilwell, Megan Stilwell, and Haley Stilwell. The two youngest daughters still lived at home and were dependent upon the Debtor. At the time of Stilwell's death, the Debtor was the sole beneficiary of a $50,000 life insurance policy and was 60% beneficiary of a $1 million policy. The Debtor was entitled to $600,000 in proceeds from the $1 million policy and each of the daughters was entitled to $100,000 in proceeds from this policy. The stipulation stated that the life insurance proceeds to which the Debtor was entitled, totaling $650,000, were being held and were accruing interest pending resolution of the objections.

On October 19, 2004, Chief United States Bankruptcy Judge Gerald D. Fines issued an Opinion in this case. *In re Stilwell,* 2004 WL

2708512 (Bankr.C.D.IU. 2004). Judge Fines noted that two other Bankruptcy Judges in the Central District of Illinois, Judge Larry L. Lessen and Judge Thomas L. Perkins, had issued Opinions that dealt squarely with the issues raised in this proceeding. Both Judge Lessen and Judge Perkins held that all proceeds from a life insurance policy insuring the life of a debtor's spouse were entirely exempt pursuant to the provisions of 735 111. Comp. Stat. 5/12-1001(f) (West 2002). See *In re Ashley*, 317 B.R. 352 (Bankr.C.D.Ill.2004); *In re McKinney*, 317 B.R. 344 (Bankr.C.D.Ill.2004); *In re Bird*, 288 B.R. 546 (Bankr.C.D.111.2002). Judge Fines therefore entered an Order which denied the Objections to the Claimed Exemption. Subsequently, Community Banks and Tuscola National Bank each filed a timely Notice of Appeal from Judge Fines' Order.

ANALYSIS

On appeal, both Community Banks and Tuscola National Bank contend that

[321 B.R. 473]

Judge Fines applied the wrong Illinois statute in ruling on their Objections. The issue presented for review is whether Judge Fines properly allowed the Debtor's claim of a full exemption of the proceeds of her deceased husband's life insurance under 735 Ill. Comp. Stat. 5/12-1001(f) or whether Judge Fines should have allowed an exemption for only that portion of the life insurance proceeds necessary for the Debtor's support under 735 Ill. Comp. Stat. 5/12-1001(h)(3). A debtor's entitlement to a bankruptcy exemption is a question of law to be reviewed de novo. *Matter of Yonikus*, 996 F.2d 866, 868 (7th Cir.1993). Following this court's careful and thorough de novo review, this court agrees with all of the other courts which have decided this issue, including United States District Judge Jeanne E. Scott, and concludes that the Debtor was entitled to a full exemption under Illinois law.

Under the Bankruptcy Act, the matter of exemptions was left to state law. *See Ashley*, 317 B.R. at 354. However, under the Bankruptcy Code, which became effective on October 1, 1979, debtors were provided a choice between federal exemptions or state exemptions, unless their state had opted out of the federal exemptions. *Ashley*, 317 B.R. at 354. Subsequently, the Illinois legislature enacted 735 Ill. Comp. Stat. 5/12-1201, effective July 1, 1982, which stated, in pertinent part, "residents of this State shall be prohibited from using the federal exemptions provided in Section 522(d) of the Bankruptcy Code of 1978 (11 U.S.C. 522(d)), except as may otherwise be permitted under the laws of Illinois." 735 111. Comp. Stat. 5/12-1201 (West 2002). Accordingly, Illinois has elected to opt out of the federal exemptions, and Illinois law applies to exemptions.

Section 12-1001 of the Illinois Code of Civil Procedure sets out a list of exempt personal property. The statute provides, in pertinent part:

> The following personal property, owned by the debtor, is exempt from judgment, attachment, or distress for rent:
>
> . . . . .
>
> (f) All proceeds payable because of the death of the insured and the aggregate net cash value of any or all life insurance and endowment policies and annuity contracts payable to a wife or husband of the insured, or to a child, parent, or other person dependent upon the insured, whether the power to change the beneficiary is reserved to the insured or not and whether the insured or the insured's estate is a contingent beneficiary or not;
>
> . . . . .

> (h) The debtor's right to receive, or property that is traceable to:
>
> (3) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor or a dependent of the debtor.

735 Ill. Comp. Stat. 5/12-1001(f),(h)(3) (West 2002).

As noted, it is the Debtor's position that section 12-1001(f) applies to this situation and, therefore, the entire proceeds she received as beneficiary of the life insurance policies insuring her husband's life, $650,000, is exempt. It is the position of Community Banks and Tuscola National Bank that section 12-1001(h)(3) applies and the proceeds of the life insurance policies are exempt only "to the extent reasonably necessary for the support of the debtor" and her dependents.

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Unfortunately, no published Illinois decision has addressed this precise issue. Fortunately, however, this court is not the first to address the interplay between the two statutes. The first court to address this issue was United States Bankruptcy Judge Jack B. Schmetterer in *In re Bateman*, 157 B.R. 635 (Bankr.N.D.Ill.1993). In addressing this issue, Judge Schmetterer aptly stated that "it must be conceded that the Illinois Legislature has not drafted §§ 1001(f) and 1001(h)(3) in a way in which distinction between application of these provisions comes immediately to the eye." *Bateman*, 157 B.R. at 638. The court then concluded that § 1001(f) applied to this situation, noting that this reading of the statute was "squarely in line with the general requirement that exemptions be liberally construed in favor of debtors." *Bateman*, 157 B.R. at 639.

