No. 22-

IN THE

Supreme Court of the United States

ALLANA BARONI,

Petitioner,

v.

DAVID SEROR, CHAPTER 7 TRUSTEE, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

11 U.S.C. § 1141 (b) provides, "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." No other section deals with who has title to property in a Chapter 11 bankruptcy. It also does not address what happens when a Chapter 11 bankruptcy is converted to a Chapter 7 bankruptcy. By contrast, Congress said what would happen to property when a Chapter 13 case is converted to a Chapter 7 case. Then, property of the estate at conversion remains estate property. 11 U.S.C. § 348 (f) (1).

The questions presented is:

Because Congress stated in clear language that a confirmed Chapter 11 debtor retains title to property after her plan is confirmed, did the Ninth Circuit err in reading into section 1141 an exception no language in the statute supported: courts could look to the Chapter 11 plan itself to determine what happened to the debtor's property?

PARTIES TO THE CASE

ALLANA BARONI—the debtor and appellant below.

DAVID SEROR—the Chapter 7 trustee below and appellee.

RELATED PROCEEDINGS

Baroni v. Seror, United States Court of Appeals for the Ninth Circuit, case no. 21-60045; no judgment entered yet.

In re Baroni, United States Bankruptcy Court for the Central District of California, case no. 1:12-bk-10986-MB; judgment entered March 21, 2020.

In re Baroni, United States District Court for the Central District of California, case no. 2:20-cv-04338-MWF; judgment entered January 25, 2021.

Baroni v. Seror, United States Court of Appeals for the Ninth Circuit, case nos. 21-55076 and 21-55150; judgment entered June 8, 2022.

In re Baroni, United States District Court for the Central District of California, case no. 2:19-cv-07548-MWF, judgment entered January 25, 2021.

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JURISDICTION

The judgment of the court of appeals was entered on June 8, 2022. Pet. App. 2a, 27a. Petitioner is filing this petition for a writ of certiorari 90 days later, on September 6, 2022. This Court has jurisdiction under 28 U.S.C. § 1254 (1).

RELEVANT STATUTORY PROVISIONS

11 U.S.C. 1141 (b) states:

> (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. § 348 (f) (1) provides:

> 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 the petition, that remains in the possess of or is under the control of the debtor on the date of conversion….

INTRODUCTION

This is a case about choices, specifically the choices Congress makes when it legislates. Although Congress has spoken on what happens the debtor's property when a Chapter 13 case is converted to Chapter 7, it did not enact the same statute to govern Chapter 11 cases Instead, it made a different choice-conversion of a Chapter 11 case to Chapter 7 would have no effect on who owned the debtor's property. The property would still be vested in the debtor.

The Ninth Circuit did not agree and created an exception that Congress did not intend to legislate. This Court should grant certiorari to correct this mistaken interpretation of a clear statute and impose a uniform rule to govern what happens to property upon conversion of a Chapter 11 case.

STATEMENT OF THE CASE

I. Allana Baroni pursues Chapter 11 reorganization.

Allana Baroni owned her home and several rental properties with her husband James. Each property had a loan with a deed of trust. Pet. App. 3a-4a.

Baroni filed for Chapter 13 bankruptcy in 2012 and then converted her case to Chapter 11. Pet. App. 3a. She

presented a Chapter 11 plan that would allow her to pay her primary residence mortgage payments and to rent the properties and make loan payments into reserve accounts during the pendency of any outstanding adversary proceedings. Pet. App. 4a. She and her husband would continue to own the properties. *Ibid.* The bankruptcy court approved the plan. *Ibid.*

The plan also allowed Baroni to file adversary complaints against her alleged creditors, challenging the creditor's claims to own her loans. Pet. App. 4a-5a.

II. The conversion from Chapter 11 to Chapter 7.

The Bank of New York Mellon (BONYM) demanded that Baroni pay its claim as the plan required. Pet. App. 5a. But the amount of BONYM's claim had changed when BONYM submitted 1099-C forms to the IRS which indicated it had forgiven $611,954.24 of the debt pursuant to the cram down provision of the plan. *Ibid.* Baroni only learned of the forms 1099-C when the IRS audited Baroni and demanded she pay income on BONYM's debt forgiveness, meaning Baroni would have to pay the claim amount plus income tax on the 1099-C amounts. *Ibid.* BONYM moved to dismiss the bankruptcy or convert it to Chapter 7. Pet. App. 6a.

The bankruptcy court granted the motion, and a Chapter 7 trustee was appointed. Pet. App. 7a. The Chapter 7 trustee demanded that Baroni turn over the rental properties, rental income, reserve account amounts and sales proceeds from one of the properties. *Ibid.* The bankruptcy court granted that motion. Pet. App. 7a-8a.

On appeal, the District Court affirmed. Pet. App. 29a. It did not rely on the language of section 1141. Pet. App. 42a-46a. Instead, it turned to a local rule of the bankruptcy court. Pet. App. 42a. The version of the local rule that the Bankruptcy Court relied upon held that every order approving a chapter 11 plan must include specific language of what happens to the debtor's property if the case is converted to Chapter 7. *Ibid.* Further, if a Chapter 11 plan did not address what would happen with the debtor's property upon conversion to Chapter 7, the property would be property of the bankruptcy estate, subject to control by a Chapter 7 trustee. Pet. App. 45a-46a. However, the 2019 version of the local rule the Bankruptcy Court relied upon was not in effect in 2013 when Baroni's plan was approved.

III. The Ninth Circuit finds that the intent of Baroni's Chapter 11 plan controlled, rather than the clear language of section 1141.

Baroni appealed the turnover order to the Ninth Circuit. That court upheld the order. Pet. App. 3a

The panel held that it was filling a gap in the bankruptcy statutes. It noted the "Bankruptcy Code is silent as to what constitutes the bankruptcy estate when a Chapter 11 plan case is converted to Chapter 7 after plan confirmation." Pet. App. 21a It stressed that Congress had been silent on the issue. *Ibid.*

The Ninth Circuit should have stopped there by ruling the plain language of section 1141 still applied—once a plan is confirmed, all property revested in the debtor. It did not matter whether case was later converted to Chapter 7.

The panel admitted that 11 U.S.C. § 1141 vested title to property in the debtor. Pet. App. 22a. But it wrote the vesting provisions of section 1141 were "explicitly subject to the provisions of the plan." Pet. App. 22a. It then attempted to discern how the plan would treat property if the Chapter 11 case were converted to Chapter 7. Pet. App. 24a-25a.

To the panel, the "central question is whether the Plan's 'language, purposes, and context' changed the effect of the general vesting provisions in 11 U.S.C § 1141 after conversion to Chapter 7." Pet. App. 24a. The panel thought the plan was to benefit creditors. It provided Baroni was to use the rental income from the properties to pay into reserve accounts, which she then would pay to her creditors. Pet. App. 25a-26a. As the panel wrote, "Instead, the income from the properties remained subject to the Plan because the premise of the plan was to pay creditors with the ongoing income stream form the rental properties." Pet. App. 26a.

However, while the plan required Baroni to pay the plan amounts, it does not specify that the rents are to be used for that purpose. Pet. App. 26a-27a. According to the District Court on appeal, the purpose of the plan was also for Baroni to keep her primary residence and the rental properties. Pet. App. 39a-40a.

The panel disregarded the District Court's ruling that the purpose of the plan was for Baroni to keep her primary residence and the rental properties Pet. App. 25a-26a. Instead, it held that the main intent of the Chapter 11 plan was to pay Baroni's creditors, and ruled the rental income was property of the bankruptcy estate. Pet. App.

26a. Those amounts would be seized by the Chapter 7 trustee and then given to Baroni's secured creditors. The panel noted, "To hold that the unadministered rent and sales proceed did not revest in the bankruptcy estate upon conversion to Chapter 7 would frustrate the intent of the Plan and is contrary to many of its provisions." Pet. App. 27a.

Baroni did not file a petition for rehearing. Pet. App. 27a.

REASONS FOR GRANTING THE PETITION

I. The Ninth Circuit read into section 1141 (a) an exception that was not there.

When a debtor files for bankruptcy, the filing creates a bankruptcy estate. 11 U.S.C. § 541 (a) (1). Under Chapter 11, the confirmation of a plan vests all property of the estate in the debtor. 11 U.S.C. § 1141 (b) (c). Here, the bankruptcy court confirmed the debtor's Chapter 11 plan, which vested all property in her. Pet. App. 3a-4a.

Bankruptcy cases often are converted from one chapter to another. Chapter 13 cases are converted to Chapter 7, and Chapter 11 cases are converted to Chapter 7. Allana Baroni's case was converted to Chapter 7 because the bankruptcy court found she had committed a material default of her plan when she questioned the effect of the IRS forms 1099-C on the amount of BONYM's claim. Pet. App. 4a-5a.

What happens to the debtor's property when her case is converted from one chapter to another? Congress

provided two answers to that question. When a Chapter 13 case is converted to Chapter 7, Congress dictated that a debtor's property would become property of the bankruptcy estate, subject to control by a Chapter 7 trustee. Congress made this choice clear in 11 U.S.C. § 348 (f) (1): "[P]roperty of the estate in the converted case shall consist of property of the estate, as of the date of filing the petition, that remains in the possess of or is under the control of the debtor…."

Congress made a different choice when a Chapter 11 case is converted to Chapter 7. Then, the debtor retains title to the property. 11 U.S.C. § 1141 (b) states that choice: "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."

This statute contains no exceptions except for language in the Chapter 11 plan or the order confirming the plan. It does not say that vesting the property in the debtor is temporary; it is permanent once the Chapter 11 plan is confirmed. It does not contain an exception to that rule, such as the statutory exception in Chapter 13 cases under section 348 (f) (1). Congress made its choice—once a Chapter 11 plan is confirmed, property vests in the debtor, even if the case is converted.

This Court stresses that statutory interpretation follows two principles. First, judges must apply clear statutory language as it is written. "Where the statute's language is plain, the sole function of the courts is … to enforce it according to its terms." *Lamie v. United States Trustee,* 540 U.S. 526, 534 (2004). Second, courts cannot read into statutes exceptions that are just not there.

NLRB v. S.W. Gen., Inc., 137 S.Ct. 929, 939 (2017). Courts have no business rewriting statutes. "The Supreme Court and this Court have warned on countless occasions against judges 'improving' plain statutory language in order to better carry out what they perceive to be the legislative purpose." *In re Bracewell,* 454 F.3d 1234, 1240 (11th Cir. 2006).

The Ninth Circuit disregarded Congress' decision. In plain language, Congress dictated that the confirmation of a Chapter 11 plan vested all property with the debtor. It said nothing about what might happen if a case were converted. The lower court should have followed this clear language as written and concluded that Baroni, the debtor, retained title to all her property despite the conversion of her case to Chapter 7.

Instead of following the plain language of section 1141 (a), the Ninth Circuit decided to change it. It held, contrary to the statute, that a court should look to the intent of the Chapter 11 plan when deciding who has title to a debtor's property. Pet. App. 24a-25a. As the Ninth Circuit recognized, the statute had no language justifying such an exception. Pet. App. 21a. The lower court thought Congress had been silent on a possible exception: "Given Congress's silence, courts have varied in their approach to what happens with the bankruptcy estate upon conversion…." Pet. App. 22a.

But Congress was not silent. It spoke loudly and clearly in section 1141 (b). A debtor's property remained vested with the debtor once a court confirmed the Chapter 11 plan. The statute contained no exception for conversion to another Chapter because Congress chose not to make

such an exception. The Ninth Circuit went beyond its role in finding and then applying an exception.

This Court should grant certiorari to correct the Ninth Circuit's egregious interpretation of section 1141 (b) and to make clear to the lower courts there is one proper construction of the statute.

II. Certiorari should be granted to ensure a uniform rule on the status of a debtor's property when her case has been converted.

This Court recently stressed that rules in bankruptcy cases must be uniform. *Siegel v. Fitzgerald*, 142 S.Ct. 1770, 1781-1782 (2022). The Ninth Circuit's decision threatens uniformity in several ways.

