

APPENDIX

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-11728

D.C. Docket No. 1:17-cv-22091-KMW,
Bkcy No. 14-bkc-36362-AJC

In re: **VIKTORIA BENKOVITCH,**

Debtor.

VIKTORIA BENKOVITCH,

Plaintiff-Appellant,

versus

DEUTSCHE BANK NATIONAL TRUST CO.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(September 23, 2019)

Before ROSENBAUM, GRANT and HULL, Circuit Judges.

PER CURIAM:

After oral argument and careful review of the record, we find no reversible error in the district court's March 30, 2018 order, affirming the bankruptcy court's orders granting summary judgment in favor of defendant-appellee Deutsche Bank National Trust Company, granting defendant-appellee's motion to dismiss and dismissing plaintiff-appellant Viktoria Benkovitch's adversarial complaint with prejudice, and denying plaintiff-appellant's emergency motion for reconsideration.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 17-22091-KMW

VIKTORIA BENKOVITCH,
Appellant.

v.

DEUTSCHE BANK NATIONAL TRUST CO.
Appellee.

ORDER

THIS MATTER is before the Court on the notice of appeal filed by Appellant Viktoria Benkovitch. (DE 1). Benkovitch appeals a series of orders in her Chapter 7 bankruptcy case based on the bankruptcy court's finding that she is not entitled to the benefits of her Chapter 11 Plan. Specifically, she appeals (1) the order granting summary judgment in favor of Deutsche Bank National Trust Co. ("Deutsche Bank"); (2) the order granting Deutsche Bank's motion to dismiss; and (3) the order denying Benkovitch's emergency motion for reconsideration. For the reasons set forth below, the bankruptcy court's orders are **AFFIRMED**. The Clerk of the Court is directed to **CLOSE** this case.

I. BACKGROUND

As the Court explained in its Order of June 6, 2017 (DE 11), this appeal arises from a dispute over a pending foreclosure sale. In 2007, Benkovitch's husband Jack Kachkar obtained a \$2.72 million note secured by a mortgage on the real property at 445 Grand Bay Dr., Apt. 1209, Key Biscayne, FL 33149 (the "Property"). (ADV DE 11 at 2).¹

¹ The Court uses "ADV DE" to refer to docket entries in the related adversary proceeding, *Benkovitch v. Deutsche Bank National Trust Company*, Adversary Case No. 17-01111-AJC (Bankr. S.D. Fla.).

According to Deutsche Bank, Benkovitch and Kachkar stopped making payments on the note in May 2008. (ADV DE 11 at 2). Consequently, in December 2013, Deutsche Bank sued Benkovitch and Kachkar in state court to foreclose on its mortgage and recover the Property. (ADV DE 11 at 2). On April 25, 2017, the state court entered a Final Judgment of Foreclosure ordering the June 9, 2017 foreclosure sale of the Property. (DE 5 at 16-20).

In December 2014, while the foreclosure case was pending, Benkovitch filed a Chapter 11 bankruptcy petition. (BKC DE 1). In September 2015, the bankruptcy court confirmed Benkovitch's Chapter 11 plan of reorganization (the "Chapter 11 Plan"). (DE 5 ¶ 10; see also Chapter 11 Plan, BKC DE 503). Eight months after confirmation, in May 2016, Benkovitch filed a motion to convert her Chapter 11 case into a Chapter 7 case due to her "inability to effectuate substantial consummation of the [Chapter 11] Plan; and material default with respect to the [Chapter 11] Plan." (BKC DE 767 ¶ 3). Based on this representation, the bankruptcy court granted Benkovitch's motion and converted the case to a Chapter 7 proceeding. (BKC DE 771).