In *In re Bird*, 288 B.R. 546 (Bankr. C.D.IU.2002), Judge Lessen, in addressing precisely the same issue, accepted the rationale and holding in *Bateman*. *Bird* 288 B.R. at 548. Judge Lessen had the same issue before him again in *In re McKinney*, 317 B.R. 344 (Bankr.C.D.Ill.2004). Judge Lessen found that his holding in *Bird* was sound and should be up held in that case. *McKinney*, 317 B.R. at 345. Judge Lessen stated that he considered the argument for reconsidering the issue and re-read Judge Schmetterer's opinion in *Bateman*. Judge Lessen stated that "Judge Schmetterer's interpretation of § 1001(f) is, in this Court's opinion, the best interpretation of a poorly-written statute. It is logical, well-reasoned, and consistent with the general requirement that exemptions be liberally construed in favor of debtors." *McKinney*, 317 B.R. at 345.

The issue was next addressed by Judge Perkins in *In re Ashley*, 317 B.R. 352 (Bankr.C.D.Ill.2004). Judge Perkins first noted that the issue before the court required it to choose between two alternative provisions that exempt life insurance proceeds. *Ashley*, 317 B.R. at 353. Judge Perkins started his analysis of the issue by considering the earliest statutory provision dealing with life insurance exemptions, a provision enacted as part of the Insurance Code in 1937, and unchanged for sixty-seven years. *Ashley*, 317 B.R. at 355, *citing* 215 Ill. Comp. Stat. 5/238(a). Judge Perkins noted that, under the exemption provided in the Insurance Code, "Illinois courts carefully protected the widow's rights to the insurance proceeds against the claims of creditors of her deceased husband." *Ashley*, 317 B.R. at 356. Judge Perkins further noted that, in enforcing the plain language of the statute, "courts have uniformly held that the Insurance Code Exemption protects insurance proceeds only against debts of the insured and not from the beneficiary's own creditors." *Ashley*, 317 B.R. at 357, *citing Roth v. Kaptowsky*, 393 Ill. 484, 66 N.E.2d 664 (1946); *People ex rel. White v. Travnick*, 346 IU.App.3d 1053, 282 Ill.Dec. 295, 806 N.E.2d

270, 277 (2004); *Uehlein v. Jackson Nat'l Life Ins. Co.,* 1985 WL 1655 (N.D.Ill.1985). Judge Perkins thereafter noted that the language of section 12-1001(f) was taken, verbatim, from the Insurance Code Exemption, but was not a full replication of the earlier provision. *Ashley,* 317 B.R. at 358.

In *Ashley*, the Trustee argued that the Legislature must have intended section 12-1001 (f) to be the exemption provision usable by an insured to exempt the insured's interest in a life insurance policy covering his or her own life while section 12-1001(h)(3) was intended to be the sole exemption provision applicable to a beneficiary's interest in life insurance proceeds. *Ashley,* 317 B.R. at 359.

In addressing this argument, Judge Perkins noted a structural ambiguity in the

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statute which arose from the manner in which the statute was put together: the Legislature borrowed a portion of the Insurance Code Exemption and inserted it into the Personal Property Exemption Law at paragraph (f); and, at the same time, the Legislature imported paragraph (h)(3) from the Bankruptcy Code section providing for federal exemptions. *Ashley,* 317 B.R. at 360. However, "rather than adopting the federal exemption scheme for life insurance in total, ... the Legislature chose, instead, to adopt only a portion of the federal scheme and to retain an existing and, on its face, conflicting, state law exemption provision, all without explaining what it was trying to accomplish." *Ashley*, 317 B.R. at 360. Judge Perkins stated:

> But the elephant in the room must be dealt with. Most tellingly, when transposing the Insurance Code Exemption, the Legislature omitted the phrase limiting the protection of the exemption to debts of the insured. It must be presumed that when the Legislature borrows the language of an existing statute for re-enactment in a new statute, but omits an important limiting phrase, that the omission was intentional and intended to effect a substantive change in meaning.

Ashley, 317 B.R. at 360. Judge Perkins determined that this omission "compels the conclusion that the first phrase of paragraph (f) provides an unlimited exemption to a beneficiary against that person's own creditors." *Ashley,* 317 B.R. at 360-61. Judge Perkins reached the same conclusion in *In re Hoffman,* 2004 WL 2331802 (Bankr.C.D.Ill.2004).

Judge Lessen's decision in *McKinney* was appealed to United States District Court Judge Jeanne E. Scott. On January 5, 2005, Judge Scott affirmed. Citing *Matter of Barker,* 768 F.2d 191, 196 (7th Cir.1985), Judge Scott noted that exemption statutes are to be read liberally in favor of the debtor. *McKinney*, Case No. 04-3212, slip op. at 6-7. Judge Scott then stated that she agreed with Judge Lessen that the plain language of § 1001(f) states that a beneficiary, such as McKinney, can claim an exemption for all life insurance proceeds. *McKinney,* slip op. at 7. Judge Scott carefully addressed the Trustee's argument that the Legislature intended § 1001(f) to have the same meaning as the Insurance Code Exemption in 215 Ill. Comp. Stat. 5/238(a). Judge Scott rejected this argument, explaining that "the Legislature borrowed only part of the language in § 238 when enacting § 1001(f); it omitted the critical language that limited the exemption to `debt or liabilities of the insured.' The omission of the limiting language indicates that the Legislature intended § 1001(f) to have a broader application than § 238." *McKinney,* slip op. at 13.