First, the Ninth Circuit opinion is the first circuit court decision to consider the question of what happens to a debtor's property when a case is converted from Chapter 11 to Chapter 7. As the first such case from an appellate court, it will tempt other appellate courts to follow it. This Court must step in to prevent the spread of the Ninth Circuit's erroneous interpretation of section 1141 (b).

Second, although other appellate courts have not yet considered the issue the Ninth Circuit faced, the bankruptcy courts have, with much disagreement. One line of bankruptcy court cases hold section 1141 (a) should be applied according to its plain language. Thus, these courts have ruled that the conversion of a Chapter 11 case to Chapter 7 means property remains vested with the debtor. *See, e.g., In re Sundale, Ltd.*, 471 B.R. 300, 306 (Bank. S.D. Fla. 2012): [In] the absence of an express

provision in the plan or confirmation order to the contrary, upon conversion, assets that vested in the reorganized debtor…do not revest in the estate to be administered by the Chapter 7 trustee."

Another line of cases disagrees and finds that a conversion to Chapter 7 vests the debtor's property in the bankruptcy estate, with control held by the Chapter 7 trustee. *See, e.g., In re Smith,* 201 B.R. 267, 270 (Bank. D. Nev. 1996). Here, the Ninth Circuit found a conflict among the lower courts on the issue and took one side in that conflict. "[C]ourts have varied in their approach to what happens with the bankruptcy estate upon conversion from Chapter 11 to Chapter 7." Pet. App. 22a.

This variety of approaches threatens confusion in the lower courts and the uniformity in bankruptcy laws imposed by the Constitution and this Court.

Finally, the lack of controlling case law may induce some bankruptcy courts to adopt "creative" solutions. These solutions may contravene the statutes Congress enacted. For example, as the District Court noted in this case, Pet. App. 42a-43a, the bankruptcy judges for the Central District of California wrote a rule that tried to "fill in the gaps" Congress supposedly left in section 1141 (b). Under Local Bankruptcy Rule 3020-1 (d), which was not in effect when the bankruptcy court confirmed Baroni's Chapter 11 plan in 2013,

> [U]nless otherwise provided in the plan, if the case is converted to one under chapter 7, the property of the reorganized debtor . . . that has not been distributed under the plan shall

> be vested in the chapter 7 estate, except for property that would have been excluded from the estate if this case had always been one under chapter 7.

The danger this local rule creates is that other bankruptcy courts may choose a different rule or no rule. Or, as in Baroni's case, courts may rely on the wrong rule, as the District Court did in affirming the bankruptcy court. Pet. App. 42a-43a. The bankruptcy court used the 2019 version Local Bankruptcy Rule 3020-1 (d). It stressed that unless Baroni lodged an order that addressed what would happen to property if the case was converted to Chapter 7, the local rule would mandate the property belonged to the bankruptcy estate. Pet. App. 45a-46a.

In turn, the District Court relied on this supposed local rule to say that because Baroni did not submit an order vesting property in her, she was stuck with the presumption under the rule that her property became property of the estate. Pet. App. 45a-46a. But the 2013 version of Local Rule 3020-1, in effect when the plan was approved, did not contain this language. Subdivision (d) of the 2013 rule dealt with final decrees, not vesting of property. Subdivision (b) concerned status reports on steps taken to implement the Chapter 11 plan. There was no presumption that the debtor's property vested in the bankruptcy estate.

This confusion points out the dangers of allowing local bankruptcy rules to override clear statutes. Again, uniform bankruptcy rules will be threatened. Certiorari should be granted to eliminate this possibility.

CONCLUSION

For these reasons, appellant and debtor ALLANA BARONI respectfully requests that the Court grant her petition for a writ of certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED JUNE 8, 2022

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21-55076, No. 21-55150

IN RE ALLANA BARONI,

Debtor,

ALLANA BARONI,

Appellant,

v.

DAVID SEROR, CHAPTER 7 TRUSTEE,

Appellee.

ALLANA BARONI,

Appellant,

v.

DAVID SEROR, CHAPTER 7 TRUSTEE; BANK OF NEW YORK MELLON; WELLS FARGO BANK, N.A., AS TRUSTEE FOR STRUCTURED ADJUSTABLE RATE MORTGAGE LOAN TRUST

Appendix A

MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-17,

Appellees,

v.

NATIONSTAR MORTGAGE LLC,

Movant.

Appeal from the United States District Court for the Central District of California. D.C. No. 2:20-cv-04338-MWF, D.C. No. 2:19-cv-07548-MWF. Michael W. Fitzgerald, District Judge, Presiding.

December 7, 2021, Argued and Submitted, Pasadena, California
June 8, 2022, Filed

Before: Paul J. Kelly, Jr.,* Milan D. Smith, Jr., and Danielle J. Forrest, Circuit Judges.

Opinion by Judge Forrest

OPINION

FORREST, Circuit Judge:

* The Honorable Paul J. Kelly, Jr., United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

Appendix A

Appellant Allana Baroni defaulted under her Chapter 11 bankruptcy plan by refusing to pay Appellee Bank of New York Mellon[1] (Bank of NYM) after she lost her adversary proceeding challenging the bank's secured claim. This was not the first time that Baroni had refused to pay a secured creditor as required under her plan. As a result, the bankruptcy court granted Bank of NYM's motion to convert the bankruptcy case from Chapter 11 to Chapter 7 and ordered Baroni to turn over undistributed assets in her possession to the Chapter 7 bankruptcy estate. Baroni challenged these two decisions in separate appeals. We have jurisdiction under 28 U.S.C. § 158(d), and we affirm both orders.

I. BACKGROUND

A. Baroni files for bankruptcy

Baroni filed for bankruptcy after defaulting on several mortgage loans that she received to purchase rental properties. She initially filed under Chapter 13, but her case was converted to Chapter 11. Bank of NYM and Wells Fargo,[2] which is not a party in these appeals, filed several proofs of claim asserting secured claims

1. Bank of NYM's full name of record is "The Bank of New York Mellon f/k/a The Bank of New York, as Successor Trustee to JP Morgan Chase Bank, N.A., as Trustee for the Holders of SAMI II Trust 2006-AR6, Mortgage Pass Through Certificates, Series 2006-AR6."

2. Wells Fargo's full name is "Wells Fargo Bank, N.A. As Trustee For Structured Adjustable Rate Mortgage Loan Trust Mortgage Pass-Through Certificates, Series 2005-17."

based on the deeds of trust that Baroni signed. Baroni disputed these secured claims asserting that Bank of NYM and Wells Fargo were not authorized to enforce her loan obligations for various reasons. Consequently, she proposed a Chapter 11 plan (Plan) that would allow her to continue renting the properties and to make her loan payments into separate Reserve Accounts while she pursued adversary proceedings against Bank of NYM and Wells Fargo. Under the terms of her Plan, if her challenges failed and these creditors' secured claims were allowed, she was required to transfer the funds held in the relevant Reserve Account "within 10 business days of entry of an order identifying the allowed claim holder" and to make all future loan payments directly to the lender. But if a lender's claim was disallowed, the relevant reserve funds would revert to Baroni. The bankruptcy court confirmed Baroni's proposed Chapter 11 Plan over objection from creditors.

B. Baroni challenges Bank of NYM's secured claim

Baroni began making her installment payments into the Reserve Accounts and initiated adversary proceedings against Bank of NYM and Wells Fargo challenging their secured claims. Three years later, Baroni lost her challenge against Wells Fargo. That is when the trouble that led to this litigation started. Despite the Plan requirement that she transfer to Wells Fargo the funds in the Reserve Account associated with its loan and start making her loan payments directly to Wells Fargo, she refused. In response, Wells Fargo moved to convert

Baroni's bankruptcy case to Chapter 7 so that a trustee would be appointed to preserve and administer the estate and ensure ongoing payments were made. After several hearings, Baroni ultimately paid Wells Fargo as required, and the bankruptcy court denied Wells Fargo's conversion motion as moot.

A year later, Baroni also lost her adversary proceeding against Bank of NYM when the bankruptcy court determined that Bank of NYM was the holder of Baroni's promissory note and was authorized to enforce her loan contract. Once again, Baroni refused to transfer the reserve funds to Bank of NYM or to start making loan payments directly to the bank.

As justification for her refusal to comply with the Plan, Baroni stated that she and her husband had each received a 1099-C from the Internal Revenue Service (IRS) indicating that a company named Specialized Loan Services had written off $305,977.12 of the subject loan balance. Baroni contends that because both her and her husband received a 1099-C, her loan was reduced by a total of $611,954.24 and that Bank of NYM had not properly calculated her remaining balance. She demanded that Bank of NYM explain the impact of the write-off before she would transfer the Reserve Account funds. After making multiple requests for Baroni to provide a copy of the 1099-Cs, Bank of NYM explained that only $305,977.12 was written off the loan balance after part of the balance was rendered unsecured under the bankruptcy Plan, and the bank continued to insist that Baroni transfer the Reserve Account funds. Baroni did

not accept this explanation and refused to make payment until the 1099-C issue was "resolved."

C. Bank of NYM moves to convert to Chapter 7

After a few months of back and forth without resolution, Bank of NYM filed its own conversion motion asking for Baroni's case to be converted to Chapter 7. This motion was filed approximately six months after the Plan required Baroni to transfer the reserve funds to Bank of NYM. The bankruptcy court held a hearing and granted this motion, concluding that Baroni had materially defaulted under the Plan by refusing to transfer the reserve funds to Bank of NYM and by not making her ongoing loan payments directly to the bank.

Baroni moved for reconsideration arguing that she could cure her default immediately. She also argued for the first time that Bank of NYM failed to give proper notice of its conversion motion to all creditors. The bankruptcy court denied her motion for reconsideration. Baroni appealed to the district court, which affirmed the bankruptcy court.

D. Baroni refuses to turn over assets to the bankruptcy estate

After Baroni's case was converted to Chapter 7, the Chapter 7 Trustee requested that Baroni transfer all Reserve Account funds to the bankruptcy estate. The Trustee also requested turnover of the sale proceeds from the rental property for which Wells Fargo had submitted

a secured claim and the rental proceeds from the rental property for which Bank of NYM submitted a secured claim. Baroni transferred the Reserve Account funds (while also protesting that the funds were not part of the Chapter 7 estate) but refused to transfer the rental and sale proceeds, arguing that they were not part of the bankruptcy estate because these assets revested in her when her Chapter 11 Plan was confirmed. The Trustee filed a motion for turnover of these assets.

The bankruptcy court determined that neither the Plan nor the Bankruptcy Code addressed what would happen to the assets of the Chapter 11 estate upon conversion to Chapter 7 after plan confirmation. Therefore, the bankruptcy court held that the Local Bankruptcy Rules for the Central District of California applied by default, which provided that unadministered assets revert to the bankruptcy estate upon conversion unless the plan provides otherwise.

The bankruptcy court also rejected Baroni's argument that the sale and rental proceeds were not property of the bankruptcy estate under our caselaw. Specifically, the bankruptcy court held that *Pioneer Liquidating Corp. v. United States Trustee (In re Consol. Pioneer Mortg. Entities)*, 264 F.3d 803 (9th Cir. 2001), established that unadministered property of a confirmed Chapter 11 plan revests in the Chapter 7 estate upon conversion if (1) the "plan provides for the distribution of future proceeds of an asset to creditors" and (2) "the bankruptcy court retains broad powers to supervise the implementation of the plan." The bankruptcy court found that the Plan contemplated

Baroni would pay future rent proceeds to her creditors and required the bankruptcy court to oversee implementation of its provisions. Consequently, it held that the assets passed into the Chapter 7 estate upon conversion.

On appeal, the district court disagreed with the bankruptcy court's analysis of *Pioneer* but affirmed its decision requiring Baroni to turn over the subject assets to the Chapter 7 estate under Local Rule 3020-1.

II. DISCUSSION

"We independently review the bankruptcy court's decision and do not give deference to the district court's determinations." *Saxman v. Educ. Credit Mgmt. Corp. (In re Saxman)*, 325 F.3d 1168, 1172 (9th Cir. 2003) (citation omitted). We review the bankruptcy court's conclusions of law de novo, and its findings of fact for clear error. *Nichols v. Birdsell*, 491 F.3d 987, 989 (9th Cir. 2007).