Almost a year later, on March 14, 2017, Benkovitch filed an adversary complaint in the bankruptcy court alleging that, based on certain provisions in the Chapter 11 Plan, Deutsche Bank's mortgage on the Property should be "deemed satisfied and its lien extinguished." (ADV DE 1). Specifically, Benkovitch alleged that under the Chapter 11 Plan, Deutsche Bank had a year to foreclose on the Property or request an extension, but Deutsche Bank failed to do either. *Id.* Benkovitch filed a motion for summary judgment (ADV DE 5) and Deutsche Bank filed a motion to dismiss the adversary proceeding (ADV DE 11). The bankruptcy court disposed of the adversary proceeding by issuing three

orders that: (1) denied Benkovitch's motion for summary judgment (DE 1 at 4-5); (2) granted Deutsche Bank's motion to dismiss the adversary proceeding (DE 1 at 7-8); and (3) denied Benkovitch's emergency motion for reconsideration of the previous orders (DE 1 at 10-11). However, the bankruptcy court's order denying the emergency motion for reconsideration also granted Benkovitch's emergency motion for a stay of the foreclosure sale pending appeal, contingent on Benkovitch posting a \$4,407,792.34 bond—the amount of the Final Judgment of Foreclosure. (DE 1 at 11).

Benkovitch appealed the bankruptcy court's three orders disposing of the adversary proceeding to this Court on June 5, 2017. (DE 1). The same day, she filed an emergency motion seeking a new order from the Court staying the foreclosure sale contingent on her posting a \$50,000 bond—her estimate of “reasonably anticipated attorneys' fees and costs to be incurred by Appellee in this appeal.” (DE 5 ¶ 51). On June 8, 2017, the Court denied Benkovitch's emergency motion finding that she failed to show any probability of success on her appeal and that she had not shown she would suffer irreparable harm without a stay. (DE 11).

ii. LEGAL STANDARD

This Court has jurisdiction under 28 U.S.C. § 158(a)(1) to hear this appeal of the Bankruptcy Court's Order. The Court reviews the Bankruptcy Court's legal conclusions *de novo* and its factual findings for clear error. *In re Globe Mfg. Corp.*, 567 F.3d 1291, 1296 (11th Cir. 2009); *In re Club Assoc.*, 951 F.2d 1223, 1228-29 (11th Cir. 1992).

III. DISCUSSION

Benkovitch argues that the bankruptcy court erred when it ordered the dismissal of her case because the court failed to enforce the terms of the Confirmation Order of her

Chapter 11 Plan. (DE 9 at 5). She argues that under 11 U.S.C.A. §348 ("section 348") and 11 U.S.C.A. § 1141 ("section 1141"), the Confirmation Order and Chapter 11 Plan are binding on Deutsche Bank despite her failure to comply with its terms. (DE 17 at 13). Deutsche Bank argues that the Chapter 11 Plan does not control because the bankruptcy was converted from Chapter 11 to Chapter 7 for "good cause" and, in any event, the Chapter 11 Plan's default provision allowed Deutsche Bank to foreclose on the property without limitation in the event of default and conversion.²

Section 1141 of the Bankruptcy Code governs the effect of confirmation and states in relevant part:

- (b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

11 U.S.C.A. § 1141. Thus, under section 1141, once a plan is confirmed, all of the property of the estate vests in the debtor unless the plan or the order confirming the plan provides otherwise. *Id.* In addition, under section 348 of the Bankruptcy Code, "orders of relief are unaffected by a debtor's subsequent conversion of a case, with some limited exceptions." *In re Palladino*, No. 89-01021-BKC-PGH, 1995 WL 723107 at *2 (S.D. Fla. Sept. 21, 1995); 11 U.S.C.A. § 348. Based on these provisions, Benkovitch argues that the Bankruptcy Court should have construed the Chapter 11 Plan as extinguishing Deutsche Bank's lien on the Property.

² Deutsche Bank raises several jurisdictional arguments on why this appeal is improper, but the court need not address those arguments in this Order. See *Lucas v. W.W. Grainger, Inc.*, 257 F.3d 1249 (11th Cir. 2001) ("We need not decide whether the district court properly resolved that issue if there is another basis for affirming its judgment, because we may affirm its judgment "on any ground that finds support in the record.")