Judge Scott also addressed the Trustee's argument that the Legislature "merely failed to change the word `insured' contained in the

Insurance Code exemption to `debtor' when it copied the language into the general personal property exemption of 12-1001." *McKinney*, slip op. at 13. Judge Scott stated that the Trustee "may be correct that § 1001(f) would say what she wants it to say if the Court changes the words of the section; however, the Court does not have the authority to change the words in the statute" and "must interpret the statute as enacted by the Legislature." *McKinney*, slip op. at 14. Judge Scott also rejected the Trustee's argument that Judge Lessen's interpretation of § 1001(f) violated principles of statutory construction because the interpretation rendered § 1001(h)(3) meaningless. Judge Scott stated:

> The simple truth is that, given the overlap between §§ 1001(f) and

[321 B.R. 476]

> 1001(h)(3), any interpretation is going to give one of these sections precedence over the other. The Court must read the overlap in an exemption statute favorably to the debtor: "Where an exemption statute might be interpreted either favorably or unfavorably vis-a-vis a debtor, we should interpret the statute in a manner that favors the debtor." *Barker*, 768 F.2d at 196. Thus, "in the absence of a more specific statement by the Illinois legislature that a debtor cannot use" the § 1001(f) exemption, this Court, "must conclude that" McKinney, "is entitled," to claim the § 1001(f) exemption. *Id*. The Illinois Legislature has not made a more specific statement that McKinney cannot claim the exemption allowed by the first clause of § 1001(f). This Court, thus, must agree with the Bankruptcy Court (and the decisions in *Ashley, Bird,* and *Bateman)* that she can claim the exemption.

McKinney, slip op. at 16. Court records show that no appeal was taken from Judge Scott's Order.

In this case, Community Banks and Tuscola National Bank argue that the Bankruptcy Courts which have decided this issue got it wrong and this court should correctly interpret the statutes and find that section 1001(h)(3) applies to this situation. Both Banks rely on the fact that the Legislature, in enacting Public Act 82-783, which included both section 1001(f) and section 1001(h)(3), stated that "this Act is intended to make non-substantive revisions in the law." The Banks argue that this statement indicates that the omission of the phrase limiting the protection of the exemption to debts of the insured was in fact unintentional. The Banks argue, as the Trustee argued before Judge Scott, that if the word "debtor" is used in place of "insured" in section 1001(f), both section 1001(f) and section 1001(h)(3) make sense and serve a distinct purpose.

The Debtor argues that Judge Fines and the other Bankruptcy Judges who have decided this issue got it right, based upon well-established rules of statutory construction, and this court should also find that the Debtor's right to receive proceeds as a spouse of the insured are completely exempt under section 1001(f).

In its Reply Brief, Tuscola National Bank argues that Judge Scott also was wrong. Tuscola National Bank notes that Judge Scott did not consider the fact that the Legislature's express statement of its intent was that it intended "to make non-substantive revisions in the law." Tuscola National Bank acknowledges, however, that Public Act 82-783 "does add additional law to the Personal Property Exemption in Illinois, including the new limiting language of 1001(h)." In fact, Public Act 82-783 added most of the language that now comprises 735 Ill. Comp. Stat. 5/12-1001 and sets out the personal property that is exempt in Illinois. These exemptions are the only ones which may be used by bankruptcy filers in Illinois because, as noted previously, the Illinois Legislature has stated that residents of this state are prohibited from using the federal exemptions set out in the Bankruptcy Code. *See* 111. Comp. Stat. 5/12-1201 (West 2002).

This court has carefully reviewed the arguments of the parties in this case and the decisions which have addressed this issue. Following this careful review, this court sees no reason to disagree with Judge Scott's well-reasoned decision in *McKinney* or with the decisions of the Bankruptcy Judges in *Bateman, Bird, McKinney, Ashley,* and *Hoffman.* This court does not find persuasive the argument that the Legislature intended only a non-substantive revision in the law when the text of Public Act 82-783 shows that the Legislature added new, substantive

[321 B.R. 477]

provisions to the section setting out exemptions for personal property. The Debtor has listed twelve new exemptions added by the Act, a listing which did not include the subsections at issue in this case. This court agrees with the characterization by Judge Scott that "the Illinois Legislature enacted both §§ 1001(f) and 1001(h)(3) at the same time as part of a complete revision of the Illinois personal property exemption law." *McKinney,* slip op. at 8; *see also In re Marriage of Logston,* 103 Ill.2d 266, 82 Ill. Dec. 633, 469 N.E.2d 167, 173-74 (1984) (discussing how, in response to developments in Federal bankruptcy law, the Illinois legislature "altered the basic format of the personal property exemption statute" and expanded section 12-1001 so that it no longer exempted only a few personal possessions and finite amounts but rather "also exempted the debtor's right to receive certain types of income, such as social security, pension, and disability insurance benefits"). This court therefore finds the Banks' argument on this point completely unavailing. Accordingly, for all of the reasons stated, this court concludes that Judge Fines correctly found that the Debtor is entitled to a claim of exemption of 100% of the proceeds of life insurance policies payable to her as a result of the death of her husband, James Stilwell.