As previously stated, Baroni filed two separate appeals. One challenging the bankruptcy court's order converting her Chapter 11 case into Chapter 7 for materially defaulting on the confirmed Chapter 11 plan (conversion appeal). And one challenging the bankruptcy court's order requiring that she turn over assets in her possession to the Chapter 7 Trustee so that they become part of the bankruptcy estate (turnover appeal). As these issues relate to each other, we address them together, analyzing the conversion order first and then the turnover order.

Appendix A

A. Chapter 7 Conversion

"The decision to convert [a] case to Chapter 7 is within the bankruptcy court's discretion." *Pioneer*, 264 F.3d at 806. We will reverse the bankruptcy court only if its decision was "based on an erroneous conclusion of law or when the record contains no evidence on which [the bankruptcy court] rationally could have based [its] decision." *Id.* at 806-07 (first alteration in original) (quoting *Benedor Corp. v. Conejo Enters., Inc. (In re Conejo Enters., Inc.)*, 96 F.3d 346, 351 (9th Cir. 1996)).

The standard for converting a Chapter 11 case to Chapter 7 is set out in 11 U.S.C. § 1112. This statute provides that the bankruptcy court "shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause." 11 U.S.C. § 1112(b)(1). However, even if cause is established, Section 1112(b)(2) prohibits a bankruptcy court from granting relief under Section 1112(b)(1) if the bankruptcy "court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, *and* the debtor or any other party in interest establishes [one of two enumerated circumstances]." *Id.* § 1112(b)(2) (emphasis added). Thus, depending on the arguments advanced by the parties, there are three primary inquiries: (1) whether cause exists for granting relief under Section 1112(b)(1); (2) whether granting relief is in the creditors' and the estate's best interests; and (3) if so, which form of relief best serves the creditors' and the estate's interests. We address each in turn.

Appendix A

1. Cause

We first address where the burden for establishing cause lies. Although the Ninth Circuit Bankruptcy Appellate Panel (BAP) has addressed this issue, *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 614 (B.A.P. 9th Cir. 2014) ("The movant bears the burden of establishing by a preponderance of the evidence that cause exists."), we have not. The parties here do not dispute that Bank of NYM, as the party seeking conversion, has the burden of establishing cause for granting conversion. And there is significant authority supporting this view. *See, e.g., Loop Corp. v. U.S. Tr.*, 379 F.3d 511, 517-18 (8th Cir. 2004); *In re Woodbrook Assocs.*, 19 F.3d 312, 317 (7th Cir. 1994); *In re Sullivan*, 522 B.R. at 614; *In re Rosenblum*, 609 B.R. 854, 863 (Bankr. D. Nev. 2019); 7 Alan J. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 1112.04[4] (16th ed. 2012) [hereinafter *Collier on Bankruptcy*]. We take this opportunity to likewise establish that the party seeking relief under Section 1112(b)(1) has the initial burden of persuasion to establish that cause exists for granting such relief. Establishing cause is not definitive, of course, because the statute makes clear that even where cause is established, the bankruptcy court must still consider the best interests of creditors and the estate. 11 U.S.C. § 1112(b). It is also well established that bankruptcy courts have broad discretion in deciding whether to grant relief under Section 1112(b)(1), even where cause is established. *Pioneer*, 264 F.3d at 806-07.

We now turn to whether cause was shown in this case. "Cause" is a defined term, and it includes a "material

default by the debtor with respect to a confirmed plan." 11 U.S.C. § 1112(b)(4)(N). The statute does not further define what constitutes a "material default," and we have not previously construed this term in the context of Section 1112(b). The Sixth Circuit has held that "[a] failure to make a payment required under the plan is a material default and is cause for dismissal." *AMC Mortg. Co. v. Tenn. Dep't of Rev. (In re AMC Mortg. Co., Inc.)*, 213 F.3d 917, 921 (6th Cir. 2000); *see also Collier on Bankruptcy* ¶ 1112.04[6][n] ("Although the Code does not define the term material, the failure to make payments when due under the plan can constitute a material default.").

Bankruptcy courts in the Ninth Circuit have followed this rule. *See, e.g., Kenny G Enters., LLC v. Casey (In re Kenny G Enters., LLC)*, No. BAP CC-13-1527, 2014 Bankr. LEXIS 3529, 2014 WL 4100429, at *13-14 (B.A.P. 9th Cir. Aug. 20, 2014) (unpublished) (holding that a "failure to pay creditors pursuant to the Plan certainly was" a material default constituting cause for conversion); *Warren v. Young (In re Warren)*, No. BAP EC-14-1390, 2015 Bankr. LEXIS 1775, 2015 WL 3407244, at *5 (B.A.P. 9th Cir. May 28, 2015) (unpublished) (holding that "failure to make any payments to several unsecured creditors for more than four years in contravention of the Plan amounted to a material default and constituted cause to convert or dismiss the bankruptcy case"); *In re Red Door Lounge, Inc.*, 559 B.R. 728, 733 (Bankr. D. Mont. 2016) (failure to make monthly loan payments and pay property taxes was material default); *cf. Pryor v. U.S. Tr. (In re Pryor)*, No. 15-BK-19998, 2016 Bankr. LEXIS 4020, 2016 WL 6835372, at *8-9 (B.A.P. 9th Cir. Nov. 18, 2016) (unpublished) (failure

to make required quarterly fee payments to trustee was "cause for dismissal or conversion"). We agree with this view in principle.

One of the primary purposes of Chapter 11 is to allow a debtor facing financial hardships to continue business operations so that it "may be restructured to enable it to operate successfully in the future" because the business may be "more valuable" as a going concern than if it were liquidated. *U.S. v. Whiting Pools, Inc.*, 462 U.S. 198, 203, 103 S. Ct. 2309, 76 L. Ed. 2d 515 (1983). This purpose is reflected in Baroni's confirmed Plan that sought to restructure the debt underlying her troubled rental properties. And given the substantial effect that a confirmed Chapter 11 plan may have on creditors, an individual debtor generally may not receive a discharge under Chapter 11—even after a plan is confirmed—until the debtor has made all creditor payments contemplated in the confirmed Chapter 11 plan. 11 U.S.C. § 1141(d)(5)(A). Ensuring that payments to creditors are made is essential to effectuating the reorganization plan and accomplishing Chapter 11's policy objectives. Thus, we agree that failing to make required plan payments can be a material default of the plan, even if the debtor has made payments for an extended period before the default or taken other significant steps to perform the plan. *See Greenfield Drive Storage Park v. Cal. Para-Professional Servs., Inc. (In re Greenfield Drive Storage Park)*, 207 B.R. 913, 916-17 (B.A.P. 9th Cir. 1997) (finding material default where debtor ceased making plan payments after doing so for several years and rejecting debtor's argument that "there could be no material default because there was

a 'substantial consummation' under the plan"); *see also Warren*, 2015 Bankr. LEXIS 1775, 2015 WL 3407244, at *3, *5 (finding material default where debtors paid some but not all creditors and rejecting debtors' argument that they had "substantially complied with the payment terms of the Plan"); *Collier on Bankruptcy* ¶ 1112.04[6][n] ("[A] default may occur long after the plan becomes effective and long after substantial consummation.").

However, that does not mean that *every* missed payment is a material default. There can be situations, for example, where the defaulted payment or the period of default is so minimal in context that it cannot fairly be characterized as a *material* default. As a general matter, "material" means something that is "significant" or "essential." BLACK'S LAW DICTIONARY (11th ed. 2019). Furthermore, a Chapter 11 plan is "construed basically as a contract." *Hillis Motors, Inc. v. Haw. Auto. Dealers' Ass'n*, 997 F.2d 581, 588 (9th Cir. 1993). And under general contract principles, whether a breach is material depends on the "extent" of the deprivation from the benefit reasonably expected. Restatement (Second) of Contracts § 241 (Am. L. Inst. 1981). Therefore, factors relevant to determining whether missed payments are a material default of the plan include the number of missed payments, the number of aggrieved creditors, and how long the default occurred.

Here, Baroni's Plan required that if Bank of NYM's secured claim was allowed, she transfer the funds that she paid into the Reserve Account to Bank of NYM. The Plan also required that she start making her outstanding loan

payments directly to Bank of NYM. As the bankruptcy court found, Baroni's payment obligations to Bank of NYM were triggered under the Plan, at the latest, when Baroni exhausted her appellate remedies in her adversary proceeding. This means that when the bankruptcy court granted conversion, Baroni had been in default under the Plan for at least six months with a past due amount of "at least $200,000, if not more." This balance did not represent a single payment; it included *five years*' worth of installment payments paid into the Reserve Account, of which Bank of NYM had yet to see a dollar.

Baroni does not dispute that she failed to pay Bank of NYM as required under the Plan, but she argues that her failures were not "material" because she had "otherwise fully executed and performed [the] Plan" by making payments to other creditors and making payments into the Reserve Accounts while her adversary proceeding was pending. The bankruptcy court rejected this argument, and so do we. Even though Baroni properly performed other obligations imposed by the Plan, she defaulted on her obligations related to Bank of NYM's secured claim. And both the amount and the length of time of this default were significant. Therefore, we conclude that the bankruptcy court did not err in finding cause for conversion in this case.

2. Best Interests of the Creditors and the Estate

Before the bankruptcy court can grant conversion, it must consider whether this relief, as opposed to some other remedy, is in best interests of the creditors and the

estate. 11 U.S.C. § 1112(b)(1). And when raised, it must also consider whether there are unusual circumstances that indicate that the creditors' and the estate's interests are best served by not granting relief under Section 1112(b) and allowing the Chapter 11 proceeding to continue. *Id.* § 1112(b)(2). In analyzing these issues, the bankruptcy court "must consider the interests of *all* of the creditors." *Shulkin Hutton, Inc., P.S. v. Treiger (In re Owens)*, 552 F.3d 958, 961 (9th Cir. 2009) (citation omitted). Baroni has argued that there are unusual circumstances counseling against awarding Section 1112(b) relief. Therefore, we address that question first and then we address whether the form of relief the bankruptcy court granted was within its discretion.

a. Is any relief warranted?

The bankruptcy court may not grant relief if it "finds and specifically identifies unusual circumstances" establishing that granting Section 1112(b) relief "is not in the best interests of the creditors and the estate" and that the debtor's conduct triggering the request for relief was reasonably justified and curable within a reasonable time. 11 U.S.C. § 1112(b)(2). The BAP has reasoned that the term "unusual circumstance" "contemplates conditions that are not common in chapter 11 cases." *Mahmood v. Khatib (In re Mahmood)*, No. 15-BK-25281, 2017 Bankr. LEXIS 724, 2017 WL 1032569, at *8 (B.A.P. 9th Cir. Mar. 17, 2017) (unpublished) (quoting *In re Prod. Int'l Co.*, 395 B.R. 101, 109 (Bankr. D. Ariz. 2008)); *see also Collier on Bankruptcy* ¶ 1112.05[2] ("[T]he word 'unusual' contemplates facts that are not common to chapter 11

cases generally."). Accordingly, courts have held that difficulty making plan payments, disputes regarding the validity and amounts of claims, and other similar issues are not "unusual circumstances." *E.g., In re Mahmood*, 2017 Bankr. LEXIS 724, 2017 WL 1032569, at *8 ("[D]isputes over liens and their respective priority are not 'unusual circumstances.'"); *Green v. Howard Fam. Tr.* (*In re Green)*, No. BR 14-15981-ABL, 2016 Bankr. LEXIS 3963, 2016 WL 6699311, at *10-11 (B.A.P. 9th Cir. Nov. 9, 2016) (unpublished) (concluding existence of default judgment and "pending dischargeability actions or claim objections" are not unusual circumstances); *In re Wallace*, No. 09-20496-TLM, 2010 Bankr. LEXIS 261, 2010 WL 378351, at *7 (Bankr. D. Idaho Jan. 26, 2010) (unreported) (a "contentious dispute over a creditor's claim is not an unusual circumstance in a chapter 11 case"); *see also In re Fisher*, No. 07-61338-11, 2008 Bankr. LEXIS 1247, 2008 WL 1775123, at *5 (Bankr. D. Mont. Apr. 15, 2008) (unreported) (unusual circumstances are those that "demonstrate that the purposes of [C]hapter 11 would be better served by maintaining the case as a chapter 11 proceeding").