On review, the Court finds that the record adequately supports the bankruptcy court's determination. The record shows that Benkovitch filed a Chapter 11 bankruptcy petition when she defaulted on her mortgage payments. (BKC DE 1). Then, after the bankruptcy court confirmed her Chapter 11 Plan, Benkovitch failed to consummate its terms and materially defaulted on its obligations. (BKC DE 767 ¶ 3). Based on her admitted failure to consummate the plan, the bankruptcy court converted her case from Chapter 11 to Chapter 7. (BKC DE 771). Additionally, under 11 U.S.C.A. § 1141(b), upon confirmation of a plan, all property of the estate is vested in the debtor "**except as otherwise provided in the plan.**" (emphasis added). Here, the Chapter 11 Plan itself addresses the effect of default and provides:

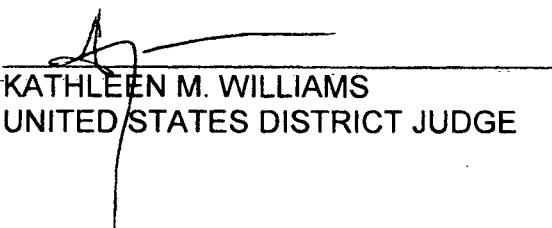
"If the Bankruptcy Court determines that there are material defaults under the [Chapter 11] Plan the case shall be converted to a case under Chapter 7. Upon conversion to Chapter 7, **any unpaid creditor(s) . . . shall have full and complete relief from the automatic stay of 11 U.S.C. Sec 362(a) to exercise their *in rem* rights against whatever collateral secures their claim(s).** Upon conversion to Chapter 7, any property of the Debtor which has not been transferred under the Plan (including the property transferred to the Debtor's sole ownership upon confirmation of the Plan) shall vest in the chapter 7 estate, free and clear of any interest of the Debtor's spouse."

(BKC DE 503 at 9) (emphasis added). Under the plain terms of the Chapter 11 Plan, after a material default, the case **shall** be converted to Chapter 7, the Property **shall** vest in the Chapter 7 estate and the creditors **shall** "have full and complete relief . . . to exercise their *in rem* rights." *Id.* (emphasis added). Thus, even under the plain terms of the Chapter 11 Plan, once Benkovitch defaulted and the case was converted to Chapter 7 proceedings, Deutsche Bank had the ability to pursue its foreclosure case.

IV. CONCLUSION

Based on this record, the Court finds that the bankruptcy court properly determined that the Chapter 11 Plan did not extinguish Deutsche Bank's lien on the Property. Accordingly, the bankruptcy court's orders challenged on appeal are **AFFIRMED**. All pending motions are **DENIED AS MOOT**. All hearings, trial settings, and deadlines are **CANCELED**. The Clerk is directed to **CLOSE** this case.

DONE AND ORDERED in Chambers in Miami, Florida, this 30 day of March, 2018.



KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE



ORDERED in the Southern District of Florida on June 1, 2017.

A. Jay Cristol

A. Jay Cristol, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:

VIKTORIA BENKOVITCH,
Debtor.

Chapter 7

Case No. 14-36362-AJC

VIKTORIA BENKOVITCH,

Plaintiff,

Adv. Case No. 17-01111-AJC

v.

DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE FOR HOLDERS
OF THE BCAP LLC TRUST 2007-AA3,

Defendant.

**ORDER ON EMERGENCY MOTION FOR RECONSIDERATION OF
ORDER GRANTING MOTION TO DISMISS [ECF NO. 22] ORDER ON
MOTION FOR SUMMARY JUDGMENT IN FAVOR OF DEFENDANT
[ECF NO. 21], OR ALTERNATIVELY, FOR STAY PENDING APPEAL**

THIS MATTER came before the Court for hearing on May 31, 2017, at 2:00 p.m., on the
Emergency Motion for Reconsideration of Order Granting Motion to Dismiss [ECF No. 22] Order on

Motion for Summary Judgment in Favor of Defendant [ECF No. 21], or Alternatively, for Stay Pending Appeal filed by Plaintiff Viktoria Benkovitch ("Plaintiff" or "Benkovitch"). The Court having reviewed the motion, having heard argument of counsel, and being otherwise fully advised in the premises, for the reasons stated on the record, it is **ORDERED** as follows:

1. Ms. Benkovitch's Emergency Motion for Reconsideration of Order Granting Motion to Dismiss [ECF No. 22][ECF No. 23] is **DENIED**.
2. Ms. Benkovitch's Emergency Motion for Reconsideration of Order on Motion for Summary Judgment in Favor of Defendant [ECF No. 21] [ECF No. 23] is **DENIED**.
3. Ms. Benkovitch's Emergency Motion for Stay Pending Appeal [ECF No. 23] is **GRANTED** contingent upon Ms. Benkovitch posting a supersedeas bond in the amount of \$4,407,792.34 on or before June 8, 2017. Counsel for Ms. Benkovitch shall immediately notify counsel for defendant upon the posting of the bond.
4. The Court finds there is no basis for reconsideration as there was no clear error of law.
5. Ms. Benkovitch's Chapter 11 plan is not enforceable as the plan was not substantially consummated, Ms. Benkovitch materially defaulted under the plan, and the case was converted to Chapter 7. The plan is null and void.

###

Submitted by:

Andrea S. Hartley
Florida Bar No. 864234
AKERMAN LLP
Brickell City Centre
98 Southeast 7th Street, Suite 1100
Miami, Florida 33131
Tel.: (305) 374-5600
Facsimile: (305) 374-5095
E-mail: andrea.hartley@akerman.com

Counsel for Defendant Deutsche Bank National Trust Company as Trustee for Holders of the BCAP LLC Trust 2007-AA3

[Attorney Andrea S. Hartley shall serve a copy of this Order upon all interested parties upon receipt and shall file a certificate of service with the Court.]



ORDERED in the Southern District of Florida on May 19, 2017.

A. Jay Cristol

A. Jay Cristol, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:

VIKTORIA BENKOVITCH,
Debtor.

Chapter 7

Case No. 14-36362-AJC

VIKTORIA BENKOVITCH,

Plaintiff,

Adv. Case No. 17-01111-AJC

v.

DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE FOR HOLDERS
OF THE BCAP LLC TRUST 2007-AA3,

Defendant.

ORDER ON MOTION FOR SUMMARY JUDGMENT

THIS MATTER came before the Court for hearing on May 4, 2017, at 10:30 a.m., on the Motion for Summary Judgment as to Complaint to Establish Extent, Validity, and Priority of Lien [ECF No. 5] filed by Plaintiff Viktoria Benkovitch ("Plaintiff" or "Benkovitch"). The Court having reviewed

the motion and Deutsche Bank's Opposition to Viktoria Benkovitch's Motion for Summary Judgment [ECF No. 19], having heard argument of counsel, and being otherwise fully advised in the premises, it is
ORDERED as follows:

1. Ms. Benkovitch's Motion for Summary Judgment [ECF No. 5] is **DENIED**.
2. Pursuant to Fed. R. Civ. P. 56(f)(1), summary judgment in favor of non-movant Defendant Deutsche Bank National Trust Company as Trustee for Holders of the BCAP LLC Trust 2007-AA3 ("Defendant" or "Deutsche Bank") is **GRANTED**. Plaintiff Benkovitch shall take nothing by this action, and Defendant Deutsche Bank shall go hence without day.
3. The Court finds that it would be inequitable to eliminate Deutsche Bank's secured mortgage lien in light of Ms. Benkovitch admitted default under the Plan and her failure to substantially consummate the Plan.
4. The Court finds Ms. Benkovitch is not entitled to the benefits of a bankruptcy Plan without being responsible for its burdens. Based on the above, the Court deletes from the Plan any time limitation for Deutsche Bank to complete foreclosure.