IT IS THEREFORE ORDERED THAT:

(1) The Order of the Bankruptcy Court entered on October 19, 2004, is AFIRMED.

(2) This case is terminated in the district court.

EXHIBIT H

Wells Fargo Auto
CPI Payment Program
PO Box 3145
Portland OR 97208-3145

March 21, 2019

961224316136
[redacted]
FRANK J KOKOSZKA, Bankruptcy Trustee
19 S LA SALLE ST
STE 1201
CHICAGO IL 60603-1419

Subject: Notice of reimbursement related to Wells Fargo* auto loan; 1997 BMW 7 SERIES

Borrower(s)/Debtor(s): [redacted]
Estimated refund amount: $7,349.17

Bankruptcy Case:	14[redacted] NORTHERN DISTRICT OF ILLINOIS
Bankruptcy Chapter:	Chapter 7
Bankruptcy Case Status:	Closed as of 02/18/2015
Trustee:	FRANK J KOKOSZKA

Dear Frank J Kokoszka, Bankruptcy Trustee:

You are receiving this letter because Wells Fargo records and bankruptcy court case information indicate (1) bankruptcy case [redacted] is closed as listed above, and (2) at least one listed borrower was a debtor in this case, and (3) you are the trustee assigned to the case(s).

We recently conducted a review of our Collateral Protection Insurance (CPI) program. CPI is a type of insurance that protects against loss or damage to a vehicle.

We determined that we applied unnecessary CPI charges to the account. The charges associated with the CPI policy(ies) may have adversely affected the account.

What you need to know

We confirmed that the following policy(ies) may have been placed unnecessarily:

- CPI Policy WF[redacted]

A reimbursement will be issued to all borrowers, as listed above, and mailed to the primary borrower. Please note this is the issuance and mailing method for accounts not involved in bankruptcy.

What you need to do

If the above issuance of the check is incorrect, please complete and return the enclosed Payment Instructions Form in the postage-paid envelope within 45 days of the date on this letter. If we do not receive a response, a check will be issued as indicated above.

*The loan may have been serviced under any of the following names: Wachovia Dealer Services, Wells Fargo Dealer Services, or Wells Fargo Auto Finance.

We're here to help
If you have questions, please call us at 1-888-228-9735, Monday–Friday, 8:00 a.m. to 8:00 p.m. Eastern Time, send an email to info@wellsfargocpipayments.com or visit wellsfargo.com/cpipayments. For customers with hearing or speech disabilities, we accept telecommunications relay service calls.

Estamos aquí para ayudar
Si tiene preguntas, por favor llámenos al 1-888-228-9735, de lunes a viernes, de 8:00 a. m. a 8:00 p. m. hora del este, envíe un correo electrónico a info@wellsfargocpipayments.com o visite wellsfargo.com/cpipayments. Para los clientes con alguna discapacidad auditiva o del habla, aceptamos las llamadas de servicio de retransmisión de telecomunicaciones.

Sincerely,

Tammy Johnson

Tammy Johnson
Senior Vice President
Customer Remediation Center of Excellence
CPI Payment Program

Loan Date: 10/11/2006
Vehicle: 1997 BMW 7 SERIES
VIN: [redacted]
Reference Number: [redacted]
Loan Number: ending in [redacted]

Enclosure: Payment Instructions Form
Enclosure: Postage-paid envelope

Please note: This notice is being provided for informational purposes. As a result of at least one bankruptcy case filing that included account referenced above, Wells Fargo is NOT attempting in any way to violate any provision of the United States Bankruptcy Code or to collect a debt (deficiency or otherwise) from any customer(s) who is impacted by an active bankruptcy case or has received a discharge, where the account was not otherwise reaffirmed or excepted from discharge. THIS IS NOT A BILL OR A REQUEST FOR PAYMENT AS TO THE BORROWER(S)/DEBTOR(S) ABOVE.

CC w/o Enclosures:

Reference Number: [redacted]

Wells Fargo Auto
CPI Payment Program
PO Box 3145
Portland OR 97208-3145

[redacted]

March 21, 2019

000 0000606 0000000 0002 0002 00303 INS: 0 0

Payment Instructions Form

If you would like to change the issuance and delivery of the refund referenced in the bankruptcy Notice of Reimbursement letter please complete and return this Payment Instructions Form.

Payment Change Declaration

Issue and mail reimbursement to the bankruptcy trustee in Case 14[redacted]

Name of Trustee (REQUIRED): ______________________________

Date (REQUIRED): ______________________________

What you need to do
Return this Payment Instructions Form within 45 days of the date shown above, using the enclosed postage-paid envelope, or scan and email the form to info@wellsfargocpipayments.com.

We're here to help
If you have questions, please call us at 1-888-228-9735, Monday–Friday, 8:00 a.m. to 8:00 p.m. Eastern Time, send an email to info@wellsfargocpipayments.com or visit wellsfargo.com/cpipayments. For customers with hearing or speech disabilities, we accept telecommunications relay service calls.

Estamos aquí para ayudar
Si tiene preguntas, por favor llámenos al 1-888-228-9735, de lunes a viernes, de 8:00 a.m. a 8:00 p.m. hora del este, envíe un correo electrónico a info@wellsfargocpipayments.com o visite wellsfargo.com/cpipayments. Para los clientes con alguna discapacidad auditiva o del habla, aceptamos las llamadas de servicio de retransmisión de telecomunicaciones.