Conversely, courts have found that unusual circumstances counseling against granting relief exist where continuing the case in Chapter 11 will likely yield a higher recovery for creditors without the usual risks of failure associated with a Chapter 11 plan. *See, e.g., In re Orbit Petroleum, Inc.*, 395 B.R. 145, 149 (Bankr. D.N.M. 2008) (continuing in Chapter 11 would leave "[c] reditors and the estate . . . far better off" than dismissal or conversion because the proposed plan provided for a

significant capital infusion that would pay all creditors in full as of the effective date of the plan); *In re Costa Bonita Beach Resort Inc.*, 479 B.R. 14, 43 (Bankr. D.P.R. 2012) (unusual circumstances existed where Chapter 11 plan was more protective of unsecured creditors than other options); *In re Melendez Concrete Inc.*, 11-09-12334 JA, 2009 Bankr. LEXIS 2925, 2009 WL 2997920, at *7 (Bankr. D.N.M. Sept. 15, 2009) (unpublished) (finding unusual circumstances where debtor's assets were three times more valuable than its secured debt and various circumstances, including an economic recission, established that creditors were likely to recover more in Chapter 11 than liquidation).

We agree that circumstances inherently present in bankruptcy, such as disputes regarding the validity and amount of a creditor's claim, are not "unusual" for purposes of Section 1112(b)(2). To meet this standard, there must be something beyond the inherent financial pressures and adversarial differences involved in a bankruptcy case to establish that the purposes of Chapter 11 or the creditors' interests are better served by continuing under that chapter.

Baroni argues that the bankruptcy court should not have converted her case to Chapter 7 because her ability to immediately cure her default by paying the bank the Reserve Account funds was an unusual circumstance given the confusion caused by the two 1099-Cs that she and her husband received. Baroni misunderstands the law. The statute makes clear that the ability to cure a default is not itself an unusual circumstance because

unusual circumstances and the ability to cure are two separate aspects of what must be shown to establish that no Section 1112(b) relief should be granted even though cause for granting such relief was established. 11 U.S.C. § 1112(b)(2).

Moreover, Baroni's arguments as to why allowing her to immediately cure her default demonstrate only why granting relief was not in *her* best interests. But the ultimate question is the best interests of the *creditors and the estate. Id.; see Khan v. Rund (In re Khan)*, No. BAP CC-11-1542-HPAD, 2012 Bankr. LEXIS 2574, 2012 WL 2043074, at *8 (B.A.P. 9th Cir. June 6, 2012) (unpublished). She does not explain why allowing her to transfer the reserve funds, as she should have done long before, was in the best interests of the creditors or the estate, particularly where she had an ongoing payment obligation and a track record of not making payments voluntarily.

We note further that even if the asserted IRS form confusion was a unique circumstance, Baroni's reliance on this as justification for not paying Bank of NYM as required under the Plan is just a continuation of her challenge to the bank's secured claim, which she had already litigated unsuccessfully. And as the bankruptcy court noted, Baroni failed to raise her 1099-C argument until after she lost her adversary proceeding against Bank of NYM.

For these reasons, we conclude that the bankruptcy court did not abuse its discretion in concluding that Section 1112(b)(2)'s unusual-circumstances exception to granting relief does not apply.

b. Does conversion best serve the creditors and the estate?

Baroni also argues that the bankruptcy court did not adequately consider which remedy—dismissal or conversion—was warranted. We are unpersuaded. The bankruptcy court considered the effect of the administration fees that would be incurred under Chapter 7 and determined that they did not substantially detract from the estate. As for creditor interests, Bank of NYM and Wells Fargo specifically explained to the bankruptcy court during both the conversion hearing and the subsequent reconsideration hearing why they preferred to "take [their] chances with [a Chapter 7 trustee]" given the difficulties Baroni had created as a debtor-in-possession.[3] And while a court must consider the best interests of all creditors, *In re Owens*, 552 F.3d at 960-61, the bankruptcy court had no basis to find that any creditor received less in Chapter 7 than in Chapter 11.

First, no creditor objected to Bank of NYM's motion for conversion.[4] *See Renewable Energy, Inc. v. U.S. Tr.*

3. Baroni argues, and Bank of NYM admits, that conversion may not have been in the best interest of creditors if the assets and sale and rental proceeds at issue in the turnover order did not revest in the Chapter 7 estate, which is the issue raised in the second appeal. As we hold the assets did revest in the estate, we do not address this point.

4. Baroni argues that Bank of NYM failed to give proper notice of its conversion motion to post-petition, post-confirmation creditors. However, she did not raise this argument until her motion for reconsideration, and as a result the bankruptcy court deemed the

(In re Renewable Energy, Inc.), No. BAP WW-15-1089-KuJuTa, 2016 Bankr. LEXIS 4256, 2016 WL 7188656, at *5 (B.A.P. 9th Cir. Dec. 9, 2016) (unpublished) (finding no error in bankruptcy court decision to choose conversion over dismissal when no creditor objected). And second, the bankruptcy court determined that conversion would bring a quicker resolution because dismissal would require the creditors to freshly pursue their claims against Baroni who had "been litigating now for six years," longer than the five years contemplated in the Plan itself.[5] *See In re Red Door Lounge*, 559 B.R. at 737. Again, the record establishes that the bankruptcy court conducted the proper analysis in assessing which remedy to select, and we find no abuse of discretion in its decision to convert Baroni's case to Chapter 7.

For all these reasons, we affirm the bankruptcy court's order granting Bank of NYM's motion to convert Baroni's bankruptcy from Chapter 11 to Chapter 7.

B. Asset Turnover

In Baroni's second appeal, she challenges the bankruptcy court's order requiring her to turn over the

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issue waived. Even overlooking that Baroni did not directly appeal the bankruptcy court's order on reconsideration, a court "'does not abuse its discretion when it disregards legal arguments made for the first time' on a motion to alter or amend a judgment." *United Nat'l Ins. Co. v. Spectrum Worldwide, Inc.*, 555 F.3d 772, 780 (9th Cir. 2009) (quoting *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001)).

5. Indeed, Baroni had filed another adversary proceeding raising the 1099-C issues.

rent and sale proceeds from her rental properties to the Chapter 7 Trustee. Whether property is included in a bankruptcy estate is a question of law subject to de novo review. *Klein v. Anderson (In re Anderson)*, 988 F.3d 1211, 1213 (9th Cir. 2021) (per curiam). We also review issues of statutory interpretation de novo. *Connell v. Lima Corp.*, 988 F.3d 1089, 1097 (9th Cir. 2021).

We start with the bedrock principle that filing a bankruptcy petition creates a bankruptcy estate consisting of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Under Chapter 11, "the confirmation of a plan vests all of the property of the estate in the debtor" and "the property dealt with by the plan is free and clear of all claims and interests of creditors." *Id.* § 1141(b), (c); *see Hillis Motors*, 997 F.2d at 587. Baroni argues that when her Plan was confirmed, this vesting provision vested all property of the Chapter 11 estate in her, leaving the Chapter 11 estate terminated or empty. Consequently, when the bankruptcy court converted the case to Chapter 7, six years after the Plan was confirmed, the Chapter 7 estate had no assets.

The Bankruptcy Code is silent as to what constitutes the bankruptcy estate when a Chapter 11 case is converted to Chapter 7 after plan confirmation. Relying on our caselaw and the Central District of California's local bankruptcy rules, the bankruptcy court concluded that the undistributed rental property proceeds reverted to the bankruptcy estate upon conversion to Chapter 7. Because we conclude that our caselaw answers this question, we do not address the Central District's local bankruptcy rule.

Given Congress's silence, courts have varied in their approach to what happens with the bankruptcy estate upon conversion from Chapter 11 to Chapter 7. *See, e.g.*, *Hagan v. Hughes (In re Hughes)*, 279 B.R. 826, 829-30 (Bankr. S.D. Ill. 2002) (listing differing approaches); *In re Sundale, Ltd.*, 471 B.R. 300, 305-06 (Bankr. S.D. Fla. 2012) (same). We have addressed this issue and have emphasized that the vesting provisions in 11 U.S.C. § 1141 are "explicitly subject to the provisions of the plan." *Pioneer*, 264 F.3d at 807 (quoting *Hillis Motors*, 997 F.2d at 587). We have also made clear that the plan does not need to explicitly state that assets revest in a converted Chapter 7 estate for this to happen. *Pioneer*, 264 F.3d at 807.

Although not a conversion case, our decision in *Hillis Motors* is instructive. There, we analyzed whether estate property in a Chapter 11 case remained subject to the automatic stay after confirmation in the context of determining whether a stay violation had occurred. *Hillis Motors*, 997 F.2d at 586-89. We concluded that there was a post-confirmation estate, the assets at issue were part of the estate, and the assets were subject to the stay due to several "atypical" provisions in the plan. *Id.* at 589-90. For example, the plan required payment of post-confirmation profits into the estate for later distribution; it protected the estate from post-confirmation claims through a post-confirmation stay; it contemplated that any debt discharge would occur in the future; and it required that the debtor's business be "conducted under court supervision via the trustee until all . . . creditors were paid," depriving the debtor of the freedom "to deal with its property and the

world as it would have been [able to] if it had not been subject to the jurisdiction of the bankruptcy court." *Id.* at 587-90. Together, these provisions indicated that "[a]lthough there was a confirmed plan, the reorganization process continued post-confirmation." *Id.* at 589. Thus the "language, purposes, and context" of the plan caused the property to remain part of the estate and thus protected by the stay, post-confirmation because the property "did not revest in the debtor at confirmation." *Id.* at 590.

Subsequent cases addressing conversion have relied on *Hillis Motors*. In *Pioneer*, several beneficiaries of a confirmed Chapter 11 plan complained that a liquidation corporation, formed under the plan to take "possession of and liquidate[] property of a debtor for distribution to creditors," was producing insufficient proceeds and refusing to provide financial information. 264 F.3d at 804-08. The bankruptcy court converted the case to Chapter 7 and held, despite plan confirmation, that the unadministered assets had revested in the Chapter 7 estate. *Id.* at 806. The BAP affirmed.

On appeal to this court, the debtor argued that "the Chapter 11 estate vanished upon confirmation," and thus "no estate existed to be converted to Chapter 7 for administration by a Chapter 7 trustee." *Id.* at 807. We rejected this argument, holding that "[u]nder these circumstances" the "language and purpose of the [plan] demonstrate[d] that assets that vested in [the liquidation corporation] upon confirmation revested in the estate when the bankruptcy court converted the case to Chapter 7." *Id.* at 807-08. Citing *Hillis Motors*, we reasoned that

although the plan did not expressly contemplate the effect of conversion, it "(1) contain[ed] explicit provisions regarding the distribution of liquidation proceeds to the [creditors], the plan's primary beneficiaries, and (2) g[ave] the bankruptcy court broad powers to oversee implementation of the plan." *Id.* at 807. Thus, the "assets held by [the liquidation corporation] for the benefit of the [plan beneficiaries] bec[a]me assets of the estate upon conversion to Chapter 7." *Id.* at 808.

Based on this authority, the BAP has applied the so-called "two prongs" of *Pioneer* in determining whether assets revest in the Chapter 7 estate upon conversion: (1) whether there is "an explicit provision regarding the distribution of future proceeds of an asset to creditors," and (2) whether the plan retains "broad powers in the bankruptcy court to oversee implementation of the plan." *Captain Blythers, Inc. v. Thompson* (*In re Captain Blythers, Inc.)*, 311 B.R. 530, 535-36 (B.A.P. 9th Cir. 2004); *see United States v. Villalobos (In re Villalobos)*, No. BAP NV-13-1179, 2014 Bankr. LEXIS 978, 2014 WL 930495, at *8-9 (B.A.P. 9th Cir. Mar. 10, 2014) (unpublished). *Pioneer* does not create "prongs," or separate elements that are necessary to a finding that assets revest in a Chapter 7 estate. This analysis derives from *Hillis Motors*, which found myriad plan provisions indicated that "the reorganization process continued post-confirmation" and thus the property "did not revest in the debtor at confirmation." *Hillis Motors*, 997 F.2d at 589-90.