###

Submitted by:

Andrea S. Hartley

Florida Bar No. 864234

Jeffrey S. Robin

Florida Bar No. 37822

AKERMAN LLP

Brickell City Centre

98 Southeast 7th Street, Suite 1100

Miami, Florida 33131

Tel.: (305) 374-5600

Facsimile: (305) 374-5095

E-mail: andrea.hartley@akerman.com

E-mail: jeffrey.robin@akerman.com

Counsel for Defendant Deutsche Bank National Trust Company as Trustee for Holders of the BCAP LLC Trust 2007-AA3

[Attorney Andrea S. Hartley shall serve a copy of this Order upon all interested parties upon receipt and shall file a certificate of service with the Court.]



ORDERED in the Southern District of Florida on May 19, 2017.

A. Jay Cristol

A. Jay Cristol, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re: Chapter 7

VIKTORIA BENKOVITCH, Case No. 14-36362-AJC
Debtor.

VIKTORIA BENKOVITCH,

Plaintiff,

Adv. Case No. 17-01111-AJC

v.

DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE FOR HOLDERS
OF THE BCAP LLC TRUST 2007-AA3,

Defendant.

ORDER GRANTING MOTION TO DISMISS

THIS MATTER came before the Court for hearing on May 4, 2017, at 10:30 a.m., on
the Motion to Dismiss Plaintiff's Complaint To Establish Extent, Validity And Priority Of Lien

With Prejudice [ECF No. 11] filed by Defendant Deutsche Bank National Trust Company as Trustee for Holders of the BCAP LLC Trust 2007-AA3 ("Defendant" or "Deutsche Bank"). The Court having reviewed the motion, and Response to Defendant's Motion to Dismiss Plaintiff's Complaint [ECF No. 13], having heard argument of counsel, and being otherwise fully advised in the premises, for the reasons stated on the record, it is **ORDERED** as follows:

1. Deutsche Bank's Motion to Dismiss [ECF No. 11] is **GRANTED**.
2. Plaintiff Viktoria Benkovitch's ("Plaintiff" or "Benkovitch") Complaint To Establish Extent, Validity And Priority Of Lien [ECF No. 1], is **DISMISSED WITH PREJUDICE**. Plaintiff Benkovitch shall take nothing by this action, and Defendant Deutsche Bank shall go hence without day.
3. The Court will not permit amendment of the Complaint as to the Defendant Deutsche Bank because such amendment is futile.

###

Submitted by:

Andrea S. Hartley

Florida Bar No. 864234

Jeffrey S. Robin

Florida Bar No. 37822

AKERMAN LLP

Brickell City Centre

98 Southeast 7th Street, Suite 1100

Miami, Florida 33131

Tel.: (305) 374-5600

Facsimile: (305) 374-5095

E-mail: andrea.hartley@akerman.com

E-mail: jeffrey.robin@akerman.com

Counsel for Defendant Deutsche Bank National Trust Company as Trustee for Holders of the BCAP LLC Trust 2007-AA3

[Attorney Andrea S. Hartley shall serve a copy of this Order upon all interested parties upon receipt and shall file a certificate of service with the Court.]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-11728-GG

In re: VIKTORIA BENKOVITCH,

Debtor.

VIKTORIA BENKOVITCH,

Plaintiff - Appellant,

versus

DEUTSCHE BANK NATIONAL TRUST CO.,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: ROSENBAUM, GRANT and HULL, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

March 19, 2020

Scott S. Harris
Clerk of the Court
(202) 479-3011

Ms. Viktoria Benkovitch
44 Cotswold Crescent
Toronto, Canada M2P 1N2

Re: Viktoria Benkovitch
v. Deutsche Bank National Trust Company
Application No. 19A1024

Dear Ms. Benkovitch:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Thomas, who on March 19, 2020, extended the time to and including April 14, 2020.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by

Susan Frimpong
Case Analyst

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

April 8, 2020

Viktoria Benkovitch
44 Cotswold Crescent
Toronto, Canada, CA M2P 1N2

RE: Benkovitch v. Deutsche Bank
No: 19A1024

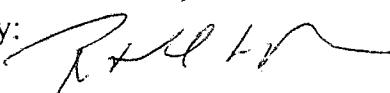
Dear Ms. Benkovitch:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was postmarked April 4, 2020 and received April 8, 2020. The application is returned for the following reason(s):

In light of the order issued by the Court on March 19, 2020, the deadline for filing any petition for a writ of certiorari is extended to 150 days from the date of the lower court judgement. A copy of the order is enclosed.