Reference Number: [redacted]
Loan Number*: ending in [redacted]
VIN: ending in [redacted]
Borrower(s)/Debtor(s): [redacted]
Estimated Refund Amount: $7,349.17
Bankruptcy Case: 14[redacted]

*The loan may have been serviced under any of the following names: Wachovia Dealer Services, Wells Fargo Dealer Services, or Wells Fargo Auto Finance.

CPI-FRM-002 (01/28/19)

X0073 v.08

EXHIBIT I

esurance
an Allstate company

March 27, 2019

Frank Kokoszka
VIA FAX: 312-254-3156

Re: DIRECTION TO PAY LETTER REQUEST – CASE # 19-07138

Customer	:	Larnell Lee
Claim No.	:	[redacted]
Date of Loss	:	03/20/2019
Vehicle	:	2013 Nissan Rogue, VIN: [redacted]

To Whom It May Concern:

The above referenced vehicle has been deemed a total loss. Please provide our office with a direction to pay letter.

Settlement Breakdown:

ESURANCE RETAINED SALVAGE		
ACTUAL CASH VALUE	$8,526.00	
EQUALS GROSS SETTLEMENT AMOUNT:	$8,526.00	
MINUS DEDUCTIBLE:	$500.00	
EQUALS ERS NET SETTLEMENT AMOUNT:		$8,026.00

Sincerely,

Lisbet Bravo
Claims Operations Assistant II
On behalf of Esurance Property and Casualty Insurance Company
Phone: (855) 525-2082
Email: lbravo@esurance.com
Fax: (877) 914-0327

EXHIBIT J

United States Bankruptcy Court
Northern District of Illinois
Eastern Division

Transmittal Sheet for Opinions for Publishing and Posting on Website

Will this opinion be published? Yes

Bankruptcy Caption: George Burciaga

Adversary Caption: George Burciaga v. Alex D. Moglia

Bankruptcy No. 18 B 13481

Adversary No. 18 A 00212

Date of Issuance: March 22, 2019

Judge: Janet S. Baer

Appearances of Counsel:

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	Bankruptcy Case No. 18-13481
	)	
GEORGE BURCIAGA,	)	Chapter 7
	)	
Debtor.	)	Honorable Janet S. Baer
	)	
GEORGE BURCIAGA,	)	Adversary Case No. 18-00212
Plaintiff,	)	
v.	)	
ALEX D. MOGLIA, not individually but as chapter 7 trustee for the bankruptcy estate of GEORGE BURCIAGA,	)	
Defendant.	)	

MEMORANDUM OPINION

George Burciaga (the "Debtor") filed a two-count adversary complaint in his bankruptcy case against Alex D. Moglia (the "Trustee"), as chapter 7 trustee for the bankruptcy estate, seeking a determination that certain severance pay (the "Severance Pay") is not property of the estate under 11 U.S.C. § 541(a)(1) but, rather, constitutes excluded post-petition earnings under 11 U.S.C. § 541(a)(6).[1] The matter is now before the Court on the parties' cross-motions for judgment on the pleadings. For the reasons set forth below, both motions will be granted in part and denied in part.

JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and Internal

[1] Unless otherwise noted, all statutory and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101 to 1532, and the Federal Rules of Bankruptcy Procedure.

Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (O).

BACKGROUND

The material facts in this case are few and undisputed. Those facts, gleaned from the relevant pleadings and the exhibits attached thereto, are as follows.

On or about May 1, 2018, the Debtor was laid off from his job at CIVIQ Smartscapes, LLC ("CIVIQ"). (Answer ¶ 8.[2]) Four days later, on or about May 5, 2018, CIVIQ offered the Debtor a separation agreement (the "Separation Agreement").[3] (*See* Compl., Ex. A; Answer ¶ 10.) Consistent with the Debtor's employment agreement,[4] the Separation Agreement offered the Debtor Severance Pay in the amount of $83,333.33, which is the equivalent of four months of his former base salary.[5] (Compl., Exs. A & B; Answer ¶ 10.) In exchange for the Severance Pay, the Debtor was required to, among other things, (1) reaffirm certain covenants in his employment agreement, including a non-compete provision; (2) release any and all claims against CIVIQ; (3) make himself available to CIVIQ to transition his former duties to others; and (4) cooperate with and assist CIVIQ in

[2] Unless otherwise noted, all references to the record are to Adv. No. 18-00212.

[3] The documents are inconsistent as to the date on which the Separation Agreement was offered to the Debtor. In his motion for judgment on the pleadings, the Trustee states–and the Debtor does not dispute–that the Agreement was offered on May 5, 2018. (Tr.'s Mot. ¶ 4.) The Separation Agreement, itself, however, is dated May 4, 2018 and includes a notation at the top of page 1 indicating that it was sent via both email and overnight delivery on May 3, 2018. (*See* Compl., Ex. A at 1.) In any event, the parties do not contest that the Agreement was offered to the Debtor prior to the filing of his bankruptcy petition.

[4] The employment agreement relevant to this matter is the one dated January 26, 2016, as modified by the "Second Amendment to Employment Agreement" dated February 28, 2018. (Compl., Ex. B.)