The central question is whether the Plan's "language, purposes, and context" changed the effect of the general

vesting provisions in 11 U.S.C. § 1141 after conversion to Chapter 7. *Id.* at 590. This was the question presented in *Pioneer*, where we considered the "prongs" as just two "circumstances" in determining the plan's purpose and requirements. 264 F.3d at 808. *Pioneer* did not limit courts to considering only these two "circumstances" when deciding whether assets revest in a Chapter 7 estate after conversion. *See id.* Thus, we clarify that a bankruptcy court should undertake a holistic analysis of the plan to determine whether its provisions deviate from the default vesting rule in 11 U.S.C. § 1141(b).[6] *Hillis Motors*, 997 F.2d at 590; *Pioneer*, 264 F.3d at 808.

Turning to the language, purposes, and context of Baroni's Plan, it has no express provision dealing with post-confirmation conversion and states that confirmation of the Plan "vests all property of the estate in the Debtor" and that Baroni "will retain all assets." Indeed, Baroni points out that, under the terms of the Plan, she was able to rent out the properties as she saw fit. But that is only one piece of the analysis.

The Plan also provides that Baroni's rental properties were subject to disputed proofs of claim which, at plan confirmation, remained unresolved and required resolution by the bankruptcy court before any type of distribution could happen. The Plan required Baroni to make regular installment payments into Reserve Accounts which would

6. Indeed, as the BAP has reasoned, the second so-called "prong" may not add much to the analysis anyway, as the bankruptcy court's ongoing jurisdiction is likely satisfied in most Chapter 11 cases. *In re Captain Blythers*, 311 B.R. at 535.

revert to her creditors if her challenges to their claims were unsuccessful. Furthermore, a significant portion of the future Plan payments came from the "monthly rental income [Baroni] receive[s] from the rental properties," which was a "source[] of money earmarked to pay creditors." The "Future Financial Outlook" section of the Plan has several paragraphs discussing the properties and how they were intended to assist in paying for the Plan, and the Plan describes each property in detail including how much rent each was generating. Taken together, these provisions do not establish that Baroni received the properties "free and clear of all claims and interest of creditors" at confirmation, as would be the case under the general vesting provisions in 11 U.S.C. § 1141. Instead, the income from the properties remained subject to the Plan because the premise of the Plan was to pay creditors with the ongoing income stream from the rental properties. This was how the Plan accomplished the Chapter 11 reorganization.

Baroni disputes this reading of the Plan and asserts that the Plan gave her creditors the right to foreclose on their liens against the rental properties when she defaulted on her Plan payments, which she argues indicates that the Plan did not contemplate future distributions. This argument is not persuasive. The Plan prohibited Baroni's creditors from enforcing their "pre-petition claims against the Debtor or the Debtor's property until the date the Debtor receives a discharge." This means that the Plan required Baroni's creditors to return to bankruptcy court to seek relief from the stay before taking any enforcement action against Baroni. That the Plan provided ongoing

stay benefits indicates that the assets did not revest in Baroni at plan confirmation because those assets were still subject to litigation; otherwise, she would not need ongoing stay protection. *See Hillis Motors*, 997 F.2d at 589-90 (holding because the debtor remained protected by the automatic stay during administration of the plan, her assets remained in the estate). To hold that the unadministered rent and sale proceeds did not revest in the bankruptcy estate upon conversion to Chapter 7 would frustrate the intent of the Plan and is contrary to many of its provisions.

III. CONCLUSION

We find no error in the bankruptcy court's order at issue in *Baroni v. Seror*, No. 21-55150, which concluded that Baroni's failure to comply with the payment terms set out in her Plan was a material default and that conversion of her case from Chapter 11 to Chapter 7 was warranted. Likewise, we find no error in the bankruptcy court's turnover order at issue in *Baroni v. Seror*, No. 21-55076, which required Baroni to turn over the undistributed proceeds from the sale and rental of the rental properties to the Chapter 7 Trustee.[7]

AFFIRMED.

7. The stay pending appeal entered in this case is lifted.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION, DATED JANUARY 25, 2021

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

CASE NO. CV 20-4338 MWF

IN RE: ALLANA BARONI

ORDER RE: APPEAL FROM THE UNITED STATES BANKRUPTCY COURT'S TURNOVER ORDER

Before the Court is an appeal from the United States Bankruptcy Court (the Honorable Marin R. Barash, United States Bankruptcy Judge). Appellant Alanna Baroni appeals the Bankruptcy Court's Order directing her to turn over certain property to the Trustee of the estate (the "Turnover Order"). The Turnover Order was issued on March 31, 2020. (*See* Docket No. 1).

Alanna Baroni submitted her Opening Brief ("OB") on August 6, 2020. (Docket No. 18). On September 8, 2020, Appellee David Seror, Chapter 7 Trustee, submitted his Brief ("AB"). (Docket No. 21). On October 5, 2020, Appellant submitted her Reply Brief ("RB"). (Docket No. 22).

The Court has read and considered the papers filed in this appeal, and held a telephonic hearing on January

19, 2021, pursuant to General Order 20-09 arising from the COVID-19 pandemic.

The Turnover Order is **AFFIRMED**. The Bankruptcy Court did not err in determining that property which had revested in Appellant upon confirmation of the chapter 11 Plan revested in the estate upon conversion to chapter 7.

I. BACKGROUND

A. The Bankruptcy Case and the Chapter 11 Plan

Appellant's Second Amended Chapter 11 Plan of Reorganization (the "Plan") was confirmed by the Bankruptcy Court on April 15, 2013. (ER 101-144). Prior to filing for bankruptcy, Appellant owned four real properties, including her residence (the "Calabasas Property") and three rental properties: the Henderson Property, the Carmel Property, and the Camarillo Property (collectively, the "Rental Properties"). (ER 110). Due to an economic downturn, Appellant was forced to lower the rent for each of the Rental Properties, which resulted in insufficient income for Appellant to cover the mortgages on the respective properties. (ER 109). One of the goals of the Plan was to allow Appellant to restructure secured debt on the Rental Properties so that the rental income could service the debt and cover HOA dues, property taxes, insurance and other maintenance expenses. (ER 110).

The Plan bifurcated the claims of secured lienholders, and provided that each lienholder would retain a secured

claim in the amount of the value of the property, and an unsecured claim for the balance. (ER 117-18). Appellant was to continue leasing the Rental Properties and use the rental income to pay creditors. (ER 109, 113). The other two sources of money "earmarked" to pay creditors were earnings from personal services performed by Appellant and a portion of cash on hand. (ER 113). Debtor was to manage her own business and financial affairs, including creating, maintaining, and administering accounts described in the Plan, and distributing money to allowed claim holders. (ER 138).

Under a section entitled "Assets and Liabilities of the Estate," the Plan provides:

> The identity and fair market value of the estate's assets are listed in Exhibit "3" so that the reader can assess what assets are at least theoretically available to satisfy claims and to evaluate the overall worth of the bankruptcy estate. Whether the Plan proposes to sell any of these assets is discussed in **Section XVII**.

(ER 135). Section XVII, entitled "Sale or Transfer of Property; Assumption of Contracts and Leases; Other Provisions," provides in part:

> Debtor will retain all assets and assume all executor [sic] contracts and unexpired leases. Debtor is not in default of any executory contract or unexpired lease and therefore no cure payments are required.

(ER 140). Section XX, entitled "Effect of Confirmation of Plan," provides:

> The provisions of a confirmed Plan bind the Debtor, any entity acquiring property under the Plan, and any creditor, interest holder, or general partner of the Debtor, even those who do not vote to accept the Plan. The confirmation of the Plan vests all property of the estate in the Debtor. The automatic stay is lifted upon confirmation as to property of the estate. However, the stay continues to prohibit collection or enforcement of pre-petition claims against the Debtor or the Debtor's property until the date the Debtor receives a discharge, if any. If the Debtor does not seek a discharge, the discharge is deemed denied, and the stay as to the Debtor and the Debtor's property terminates upon entry of the order confirming the Plan.

(ER 141-42).

On March 26, 2019, Appellant sold the Henderson Property for $315,078.12 (the "Sale Proceeds"). (ER 482).

On March 11, 2019, the secured creditor for the Camarillo Property, the Bank of New York Mellon ("BoNYM") moved to convert or dismiss Appellant's case to one under chapter 7, asserting that Appellant had materially defaulted under the Plan by failing to disburse funds held in a reserve account to BoNYM, as the Plan

required. (Bk. Docket No. 949). The Bankruptcy Court issued an order granting the motion to convert on April 29, 2019. (Bk. Docket No. 967). On April 30, 2019, Appellee David Seror was appointed as the chapter 7 Trustee. (Bk. Docket No. 968).

B. The Turnover Order

Appellant filed the instant appeal of the Conversion Order.

On June 26, 2019, the Trustee filed a motion for turnover, seeking entry of a court order directing Appellant to turn over to the Trustee all property of the estate, including, (a) the Sale Proceeds from the recent Henderson Property sale, (b) the rent proceeds from the Camarillo and Carmel Properties (the "Rental Proceeds"), and (c) a 1955 Ford Thunderbird (the "Turnover Motion"). (ER 1-24). Trustee's request for the Thunderbird was subsequently withdrawn. (ER 483).

Appellant opposed the Turnover Motion, asserting that no property remained in the estate under the terms of the confirmed Plan, and therefore, no property should be turned over to the Trustee. (ER 25-151). After ordering supplemental briefing and holding two hearings on the issue, the Bankruptcy Court granted the Turnover Motion, and issued the Turnover Order on March 31, 2020. (ER 474-87).

In the Turnover Order, the Bankruptcy Court acknowledged that, in the absence of a specific term in a

chapter 11 plan, the Bankruptcy Code does not address what happens to the property of an estate revested in a chapter 11 debtor pursuant to a confirmed plan if there is a post-confirmation conversion to chapter 7. (ER 483) (citing *Cobalis Corp. v. YA Global Invest., L.P. (In re Cobalis Corp.)*, 517 B.R. 169, 173 (C.D. Cal. 2014); *Captain Blythers, Inc. v. Thompson (In re Captain Blythers, Inc.)*, 311 B.R. 530, 535 (B.A.P. 9th Cir. 2004) *aff'd* 182 Fed. App'x 708 (9th Cir. 2006)). The Bankruptcy Court also acknowledged that this was the situation here, as Appellant's Plan did not address what happens to property dealt with in the Plan upon a post-confirmation conversion to chapter 7. (ER 482).

The Bankruptcy Court looked to two sources to fill the gap in the Plan's terms. First, it cited Local Bankruptcy Rule 3020-1(d), which provides that:

> the property of the reorganized debtor . . . that has not been distributed under the plan shall be vested in the chapter 7 estate, except for property that would have been excluded from the estate if this case had always been one under chapter 7.

(ER 484-85) (citing Local Bankruptcy Rule 3020-1(d); *In re Kenny G Enter., LLC*, 2014 WL 4100429, *13 (B.A.P. 9th Cir., Aug. 20, 2014)). The Bankruptcy Court incorporated Local Bankruptcy Rule 3020-1(d) into the Plan. (ER 485). Second, the Bankruptcy Court cited *In re Consolidated Pioneer Mortgage Entities ("Pioneer")*, 264 F.3d 803, 807 (9th Cir. 2001) for the proposition that a debtor's property

revests into the chapter 7 estate upon post-confirmation conversion where (1) the plan provides for the distribution of future proceeds of an asset to creditors; and (2) the bankruptcy court retains broad powers to supervise the implementation of the plan. (ER 484).

The Bankruptcy Court determined that the Plan satisfied both *Pioneer* conditions. (ER 485). First, it found that the Plan provided for the distribution of future proceeds of assets to creditors. In support, the Bankruptcy Court referenced the provisions of the Plan which provided that (a) the rental proceeds were one of three sources of money "earmarked to pay creditors," and (b) if a surplus arose from the disallowance of unsecured claims, Debtor was required to distribute the surplus funds to holders of allowed unsecured claims until the claims were paid in full, before reverting back to Debtor. (ER 481). Second, the Bankruptcy Court found that it retained broad power to oversee the implementation of the Plan, including (a) resolving disputed secured and unsecured claims, (b) potentially granting relief from the automatic stay which continued post-confirmation, (c) determining whether conditions for Debtor's discharge have been met, and (d) holding exclusive jurisdiction over matters related to the Plan prior to entry of a final decree, after which relief could be sought in a state court of general jurisdiction. (ER 479-81, 485).