Sincerely,
Scott S. Harris, Clerk

By:


Redmond K. Barnes
(202) 479-3022

Enclosures

(ORDER LIST: 589 U.S.)

THURSDAY, MARCH 19, 2020

ORDER

In light of the ongoing public health concerns relating to COVID-19, the following shall apply to cases prior to a ruling on a petition for a writ of certiorari:

IT IS ORDERED that the deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. See Rules 13.1 and 13.3.

IT IS FURTHER ORDERED that motions for extensions of time pursuant to Rule 30.4 will ordinarily be granted by the Clerk as a matter of course if the grounds for the application are difficulties relating to COVID-19 and if the length of the extension requested is reasonable under the circumstances. Such motions should indicate whether the opposing party has an objection.

IT IS FURTHER ORDERED that, notwithstanding Rules 15.5 and 15.6, the Clerk will entertain motions to delay distribution of a petition for writ of certiorari where the grounds for the motion are that the petitioner needs additional time to file a reply due to difficulties relating to COVID-19. Such motions will ordinarily be granted by the Clerk as a matter of course if the length of the extension requested is reasonable under the circumstances and if the motion is actually received by the Clerk at least two days prior to the relevant distribution date. Such motions should indicate whether the opposing party has an objection.

LIST OF STATUTES AND AUTHORITIES

11 U.S. Code Section 1101

In this chapter—

(1)

“debtor in possession” means debtor except when a person that has qualified under section 322 of this title is serving as trustee in the case;

(2)“substantial consummation” means—

- (A) transfer of all or substantially all of the property proposed by the plan to be transferred;
- (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and
- (C) commencement of distribution under the plan.

11 U.S. Code § 1107 -Rights, powers, and duties of debtor in possession

(a) Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of this title, of a trustee serving in a case under this chapter.

(b) Notwithstanding section 327(a) of this title, a person is not disqualified for employment under section 327 of this title by a debtor in possession solely because of such person’s employment by or representation of the debtor before the commencement of the case.

11 U.S. Code § 1127 - Modification of plan

(a)The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the

requirements of sections 1122 and 1123 of this title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan.

(b)The proponent of a plan or the reorganized debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of such plan, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. Such plan as modified under this subsection becomes the plan only if circumstances warrant such modification and the court, after notice and a hearing, confirms such plan as modified, under section 1129 of this title.

11 U.S. Code § 1141. Effect of confirmation

(a)Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

11 U.S. Code § 1144. Revocation of an order of confirmation

On request of a party in interest at any time before 180 days after the date of the entry of the order of confirmation, and after notice and a hearing, the court may revoke such order if and only if such order was procured by fraud. An order under this section revoking an order of confirmation shall—

- (1)contain such provisions as are necessary to protect any entity acquiring rights in good faith reliance on the order of confirmation; and
- (2)revoke the discharge of the debtor.

11 U.S. Code § 1327. Effect of confirmation

(a)The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

(b)Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

11 U.S. Code § 105. Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest—

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title—

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

- (iv)sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;
- (v)fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or
- (vi)provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

11 U.S. Code § 348. Effect of conversion

- (a)Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.
- (b)Unless the court for cause orders otherwise, in sections 701(a), 727(a)(10), 727(b), 1102(a), 1110(a)(1), 1121(b), 1121(c), 1141(d)(4), 1201(a), 1221, 1228(a), 1301(a), and 1305(a) of this title, “the order for relief under this chapter” in a chapter to which a case has been converted under section 706, 1112, 1208, or 1307 of this title means the conversion of such case to such chapter.
- (c)Sections 342 and 365(d) of this title apply in a case that has been converted under section 706, 1112, 1208, or 1307 of this title, as if the conversion order were the order for relief.
- (d)A claim against the estate or the debtor that arises after the order for relief but before conversion in a case that is converted under section 1112, 1208, or 1307 of this title, other than a claim specified in section 503(b) of this title, shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition.
- (e)Conversion of a case under section 706, 1112, 1208, or 1307 of this title terminates the service of any trustee or examiner that is serving in the case before such conversion.
- (f)
 - (1)Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion;