[5] Pursuant to the Separation Agreement, this amount is to be paid to the Debtor in biweekly installments, beginning within two weeks of June 19, 2018, the effective date of the Agreement. (Compl., Ex. A, §§ 2 & 9.)

connection with any audits, inspections, inquiries, or legal proceedings. (Compl., Exs. A & B; Answer ¶¶ 11-13.)

On May 8, 2018, the Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code.[6] At that time, the Debtor had neither signed the Separation Agreement nor received any of the Severance Pay. (*See* Tr.'s Mot. ¶ 10; Debtor's Mot. ¶ 9.) About a month later, on June 12, 2018, the Debtor filed an adversary complaint, seeking a determination that the Severance Pay is not property of the bankruptcy estate but, instead, excluded earnings from services performed after the commencement of the case. Thereafter, both the Debtor and the Trustee filed the instant motions for judgment on the pleadings. The motions have been fully briefed and are now ready for ruling.

JUDGMENT ON THE PLEADINGS STANDARD

The parties' cross-motions for judgment on the pleadings were filed under Rule 12(c), made applicable to adversary proceedings pursuant to Federal Rule of Bankruptcy Procedure 7012(b). Under Rule 12(c), judgment on the pleadings may be granted if the movant clearly shows that there are no material issues of fact in dispute and that the movant is entitled to judgment as a matter of law. *Nat'l Fid. Life Ins. Co. v. Karaganis*, 811 F.2d 357, 358 (7th Cir. 1987).

In ruling on a motion for judgment on the pleadings, a court must view the facts in the light most favorable to the nonmoving party but is not bound by that party's legal characterizations of the facts. *See id.* All uncontested allegations to which the parties have had an opportunity to respond are taken as true. *Flora v. Home Fed. Sav. & Loan Ass'n*, 685 F.2d 209, 211 (7th Cir. 1982). Although a court generally may not look beyond the pleadings, which consist of the complaint, the

[6] The parties assert that the Debtor filed his petition on May 7, 2018 (Answer ¶ 9), but the docket reflects a filing date of May 8, 2018. (*See* Bankr. No. 18-13481, Docket No. 1.)

answer, and any written instruments attached as exhibits, *N. Ind. Gun & Outdoor Shows, Inc. v. City of S. Bend,* 163 F.3d 449, 452-53 (7th Cir.1998); *see also* Fed. R. Civ. P. 10(c), a court may take judicial notice of matters of public record, *United States v. Wood*, 925 F.2d 1580, 1582 (7th Cir. 1991).

As set forth above, there are no material facts in dispute in this matter. Thus, the only question to be considered is whether either party is entitled to judgment as a matter of law.

DISCUSSION

Pursuant to § 541(a), the filing of a bankruptcy case creates an estate comprised of the debtor's property. 11 U.S.C. § 541(a). Property of the estate is "broad[ly]" defined by the Code, *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204-05 (1983), encompassing "all legal or equitable interests of the debtor in property," 11 U.S.C. § 541(a)(1). Thus, "every conceivable interest of the debtor, future, nonpossessory, contingent, speculative, and derivative, is [property of the estate] within the reach of § 541." *In re Yonikus*, 996 F.2d 866, 869 (7th Cir. 1993), *abrogated on other grounds by Law v. Siegel*, 134 S. Ct. 1188 (2014).

Section 541(a)(6) expands the scope of the definition of "property of the estate" to include not only property interests of the debtor as of the commencement of the case, but also "[p]roceeds, product, offspring, rents, or profits of or from property of the estate." 11 U.S.C. § 541(a)(6); *see also In re Jokiel*, 447 B.R. 868, 871 (Bankr. N.D. Ill. 2011), *In re Taronji*, 174 B.R. 964, 967 (Bankr. N.D. Ill. 1994). "[T]his addition of post[-]petition 'proceeds' to the property of the estate," however, "is subject to an exception for 'earnings from services performed by an individual debtor after the commencement of the case.'" *Taronji*, 174 B.R. at 967 (quoting 11 U.S.C. § 541(a)(6)).

The issue before the Court is whether the Severance Pay is property of the bankruptcy estate under § 541. The Debtor argues that the Severance Pay is not property of the estate because his receipt of that Pay is contingent on his agreement to execute the Separation Agreement and his subsequent compliance with the post-petition conditions outlined therein. According to the Debtor, the Severance Pay is thus a "continuation of income" excluded from the estate under § 541(a)(6). The Trustee disagrees. Relying on *Segal v. Rochelle*, 382 U.S. 375, 380 (1966), he argues that the Severance Pay is "sufficiently rooted in the pre-bankruptcy past" and therefore constitutes property of the estate. The Trustee further contends that the reaffirmation of a non-compete covenant, the release of claims against CIVIQ, and the other terms of the Separation Agreement do not require the Debtor to "perform affirmative acts" and do not, for that reason, constitute services performed by the Debtor after the commencement of the case for purposes of the exception under § 541(a)(6).