Drawing upon these two sources to interpret the Plan, the Bankruptcy Court held that the Camarillo Property (and the rents derived therefrom), the Carmel Property (and the rents derived therefrom), and the sale proceeds

from the Henderson Property, all vested in the chapter 7 estate upon conversion. (ER 482-83, 485). The Bankruptcy Court ordered Appellant to turn this property over to the Trustee. (ER 485).

Appellant filed the instant appeal of the Turnover Order.

II. STANDARD OF REVIEW

The Court has jurisdiction to hear appeals from final judgments, orders, and decrees of the bankruptcy court. 28 U.S.C. § 158(a). When considering an appeal from the bankruptcy court, a district court uses the same standard of review that a circuit would use in reviewing a decision of a district court. *See In re Baroff*, 105 F.3d 439, 441 (9th Cir. 1997). The Court reviews *de novo* the Bankruptcy Court's conclusions of law and reviews for clear error the Bankruptcy Court's findings of fact. *See In re Int'l Fibercom, Inc.*, 503 F.3d 933, 940 (9th Cir. 2007).

III. DISCUSSION

Appellant argues that the Turnover Order must be reversed because the terms of the Plan revested Appellant's property in her at the time of confirmation, which was not reversed and revested into the estate upon conversion to chapter 7. (OB 15-19).

"There is no Bankruptcy Code provision addressing what happens to the property of a debtor in a post-confirmation Chapter 7 conversion." *In re Cobalis Corp.*,

517 B.R. at 173 (C.D. Cal. 2014) (citing *In re Captain Blythers*, 311 B.R. at 535). Accordingly, "[u]nless the plan or confirmation order provides otherwise, postconfirmation conversion of a debtor's Chapter 11 case to Chapter 7 will not reverse the revesting of estate property in the debtor resulting from plan confirmation." Judge Judith K. Fitzgerald (Ret.) & Judge Mary F. Walrath, *The Rutter Group Practice Guide: Bankruptcy* (Nat. Ed.), Ch. 11-L., Consequences of Plan Confirmation [11:2058] (2020). "Thus, a Chapter 7 case *will generally not have any estate property to administer* upon postconfirmation conversion, because all estate property will have revested in the reorganized debtor upon confirmation." *Id.* (emphasis in original) (citing cases); *see also* 11 U.S.C. § 1141(b) (providing that property of the estate vests in the debtor upon plan confirmation "except as otherwise provided in the plan").

The Plan expressly provides that its confirmation "vest[ed] all property of the estate in the Debtor." (ER 142). The Plan is silent, however, about what happens to Debtor's revested property, if anything, in the event of conversion to chapter 7. The question, then, is how to interpret the Plan as to this issue.

A. The Plan's Language and Purpose

"A reorganization plan resembles a consent decree and therefore, should be construed basically as a contract." *Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n*, 997 F.2d 581, 588 (9th Cir. 1993) (citation omitted). "[S]tate law constitutes the federal rule of decision here and governs

[the Court's] interpretation of [Appellant's] plan." *Id.* (citation omitted). Under California law, "[t]he basic goal of contract interpretation is to give effect to the parties' mutual intent at the time of contracting." *Reilly v. Inquest Tech., Inc.*, 218 Cal. App. 4th 536, 554, 160 Cal. Rptr. 3d 236 (2013) (citations omitted). "Also, under California law, ambiguities in a contract are generally construed against the drafter." *In re Captain Blythers, Inc.*, 311 B.R. 530, 536 (B.A.P. 9th Cir. 2004), *aff'd*, 182 F. App'x 708 (9th Cir. 2006) (citing *Ponder v. Blue Cross of Southern California*, 145 Cal. App. 3d 709, 718, 193 Cal. Rptr. 632 (1983)).

The Ninth Circuit has recognized that even where a confirmed plan does not explicitly so provide, a debtor's assets will revest in the estate upon conversion where the "language and purpose" of the plan necessitate such a result. *See Pioneer*, 264 F.3d at 807-08 (citing *Hillis*, 997 F.2d at 589).

In *Hillis*, the Ninth Circuit confronted the issue of whether the debtor's corporate property revested in the debtor upon confirmation of the chapter 11 plan, where the plan's text provided no clear answer. 997 F.2d at 590. The *Hillis* court acknowledged that confirmation customarily revests the property in the estate of the debtor, discharges all dischargeable claims against the debtor, and lifts the automatic stay of acts against the debtor or its property, unless the plan provides otherwise. *Id.* at 589. However, the debtor's reorganization plan was atypical in many ways. Specifically, the trustee, acting as the bankruptcy court's representative, retained management and strict control over the debtor's business, and therefore, the

debtor "was not free to do what it pleased with its assets and property[.]" *Id.* In addition, the plan's clear purpose in permitting the continued operation of the business was to repay the company's creditors under the court's supervision, and only after the payment of all estate claims and expenses could the business operate "free and clear of judicial intervention." *Id.* The Ninth Circuit held that this extrinsic evidence "points directly towards the conclusion that [the debtor's] corporate property did not revest in the debtor at confirmation[,]" but remained part of the estate. *Id.* at 590.

In *Pioneer*, when six related entities filed chapter 11, Pioneer Liquidating Corporation ("PLC") was specifically "formed in a manner to implement and fulfill the purposes of the plan[,]" and therefore, was to take title to assets of all six estates, liquidate those assets, and use the liquidated funds to resolve and pay creditor and investor claims. 264 F.3d at 804-05. When the bankruptcy court thereafter converted the case to chapter 7, it ordered PLC to turn over all property of the estate. *Id.* at 806. PLC argued that confirmation of the plan had vested all property of the estate in PLC, and therefore, no estate existed to be converted to chapter 7. *Id.* at 807. The Ninth Circuit disagreed. It explained that "[a]lthough typically confirmation of a plan 'terminates the existence of the estate, reversion of property from the estate to the debtor upon confirmation contained in 11 U.S.C. § 1141(b) is explicitly subject to the provisions of the plan.'" *Id.* (quoting *Hillis*, 997 F.2d at 589) (internal alterations omitted).

Relying upon *Hillis*, the *Pioneer* court looked to the "language and purpose" of the plan. *Id.* Although the plan at issue "did not specifically provide that remaining assets would revest in the estate in the event of conversion," it did "(1) contain[] explicit provisions regarding the distribution of liquidation proceeds to the investors, the plan's primary beneficiaries; and (2) give[] the bankruptcy court broad powers to oversee implementation of the plan." *Id.* (citing *Hillis*, 997 F.2d at 589). The Ninth Circuit held that, "[u]nder these circumstances, assets held by PLC for the benefit of the investors become assets of the estate upon conversion to Chapter 7." *Id.* at 808.

Appellant contends that *Pioneer* actually supports her position because the plan in *Pioneer* specifically dedicated PLC's assets to creditors and strictly controlled PLC's use of the assets, whereas here, the Plan specifically dedicated all assets to Appellant, and in no way limited her ability to sell or otherwise use the assets, as would be expected if the assets belonged to the estate post-confirmation. (OR at 22-23). As an example, Appellant points to the fact that no one objected to or claimed that her post-confirmation sale of the Henderson Property was improper under the Plan. (*Id.* at 8). Appellee maintains that *Pioneer* is not materially distinguishable because the purpose of the Plan was to pay creditors with monthly rental income and the Bankruptcy Court retained broad jurisdiction over the implementation of the Plan. (AB at 8-15).

With respect to the first *Pioneer* factor, the Court agrees with Appellant that *Pioneer* is distinguishable in the sense that the debtor in that case, PLC, was a

liquidating entity created for the ***sole purpose*** of providing payments to creditors from the liquidation of its assets. (OB at 4). Whereas here, the Plan expressly provides for the distribution of the Rental Proceeds to the creditors, but not the liquidation of the Rental Properties. (*See* ER 109, 140). In addition, creditors were to be paid not only with the Rental Proceeds, but also with (a) earnings from services performed by an entity owned by Appellant, Baroni Enterprises, LLC, and (b) a portion of cash on hand as of the Effective Date. (ER 113).

While a purpose of the Plan certainly was to repay creditors (like any chapter 11 plan), an additional purpose was to assist Appellant in regaining financial control of her Real Properties and avoid foreclosure. (*See* ER 110 ("Debtor will seek to achieve through this Chapter 11 Plan what she attempted pre-petition — to restructure secured debt on rental properties so that the rental income can service the debt and cover HOA dues, property taxes, insurance, and other maintenance expenses."); ER 118 ("The goal of the restructure is to make each rental property cash flow positive. Currently the rent generated by each property is insufficient to cover the first mortgage on each property."). In fact, the Plan expressly contemplated that the Real Properties would not be sold but would be managed and retained by Appellant — even in the event that Appellant's revenue was insufficient to pay creditors. (ER 140 ("Debtor will retain all assets"); ER 139 (explaining that Appellant's cash on hand, which was being held for secured creditors, would "serve as a savings account for Debtor in the event of unexpected emergencies and to cover shortfalls in

Plan payments resulting therefrom or resulting from unforeseen circumstances that adversely affect Debtor's revenue"). And unlike in *Hillis*, the Bankruptcy Court did not manage or retain strict control over Appellant's rental properties. Although Appellant was to pay creditors with the Rental Proceeds, the Plan did not otherwise restrict Appellant from being "free to do what [she] pleased" with the Rental Properties. *See Hillis*, 997 F.2d at 589.

Interpreting the Plan in light of these express provisions, the Court cannot conclude that the Plan's intended purpose was to strip Appellant of her Real Properties and vest them in the chapter 7 estate upon conversion.

With respect to the second *Pioneer* prong, it appears that the Bankruptcy Court did retain broad powers to implement the Plan, including the ability to (a) resolve disputed secured and unsecured claims, (b) grant relief from the automatic stay which continued post-confirmation, (c) determine whether conditions for Debtor's discharge have been met, and (d) hold exclusive jurisdiction over matters related to the Plan prior to entry of a final decree. (ER 479-81, 485).

Nonetheless, as noted above, it appears that this criterion would be "easily satisfied" by most chapter 11 plans. *Captain Blythers*, 311 B.R. at 538 (explaining that "most confirmation orders and many plans explicitly provide for continued bankruptcy jurisdiction over various disputes arising from the plan," though noting that these provisions "are probably redundant" since jurisdiction is

not created "simply by including such a term in a plan or confirmation order") (quoting *Jacobson v. AEG Capital Corp.*, 50 F.3d 1493, 1501 (9th Cir. 1995)). Accordingly, "it is not evident that the requirement adds much to the revesting analysis." *Id.* (noting that the second *Pioneer* prong was "easily satisfied by the Plan here (and, in our experience, most others")).

At the hearing, the Trustee argued that *Pioneer* was his best case in support of his position. According to the Trustee, the Real Properties revested in the chapter 7 estate upon conversion because, under *Pioneer*, the purpose of the Plan was to resolve disputes with and pay secured creditors and the Bankruptcy Court retained jurisdiction over the heart of the Plan and ensure its implementation. (Hearing Tr. 21:13-23:4).

The problem with this argument is that when *Pioneer* is viewed with the high level of generality that the Trustee urges, *Pioneer*'s two-prong test is rendered effectively meaningless. Nearly every chapter 11 plan would fall within its scope and an analysis of any given plan's "language and purpose" would be all but unnecessary. Perhaps the Ninth Circuit intended *Pioneer* to apply this broadly, but without a published opinion making clear *Pioneer*'s vast applicability, the Court is unwilling to interpret it in such a way.