(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12 reduced to the extent that they have been paid in accordance with the chapter 13 plan; and

(C) with respect to cases converted from chapter 13—

(i) the claim of any creditor holding security as of the date of the filing of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter 13; and

(ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

11 U.S. Code § 506. Determination of secured status

(a)

(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

(2) If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired

- (C) counterclaims by the estate against persons filing claims against the estate;
- (D) orders in respect to obtaining credit;
- (E) orders to turn over property of the estate;
- (F) proceedings to determine, avoid, or recover preferences;
- (G) motions to terminate, annul, or modify the automatic stay;
- (H) proceedings to determine, avoid, or recover fraudulent conveyances;
- (I) determinations as to the dischargeability of particular debts;
- (J) objections to discharges;
- (K) determinations of the validity, extent, or priority of liens;
- (L) confirmations of plans;
- (M) orders approving the use or lease of property, including the use of cash collateral;
- (N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;
- (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and
- (P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)

(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and

any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

28 U.S. Code § 158. Appeals

(a) The district courts of the United States shall have jurisdiction to hear appeals [1]

(1) from final judgments, orders, and decrees;

(2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and

(3) with leave of the court, from other interlocutory orders and decrees;

of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

(b)

(1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that—

- (A)there are insufficient judicial resources available in the circuit; or
- (B)establishment of such service would result in undue delay or increased cost to parties in cases under title 11.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference of the United States a report containing the factual basis of such finding.

(2)

(A)A judicial council may reconsider, at any time, the finding described in paragraph (1).

(B)On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(C)On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(D)If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

(3)Bankruptcy judges appointed under paragraph (1) shall be appointed and may be reappointed under such paragraph.

(4)If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

(5)An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.

(6)Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such district.

(c)

(1) Subject to subsections (b) and (d)(2), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless—

- (A) the appellant elects at the time of filing the appeal; or
- (B) any other party elects, not later than 30 days after service of notice of the appeal; to have such appeal heard by the district court.

(2) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

(d)

(1) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

(2)

(A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—

(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel—

(i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

(ii)receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A);

then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

(C)The parties may supplement the certification with a short statement of the basis for the certification.

(D)An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal is pending, issues a stay of such proceeding pending the appeal.

(E)Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.

28 U.S. Code § 1334.Bankruptcy cases and proceedings

(a)Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b)Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)

(1)Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2)Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d)Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable

by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

28 U.S. Code § 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S. Code § 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

- (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002;
- (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);
- (3) a proceeding to obtain approval under §363(h) for the sale of both the interest of the estate and of a co-owner in property;
- (4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§727(a)(8), 1 (a)(9), or 1328(f);
- (5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;
- (6) a proceeding to determine the dischargeability of a debt;
- (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
- (8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;
- (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or
- (10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. §1452.

Rule 1019. Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case

When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:

- (1) Filing of Lists, Inventories, Schedules, Statements.

(A) Lists, inventories, schedules, and statements of financial affairs theretofore filed shall be deemed to be filed in the chapter 7 case, unless the court directs otherwise. If they have not been previously filed, the debtor shall comply with Rule 1007 as if an order for relief had been entered on an involuntary petition on the date of the entry of the order directing that the case continue under chapter 7.

(B) If a statement of intention is required, it shall be filed within 30 days after entry of the order of conversion or before the first date set for the meeting of creditors, whichever is earlier. The court may grant an extension of time for cause only on written motion filed, or oral request made during a hearing, before the time has expired. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

(2) New Filing Periods.