A. The "Sufficiently-Rooted" Test

Over fifty years ago, the United States Supreme Court explained that the "main thrust" of what is now § 541 of the Code "is to secure for creditors everything of value [that the debtor] may possess in alienable or leviable form when he files his petition." *Segal*, 382 U.S. at 379. To that end, the Supreme Court said, "the term 'property' has been construed most generously and an interest is not outside its reach because it is novel or contingent or because enjoyment must be postponed." *Id.* The Court recognized, however, that there are limits to what constitutes property of the estate, especially in light of the goal of bankruptcy, which is to "leave the [debtor] free after the date of his petition to accumulate new wealth in the future. Accordingly, future wages of the [debtor] do not constitute 'property' at the time of bankruptcy." *Id.*

Based on these principles, the Supreme Court found that, in determining if an asset is property of the estate, the proper inquiry is whether the asset is "sufficiently rooted in the pre-bankruptcy past and so little entangled with the [debtor's] ability to make an unencumbered fresh start that [the asset] should be regarded as 'property'" under what is now § 541. *Id.* at 380; *see also In re Meyers,* 616 F.3d 626, 628 (7th Cir. 2010) (adopting the "sufficiently-rooted" test in determining how to allocate tax refunds); *Jokiel*, 447 B.R. at 871-73 (applying the "sufficiently-rooted" test). The key question in this matter, then, is whether the Severance Pay is "sufficiently rooted" in the Debtor's pre-petition past or whether it constitutes excluded earnings from post-petition services.

B. Application of the Test

Based on a review of the pertinent facts, the Court finds that a portion of the Severance Pay is "sufficiently rooted" in the Debtor's pre-bankruptcy past that it constitutes property of the Debtor's bankruptcy estate. Specifically, prior to the filing of his bankruptcy petition, the Debtor was presented with the Separation Agreement under which he was offered the Severance Pay. The offer of Severance Pay is consistent with the various terms of the Debtor's employment agreement, which was executed pre-petition. And, by its very nature, the Severance Pay offer is related to the separation of the Debtor from his employment, that separation also having occurred before the bankruptcy filing. In short, the Debtor has a right to the Severance Pay because that Pay is associated with the pre-petition termination of his pre-petition employment.

Notwithstanding the foregoing, the Severance Pay also bears a number of post-petition characteristics. First, the Debtor did not sign the Separation Agreement under which the Severance Pay was offered until after filing his chapter 7 petition. As a result, any Severance Pay that he receives was and will continue to be paid to him post-petition. Most importantly, various post-petition actions and obligations under the Separation Agreement are conditions to the Debtor's pre-petition right to receive the Severance Pay. Specifically, the Agreement conditions the Debtor's right to receive the Pay on, among other things, the following:

(1) **Cooperating with CIVIQ:**

(a) assisting CIVIQ with any matters related to the services performed during the Debtor's employment, including transitioning his duties to others;

(b) cooperating with CIVIQ in the defense or prosecution of any lawsuit, investigation, or third-party claim or action in existence or which may be brought or threatened in the future against or on behalf of CIVIQ by, among other things, (i) meeting with CIVIQ and its legal counsel to prepare for any proceeding, (ii) providing affidavits and/or testimony, (iii) assisting with audits and inspections, and (iv) acting as a witness in connection with any litigation or other legal proceeding affecting CIVIQ; and

(c) promptly informing the president or HR representative of CIVIQ in writing in the event that the Debtor is contacted by any individual representing any party adverse to the business interests of CIVIQ, including anyone threatening any form of legal action against CIVIQ.

(2) **Returning Property, Affirming Covenants, Refraining from Making Disparaging Statements:**

(a) returning to CIVIQ all company property, including computer equipment, software, and access codes, as well as company files and documents;

(b) abiding by all common law and/or statutory obligations related to the protection and non-disclosure of CIVIQ's trade secrets and/or confidential and proprietary documents and information;

(c) continuing to comply with the confidentiality and non-compete restrictions set forth in the Debtor's pre-petition employment agreement; and

(d) not making any statements that are professionally or personally disparaging about, or adverse to, the interests of CIVIQ and its officers, directors, and employees.

> (3) **Releasing Claims:** Agreeing to a broad release of any and all legal claims that the Debtor may have against CIVIQ, including fair employment practices, breach of contract, and age discrimination claims.

(Compl., Ex. A, §§ 3-6.) Only by signing the Separation Agreement, and thereby agreeing to the provisions thereunder, was the Debtor entitled to receive any Severance Pay. If he did not sign the document and agree to the post-petition conditions, the Debtor would receive nothing. Because the Separation Agreement requires the Debtor to perform certain post-petition services, the portion of the Severance Pay related to those services must be excluded from the estate under the post-petition earnings exception of § 541(a)(6).

Relying on *In re Jokiel,* the Trustee contends that the exception is not applicable here because the terms of the Separation Agreement do not require the Debtor to perform any "affirmative acts." Specifically, the Trustee argues, not competing against CIVIQ and releasing potential claims against the company do not constitute "services actually performed" by the Debtor to bring the Severance Pay within the ambit of § 541(a)(6)'s exception.