B. Default Rule: Local Bankruptcy Rule 3020-1

Local Bankruptcy Rule 3020-1(b) provides that every order confirming a chapter 11 plan must contain

express language specified in the rule which, in essence, solves the interpretive quandary at issue here by vesting all undistributed property under the chapter 11 plan to the chapter 7 estate upon conversion. *See* L.B.R. 3020-1(b) (specific language provided); *see* The Rutter Group, *California Practice Guide: Bankruptcy*, Ch. 11-L., Consequences of Plan Confirmation [11:2058] (2020) (referring to Local Bankruptcy Rule 3020-1(b) as providing "specific language for the confirmation order that addresses this problem"). The language provided in Local Bankruptcy Rule 3020-1(b) was not included in the Plan.

Local Bankruptcy Rule 3020-1(d) provides that, even where a chapter 11 plan does not include the express language in 3020-1(b),

> unless otherwise provided in the plan, if the case is converted to one under chapter 7, the property of the reorganized debtor . . . that has not been distributed under the plan shall be vested in the chapter 7 estate, except for property that would have been excluded from the estate if this case had always been one under chapter 7.

The Bankruptcy Court held that Local Bankruptcy Rule 3020-1(d) operated as a default plan provision, and vested in the chapter 7 estate Appellant's property that had not been distributed under the Plan, which included the Rental Properties, the Rental Proceeds, and the Sale Proceeds from the recent sale of the Henderson Property. (ER 485-46).

Appendix B

Appellant contends that Local Bankruptcy Rule 3020-1(d) is invalid to the extent that it purports to nullify provisions of the Bankruptcy Code, specifically, 11 U.S.C. § 1141(b), which provides that "[e]xcept 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," and section 1141(c), which provides that "except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor." (OB at 32-34). Appellant argues that interpreting Local Bankruptcy Rule 3020-1(d) to reverse the default rules created by §§ 1141(b) and (c) would impermissibly abridge and modify a substantive right in violation of the Rules Enabling Act. (*Id.* at 33) (citing 28 U.S.C. § 2075).

The Trustee contends that Local Bankruptcy Rule 3020-1(d) does not violate the Bankruptcy Code, but permissibly provides a default provision, since neither section 1141(b) nor section 1141(c) addresses what happens in a post-confirmation conversion situation. (AB 17-18).

At the hearing, Nationstar argued that Local Bankruptcy Rule 3020-1(d) does not impose a substantive rule, but creates a procedural requirement that, prior to confirmation, chapter 11 debtors must make an express decision as to what will happen to revested property in the event of conversion. (Hearing Tr. 29:3-19). Nationstar asserted that, because Appellant chose not to include an express provision in the Plan, Local Bankruptcy Rule 3020-1(d) permissibly provides a default rule. (*Id.*).

The Court is persuaded by Appellees' arguments that §§ 1141(b) and (c) should not be interpreted as conferring a substantive right on a debtor postconfirmation, since the sections are completely silent on the issue of conversion. Local Bankruptcy Rule 3020-1(d) cannot therefore be construed as altering or abridging a substantive right in violation of the Rules Enabling Act. The Local Rule permissibly applies a default provision to a situation which the Bankruptcy Code does not address.

Moreover, the Bankruptcy Code plainly allows parties to contract around the situation of post-confirmation conversion and create their own rules about what will happen. *See* U.S.C. § 1141(b) ("[e]xcept as otherwise provided in the plan or the order confirming the plan . . . "); § 1141(c) ("except as otherwise provided in the plan or in the order confirming the plan . . . "). Applying California principles of contract interpretation, the Local Rule can be viewed as admissible extrinsic evidence that helps gap-fill the Plan's silence as to what happens in the event of conversion. *See Burch v. Premier Homes, LLC*, 199 Cal. App. 4th 730, 743-44, 131 Cal. Rptr. 3d 855 (2011) ("It is well settled that, unless a court can to a certainty and with sureness by a mere reading of the document, determine which is the correct interpretation[,] extrinsic evidence becomes admissible as an aid to interpretation[.]") (internal alterations and citation omitted).

Courts may reference extrinsic evidence to ascertain "objective manifestations of the parties' intent" which demonstrate "the surrounding circumstances under which the parties negotiated or entered into the contract; the

object, nature and subject matter of the contract; and the subsequent conduct of the parties." *People v. Shelton*, 37 Cal. 4th 759, 767, 37 Cal. Rptr. 3d 354 (2006). "[A]s long as such evidence is not used to give the instrument a meaning to which it is not reasonably susceptible[,]" the extrinsic evidence is admissible to interpret the language of an agreement. *Morey v. Vannucci*, 64 Cal. App. 4th 904, 912, 75 Cal. Rptr. 2d 573 (1998).

As Nationstar argued, the Local Rule requires parties to a chapter 11 plan to address expressly in the plan what will happen to the debtor's property in the event of post-confirmation conversion. Appellant opted not to provide this express language. In light of these surrounding circumstances under which the parties entered into the Plan, the Plan's silence should be construed as evidence of the parties' objective intent to be bound by the Local Rule's default provision. Therefore, was not error for the Bankruptcy Court to conclude that the Plan revested Appellant's property in the chapter 7 estate upon conversion.

IV. CONCLUSION

For the reasons stated above, the Bankruptcy Court's Conversion Order is **AFFIRMED**. As noted on the docket, the stay of the sale by the Trustee of the real property located at 3435 Rio Road, Carmel, California, 93921, will expire today at 5:00 p.m. (*See* Docket No. 39). The stay is extended to **January 26, 2021**, at **5:00 p.m.** and will then dissolve without further order of the Court. Any further stay would have to be justified as a stay pending appeal to the Ninth Circuit.

IT IS SO ORDERED.

DATED: January 25, 2021

/s/ Michael W. Fitzgerald
MICHAEL W. FITZGERALD
United States District Judge

APPENDIX C — FINDINGS OF FACT OF THE UNITED STATES BANKRUPTCY COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, SAN FERNANDO VALLEY DIVISION, FILED MARCH 31, 2020

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION

Case No. 1:12-bk-10986-MB
Chapter 7

In re:

ALLANA BARONI,

Debtor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING ORDER GRANTING TRUSTEE'S TURNOVER MOTION

On April 29, 2019, this Court entered its order [Doc. #967] granting the motion of Bank of New York Mellon ("BONYM") to convert this case chapter 11 to chapter 7 of the Bankruptcy Code (the "Conversion Date"). On April 30, 2019, the United States Trustee filed its *Notice of Appointment of Trustee and Fixing of Bond; Acceptance of Appointment as Interim Trustee* [Doc. #968] pursuant to which David Seror was appointed as the chapter 7 Trustee of this case (the "Trustee"), in which capacity he continues to serve.

Appendix C

On June 26, 2019, the Trustee for the bankruptcy estate of debtor Allana Baroni (the "Debtor") filed his *Motion for Turnover of Property of the Estate, and (2) Order Compelling Debtor to Comply with Bankruptcy Rule 1019 and Local Bankruptcy Rules 2015-2(c) and 3020-1(d)* [Doc. #991] (the "Turnover Motion"). Pursuant to the Turnover Motion the Trustee sought entry of a Court order directing the Debtor (i) to turn over to the Trustee all property of the estate including, but not limited to, (a) the proceeds (the "Sale Proceeds") from the sale of the Henderson Property (defined below), (b) the rent proceeds (the "Rent Proceeds") from the Camarillo Property (defined below) and the Carmel Property (defined below), and (c) a 1955 Ford Thunderbird, and (ii) to otherwise comply with Rule 1019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Bankruptcy Rules 2015-2(c) and 3020-1(d) . The Debtor filed her opposition [Doc. #1004] (the "Opposition") to the Turnover Motion on July 3, 2019 pursuant to which she alleged the following: (i) none of the Debtor's property that vested in her pursuant to the Confirmation Order (defined below) is property of the chapter 7 estate, and (ii) her case should be dismissed[1] because the Debtor has very few unsecured creditors (and their claims can easily be satisfied) and secured creditors can pursue their rights under state law.

1. The Debtor filed her motion to dismiss [Doc. #989] (the "Motion to Dismiss") on June 25, 2019, which was heard at the same time as the Trustee's Turnover Motion. The Debtor's second argument for why this Court should deny the Turnover Motion mirrors the Debtor's assertions in the Motion to Dismiss.

Appendix C

The Court held an initial hearing on the Turnover Motion on July 17, 2019, pursuant to which the Court requested additional briefing from the Trustee and the Debtor on the issue of what is in the chapter 7 estate, if anything. The Court continued the hearing on the Turnover Motion and on the Motion to Dismiss to August 29, 2019 at 2:30 p.m. At the continued hearing, Jonathan Hayes and Matthew Resnik appeared on behalf of the Debtor. Susan Seflin and Jessica Bagdanov appeared on behalf of the Trustee. Justin Balser appeared on behalf of BONYM. Bernard Kornberg and Adam Barasch appeared on behalf of Nationstar and Wells Fargo. Greg Jones appeared on behalf of CIT Bank. After considering the Turnover Motion and all pleadings filed in support thereof and in opposition thereto and the record of this case, and the arguments of counsel, ~~and evaluating credibility,~~ the Court on August 30, 2019, entered its *Interim Order Directing Turnover of Property of the Estate* [Doc. #1057] (the "Interim Order") pursuant to which it granted in part the Turnover Motion on an interim basis as set forth in the Interim Order.

On October 7, 2019, the Court conducted a status conference to resolve the disputes between the Trustee and the Debtor regarding their respective proposed Findings of Fact and Conclusions of Law regarding the Turnover Motion. Among those disputes was the amount of the sales proceeds from the Henderson Property remaining as of the date this bankruptcy case converted to chapter 7. The Trustee asserted that amount was $315,078.12 and the Debtor asserted it was a lesser, unspecified, amount. The Court set an evidentiary hearing

for December 17, 2019, to resolve that issue, directed the parties to continue with discovery regarding the factual issues in dispute, and set a further briefing schedule in connection with the evidentiary hearing. Thereafter, the Debtor filed her *Comments re Trustee's Proposed Findings and Order Granting Motion for Turnover* [Doc. #1100] by which she withdrew her objection to the turnover amount of $315,078.12, rendering the evidentiary hearing unnecessary.

The Court hereby makes the following findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, made applicable here by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure:

I. FINDINGS OF FACT[2]

~~**Procedural Background of the Debtor's Bankruptcy Case**~~

A. The Debtor filed a voluntary petition [Doc. #1] on February 1, 2012 under chapter 13 of 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code").

B. On February 10, 2012, the Debtor filed a motion to convert [Doc. #10] her case to one under chapter 11 of the Bankruptcy Code.

2. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.

Appendix C

C. Property of the chapter 11 estate included, among other things, the following: (a) residential real estate located at 2240 Village Walk Drive Unit 2311, Henderson, Nevada 89052 (the "Henderson Property"); (b) residential real estate located at 3435 Rio Road, Carmel, California 92321 (the "Carmel Property"); (c) residential real estate located at 5390 Plata Rosa Court, Camarillo, California (the "Camarillo Property"); and (d) residential real estate located at 3339 Via Verde Ct., Calabasas, California 91302 (the "Calabasas Property" and collectively, with the Henderson Property, the Carmel Property and the Camarillo Property, the "Real Properties").

D. The Debtor filed her combined second amended disclosure statement and plan [Doc. #376] (the "Plan") on March 20, 2013. The Plan was confirmed by order entered on April 15, 2013 [Doc. #423] (the "Confirmation Order") on April 15, 2013.