(A) A new time period for filing a motion under §707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of dischargeability of any debt shall commence under Rules 1 1017, 3002, 4004, or 4007, but a new time period shall not commence if a chapter 7 case had been converted to a chapter 11, 12, or 13 case and thereafter reconverted to a chapter 7 case and the time for filing a motion under §707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of the dischargeability of any debt, or any extension thereof, expired in the original chapter 7 case.

(B) A new time period for filing an objection to a claim of exemptions shall commence under Rule 4003(b) after conversion of a case to chapter 7 unless:

- (i) the case was converted to chapter 7 more than one year after the entry of the first order confirming a plan under chapter 11, 12, or 13; or
- (ii) the case was previously pending in chapter 7 and the time to object to a claimed exemption had expired in the original chapter 7 case.

(3) Claims Filed Before Conversion. All claims actually filed by a creditor before conversion of the case are deemed filed in the chapter 7 case.

(4) Turnover of Records and Property. After qualification of, or assumption of duties by the chapter 7 trustee, any debtor in possession or trustee previously acting in the chapter 11, 12, or 13 case shall, forthwith, unless otherwise ordered, turn over to the chapter 7 trustee all records and property of the estate in the possession or control of the debtor in possession or trustee.

(5) Filing Final Report and Schedule of Postpetition Debts.

(A) Conversion of Chapter 11 or Chapter 12 Case. Unless the court directs otherwise, if a chapter 11 or chapter 12 case is converted to chapter 7, the debtor in possession

or, if the debtor is not a debtor in possession, the trustee serving at the time of conversion, shall:

(i) not later than 14 days after conversion of the case, file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and

(ii) not later than 30 days after conversion of the case, file and transmit to the United States trustee a final report and account;

(B) Conversion of Chapter 13 Case. Unless the court directs otherwise, if a chapter 13 case is converted to chapter 7,

(i) the debtor, not later than 14 days after conversion of the case, shall file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and

(ii) the trustee, not later than 30 days after conversion of the case, shall file and transmit to the United States trustee a final report and account;

(C) Conversion After Confirmation of a Plan. Unless the court orders otherwise, if a chapter 11, chapter 12, or chapter 13 case is converted to chapter 7 after confirmation of a plan, the debtor shall file:

(i) a schedule of property not listed in the final report and account acquired after the filing of the petition but before conversion, except if the case is converted from chapter 13 to chapter 7 and §348(f)(2) does not apply;

(ii) a schedule of unpaid debts not listed in the final report and account incurred after confirmation but before the conversion; and

(iii) a schedule of executory contracts and unexpired leases entered into or assumed after the filing of the petition but before conversion.

(D) Transmission to United States Trustee. The clerk shall forthwith transmit to the United States trustee a copy of every schedule filed pursuant to Rule 1019(5).

(6) Postpetition Claims; Preconversion Administrative Expenses; Notice. A request for payment of an administrative expense incurred before conversion of the case is timely filed under §503(a) of the Code if it is filed before conversion or a time fixed by the court. If the request is filed by a governmental unit, it is timely if it is filed before conversion or within the later of a time fixed by the court or 180 days after the date of the conversion. A claim of a kind specified in §348(d) may be filed in accordance with Rules 3001(a)–(d) and 3002. Upon the filing of the schedule of unpaid debts incurred after commencement of the case and before conversion, the clerk, or some other person as the court may direct, shall give notice to those entities listed on the schedule of the time for filing a request for payment of an administrative expense

and, unless a notice of insufficient assets to pay a dividend is mailed in accordance with Rule 2002(e), the time for filing a claim of a kind specified in §348(d).

Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court

(a) Cases Involving Same Debtor. If two or more petitions by, regarding, or against the same debtor are pending in the same court, the court may order consolidation of the cases.

(b) Cases Involving Two or More Related Debtors. If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under §522(b)(2) of the Code and the other has elected the exemptions under §522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by §522(b)(2).

(c) Expediting and Protective Orders. When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

Rule 60. Relief from a Judgment or Order

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

- (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
- (2) grant relief under 28 U.S.C. §1655 to a defendant who was not personally notified of the action; or
- (3) set aside a judgment for fraud on the court.

(e) Bills and Writs Abolished. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.