In *Jokiel*, the debtor was employed pursuant to an employment agreement which included, *inter alia*, a non-compete provision. 447 B.R. at 870. About three months after the debtor filed for chapter 7 bankruptcy protection, his employer executed a merger agreement with another entity, and the debtor was terminated. *Id.* According to the severance provisions in his employment agreement, the debtor was entitled to a lump-sum payment of a certain percentage of his annual base salary if he was terminated without cause, and his unvested or restricted stock options would become fully vested. *Id.* As a condition to receiving severance pay, the debtor was required to sign a general release of any claims against his employer. *Id.* Once terminated, the debtor signed the release in exchange for the vesting of his unvested stock options and deferred stock, along with a lump-sum payment of $1,215,000, minus withholdings and deductions. *Id.* at 870-71. Noting that the severance provisions were contained in the debtor's pre-petition employment agreement, the chapter 7 trustee claimed that the severance payment constituted property of the bankruptcy estate and filed a motion for turnover. *Id.* at 871. In response, the debtor argued that the merger and termination did not occur until several months after the petition date, that the severance payments thus constituted "earnings from services performed by an individual debtor after the commencement of the case," and that they were therefore excluded from the estate under § 541(a)(6). *Id.*

Applying the Supreme Court's "sufficiently rooted" test, the *Jokiel* court found that "the majority of the severance payment" was "'sufficiently rooted in the pre-bankruptcy past'" that it constituted property of the debtor's bankruptcy estate. *Id.* at 872. According to the court, the right to the severance payment was clearly established as of the petition date by virtue of the pre-petition employment agreement, and the severance payment served "more as an incentive for the [d]ebtor to enter into the employment agreement than as an incentive for him to continue working." *Id.* In addition, the court found that "abstaining from action" as required by the non-compete provision and the execution of a claims release was not the type of "affirmative act[]" that would constitute a "service" under § 541(a)(6). *Id.* at 873 (citing *In re Prince*, 85 F.3d 314, 323 (7th Cir. 1996) (explaining that "courts have interpreted the post[-]commencement earnings exception extremely narrowly, holding that § 541(a)(6) excepts only earnings from services actually performed by an individual debtor after the date of commencement")). The court concluded that "not engaging in certain specified activities cannot be considered a 'service performed.'" *Id.*; *see also Stinnett v. LaPlante (In re Stinnett)*, 465 F.3d 309, 313 (7th Cir. 2006) (finding that "earnings obtained solely by virtue of the inability to perform services cannot be considered the legal equivalent of 'earnings from services performed'").

In reaching that conclusion, the *Jokiel* court contrasted requirements to abstain from action with even minimal affirmative obligations needed for a service to be excepted under § 541(a)(6) by examining *In re Haynes*, 679 F.2d 718 (7th Cir. 1982). In *Haynes*, the Seventh Circuit was faced with the issue of whether a military retiree's retirement pay constituted proceeds for services performed post-petition. *Id*. at 719. In exchange for retiree pay, the debtor was required to perform up to two months of active duty training every four years, if ordered to do so by the Secretary of the Navy, and to report to the Navy for a physical exam at least once every four years. *Id.* The *Haynes* court found that because the debtor had continuing required duties, his military retirement pay was more like wages than a pension, constituted compensation for "reduced current services," and thus was not property of the estate. *Id.*

In this matter, the Debtor, like the one in *Jokiel*, must "abstain[] from action" pursuant to the non-compete and claims release provisions of the Separation Agreement. However, if called upon, the Debtor is also required to perform a great number of affirmative acts, some of which could obligate him for years, in order to receive the Severance Pay. Accordingly, the Court concludes that a portion of the Severance Pay constitutes post-petition services under the exception to § 541(a)(6).

C. Allocation of the Severance Pay

Having found that the Severance Pay is both pre-petition property of the bankruptcy estate and post-petition earnings for services excluded therefrom, the Court must determine how to allocate that Pay between the estate and the Debtor. When "proceeds" arise both from post-petition services performed by an individual debtor and from other estate assets, "[t]he application of the post[-

]petition earnings exception requires a proportional division." *Taronji*, 174 B.R. at 970; *see also Jokiel*, 447 B.R. at 874 (explaining that "where some post-petition service is a condition to a pre-petition right, the interest should be divided between the estate and the debtor *pro rata* based on the ratio between the time the debtor worked under the employment agreement before the petition date and the time worked after the petition date").

As discussed above, the Debtor has a right to the Severance Pay based on his pre-petition employment and termination. However, the Separation Agreement, executed after the bankruptcy filing, requires the Debtor to perform various affirmative acts post-petition, including transitioning his duties to others at CIVIQ and meeting with CIVIQ and its legal counsel to prepare for the defense or prosecution of litigation or other legal action, now or in the future. While the Debtor may never be called upon to perform these and other services, it is also possible that CIVIQ will reach out to him and that he will be obligated for years to come.

Given the hybrid nature of the Severance Pay and the fact that the Debtor's post-petition obligations could last for years, the Court determines that a fair allocation of the Severance Pay between the bankruptcy estate and the Debtor is 50/50. As a result, the Debtor's motion for judgment on the pleadings will be granted in part, with 50% of the Severance Pay being deemed post-petition earnings excluded from the estate under § 541(a)(6), and the Trustee's motion for judgment on the pleadings will be granted in part, with 50% of the Severance Pay being deemed property of the estate under § 541(a)(1).

CONCLUSION

For the foregoing reasons, the Court finds that half of the Severance Pay is property of the Debtor's bankruptcy estate and half constitutes earnings excluded therefrom. Accordingly, both of the parties' motions for judgment on the pleadings will be granted in part and denied in part. A separate order will be entered consistent with this Memorandum Opinion.

Dated: **March 22, 2019** **ENTERED:**

Janet S. Baer
United States Bankruptcy Judge