E. This Court retained broad jurisdiction under the Plan, which required the Court to oversee implementation of the Plan in numerous ways:

a. Calculated as a percentage of the face amount of the secured claims, the Plan disputed 99% of the secured claims. Classes One, Two and Three consist of undisputed secured claims totaling ***$13,666***. Plan, §§ X.f, X.g, X.h. The remaining classes of secured claims are all disputed and total ***$5,544,841***: Class Four (treatment of Proof of Claim 3), Class Five (treatment of Proof of Claim 7), Class Six (treatment of Proof of

Claim 6), and Class Seven (treatment of Proof of Claim 10). Plan, §§ X.i, X.j, X.k, X.l. As such, distributions to 99% of the secured claims required resolution of the Debtor's objections to those claims by this Court. Debtor asserted those objections by filing six adversary proceedings: *Baroni v. Nationstar Mortgage, LLC*, 1:13-ap-01069-MB, *Baroni v. Green Tree Servicing, LLC, et al.*, 1:13-ap-01070-MB, *Baroni v. Wells Fargo, N.A.*, 1:13-ap-01071-MB, *Baroni v. The Bank of New York Mellon, etc.*, 1:13-ap-01072-MB, *Baroni v. OneWest Bank, FSB et al.* 1:13-ap-01249-MB and *Baroni v. Specialized Loan Servicing, LLC, et al.*, 1:19-ap-01037-MB (collectively, the "Adversary Proceedings"). Most of the Adversary Proceedings also assert affirmative claims for relief against the lenders and thus required liquidation of the Debtor's litigation claims by this Court. See Plan, Exhibit 2. The Plan provided that the Debtor would make payments into a reserve account pending litigation with the disputed secured creditors and, that "When a disputed priority, administrative, or secured claim becomes allowed, the Disbursing Agent will distribute to the holder thereof an amount equal to the amount in the Reserve Account held for such claimant, within 10 business days of entry of an order identifying the allowed claim holder." Plan, § X.c.

b. Calculated as a percentage of the face amount of the unsecured claims, the Plan disputed 97%

of the unsecured claims. Class Eight consists of undisputed unsecured claims totaling ***$27,388***. Plan, § X.m. Class Nine consists of disputed unsecured claims totaling ***$1,078,275***. Plan, § X.n. Distributions to 97% of the unsecured claims required resolution of the Debtor's objections to those claims. As Class Nine consists exclusively of the deficiency claims of the lenders in Classes Five, Six and Seven, and the wholly unsecured claim of the junior lienholder on the Henderson Property (Proof of Claim 4), Debtor's objections to those claims were to be litigated in the Adversary Proceedings filed in this Court. The Plan proposed to pay holders of allowed unsecured claims the total combined sum of $50,000, paid on a pro rata basis between claimants. Plan, §§ X.m and X.n.

c. The Plan vested all property of the estate in the Debtor and then expressly continued the automatic stay as to the Debtor's property until the date the Debtor received her discharge. Plan, § XX.a. The Plan also continued the automatic stay as to collection or enforcement of prepetition claims until the date the Debtor received her discharge. *Id.* Because the automatic stay continued post-confirmation, even as to property of the estate revested in the Debtor at confirmation, and because bankruptcy courts have exclusive jurisdiction to grant relief from the automatic stay, the Plan mandated this Court's oversight until entry of the Debtor's discharge.

See *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1082-83 (9th Cir. 2000).

d. Consistent with Bankruptcy Code section 1141(d)(5), the Plan delayed entry of the Debtor's discharge until completion of all payments under the Plan. Plan, § XX.b. Thus, this Court was required to determine whether the conditions for entry of the Debtor's discharge have been met.

e. The Plan expressly provided that relief relating to a Plan provision could only be sought in a state court of general jurisdiction *after* a final decree was entered and the bankruptcy case was closed, leaving this Court with exclusive jurisdiction over matters related to the Plan and its implementation prior to entry of a final decree. Plan, § XX.e.

F. The Plan included provisions providing that the property of the estate revested in the Debtor, to be administered first for the benefit of creditors:

a. The Plan provided that the Debtor would continue to lease the Henderson Property, the Carmel Property and the Camarillo Property (collectively, the "Rental Properties") during the five year term of the Plan and that income from the Rental Properties would be one of three "sources of money earmarked to pay creditors." Plan, §§ VII and IX.

b. The Plan provided that if a surplus arose from the disallowance of unsecured claims, the Debtor was required to distribute the surplus funds first to holders of allowed unsecured claims and any surplus would revert back to the Debtor only if such unsecured claims were paid in full. Plan, § X.c.

~~G. Under the Plan, the Debtor disputed certain claims, including those of creditors holding secured claims against the Real Properties. The Plan provided that the Debtor would make payments into a reserve account pending litigation with the disputed secured creditors and, that "When a disputed priority, administrative, or secured claim becomes allowed, the Disbursing Agent will distribute to the holder thereof an amount equal to the amount in the Reserve Account held for such claimant, within 10 business days of entry of an order identifying the allowed claim holder." Plan, § X.c.~~

~~H. Additionally under the Plan, the Debtor proposed to pay general unsecured creditors classified in Class 8 (undisputed general unsecured creditors) and Class 9 (disputed general unsecured claims of junior and stripped mortgage holders) the total combined sum of $50,000, paid on a pro rata basis between claimants. Plan, §§ X.m and X.n.~~

~~I. On March 11, 2019, the secured creditor for the Camarillo Property, Bank of New York Mellon ("BONY"), filed its Motion to Convert [Doc. #949] this case from one under chapter 11 of the Bankruptcy Code to one under~~

chapter 7. The Motion to Convert was granted orally by this Court at a hearing held on April 9, 2019. The order granting the Motion to Convert [Doc. #967] (the "Conversion Order") was entered on April 29, 2019.

J. On April 30, 2019, the United States Trustee filed its *Notice of Appointment of Trustee and Fixing of Bond; Acceptance of Appointment as Interim Trustee* [Doc. #968] pursuant to which David Seror was appointed as the chapter 7 Trustee of this case, in which capacity he continues to serve.

The Trustee's Turnover Motion

K. On June 26, 2019, the Trustee filed the Turnover Motion pursuant to which he sought entry of a Court order directing the Debtor (i) to turn over to the Trustee all property of the estate including, but not limited to, (a) the proceeds (the "Sale Proceeds") from the sale of the Henderson Property, (b) the rent proceeds (the "Rent Proceeds") from the Camarillo Property and the Carmel Property, and (c) a 1955 Ford Thunderbird, and (ii) to otherwise comply with Rule 1019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Bankruptcy Rules 2015-2(c) and 3020-1(d) .

L. The Debtor filed her opposition [Doc. #1004] (the "Opposition") to the Turnover Motion on July 3, 2019 pursuant to which she alleged the following: (i) none of the Debtor's property that vested in her pursuant to the Confirmation Order is property of the chapter 7 estate,

~~and (ii) her case should be dismissed[3] because the Debtor has very few unsecured creditors (and their claims can be easily satisfied) and secured creditors are left to their rights under state law.~~

~~M. The Court held an initial hearing on the Turnover Motion on July 17, 2019 pursuant to which the Court requested additional briefing from the Trustee and the Debtor on the issue of what is in the chapter 7 estate, if anything. The Court continued the hearing on the Turnover Motion and on the Motion to Dismiss to August 29, 2019 at 2:30 p.m.~~

~~N. On August 30, 2019, the Court entered its *Interim Order Directing Turnover of Property of the Estate* [Doc. #1057] (the "Interim Order") pursuant to which it granted the Turnover Motion on an interim basis as set forth in the Interim Order.~~

G. The Court finds that it has ~~had substantial~~ continuing jurisdiction over ~~the~~ property ~~of the estate that is~~ dealt with under ~~in~~ the Plan. *See* Transcript of Hearing, August 29, 2019 at 2:30 p.m. ("Hrg. Tr."), p. 59:13-18 and p. 64:14-15.

H. With respect to the Plan, the Court finds that (i) the Plan provided for the Debtor to make payments to

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3. The Debtor filed her motion to dismiss [Doc. #989] (the "Motion to Dismiss") on June 25, 2019, which was heard at the same time as the Trustee's Turnover Motion. The Debtor's second argument for why this Court should deny the Turnover Motion mirrors the Debtor's assertions in the Motion to Dismiss.

creditors from, among other things, rent proceeds from the Rental Properties; (ii) the Plan contemplated that the Debtor would not sell the Rental Properties during the term of the Plan; and (iii) the Rental Properties would continue to provide revenue to make payments under the Plan. Hrg. Tr., p. 58:21-25; p. 59:1-2 and p. 62:10-12.

I. The Court finds that the Plan did not address what happens to property dealt with in the Plan upon a post-confirmation conversion to chapter 7; therefore, Local Bankruptcy Rule 3020-1(d) operates as a default plan provision and requires that ~~controls~~ property of the Debtor "that has not been distributed under the plan shall be vested in the chapter 7 estate." Hrg. Tr., p. 60:1-21 and p. 61:1-5.

J. With respect to the Debtor's arguments that the Calabasas Property, the Camarillo Property and the Carmel Property are not property of the estate and that the Sale Proceeds are not property of the estate, the Court did not find the Debtor's arguments persuasive in light of the Ninth Circuit's decisions in *In re Consolidated Pioneer Mortgage Entities ("Pioneer")*, 264 F.3d 803 (9th Cir. 2001) and *Hillis Motors, Inc. v. Hawaii Audo. Dealers' Ass'n*, 997 F.2d 581, 589 (9th Cir. 1993), the decision of the Bankruptcy Appellate Panel in *Captain Blythers, Inc. v. Thompson (In re Captain Blythers, Inc.)*, 311 B.R. 530, 535 (B.A.P. 9th Cir. 2004) *aff'd* 182 Fed. Appx. 708 (9th Cir. 2006), the decision of the United States District Court for the Central District of California in *Cobalis Corp. v. YA Global Invest., L.P. (In re Cobalis Corp.)*, 517 B.R. 169, 174 (C.D. Cal. 2014), and in light of Local Bankruptcy

Rule 3020-1(d). Hrg. Tr., p. 70:19-25. The Court found the arguments and legal authorities provided by the Trustee persuasive on this point, and the Debtor did not meaningfully distinguish the facts of this case from those in *Pioneer*, or from those in the unpublished case of *In re Kenny G Enterprises, LLC,* 692 Fed. Appx. 950 (9th Cir. July 28, 2017).

K. The Court finds that the Calabasas Property, the Camarillo Property (and rents derived therefrom) and the Carmel Property (and the rents derived therefrom) are property of the chapter 7 estate. Hrg. Tr., p. 71: 6-8.

L. The Trustee provided evidence that the Debtor received $315,078.12 from the sale of the Henderson Property on March 26, 2019, which is prior to conversion of the case to chapter 7. Trustee's supplemental brief [Doc. #1032], Exhibit E and Declaration of David Seror ¶ 13. The Debtor did not dispute that fact. In her opposition to the Turnover Motion [Doc. #1004, p.11], the Debtor claimed that she spent certain of the Sale Proceeds on various expenses. Declaration of Allana Baroni [Doc. #1004] ¶ 7. Thereafter, on October 31, 2019, the Debtor filed her *Comments re Trustee's Proposed Findings and Order Granting Motion for Turnover* in which she stated "that she will withdraw her objection to the amount proposed by the Trustee, namely, $315,078.12." [Doc. 1100 at 2:8-9]. ~~While the Debtor states that she used the Sale Proceeds to make certain payments, there is no evidence in the record that, between the sale closing date and the Conversion Date, the Debtor spent the Sale Proceeds (although she may have spent them post-conversion, she~~

~~would not have been entitled to do so). Additionally, the Debtor's Amended Schedules [Doc. #1036] state under penalty of perjury that as of the Conversion Date, the Baroni Enterprises, Inc. corporate bank account held funds in excess of the Sale Proceeds.~~ Accordingly, upon conversion of the case, the entirety of the Sale Proceeds in the amount of $315,078.12 constituted property of the chapter 7 estate.

M. The Court finds that the Sale Proceeds from the sale of the Henderson Property were ~~are~~ property of the chapter 7 estate upon conversion and that the Debtor shall deliver such amount to the Trustee, i.e., $315,078.12. ~~the Henderson Sale Proceeds remaining as of the Conversion Date or the value of such property.~~ Hrg. Tr., p. 71:2-6. 11 U.S.C. § 542(a).

N. The Trustee's request for turnover of the Thunderbird is deemed withdrawn. Hrg. Tr., p. 71:9-10.

O. With respect to the Debtor's argument that the Turnover Motion should not be granted because her case should be dismissed (i.e., because the Debtor has very few unsecured creditors and because secured creditors can pursue ~~are left to~~ their rights under state law, the Court disagrees and has addressed these arguments in its Findings of Fact and Conclusions of Law entered with respect to the Debtor's Motion to Dismiss, which findings are incorporated herein by this reference. [Doc. #1144].

Appendix C

II. CONCLUSIONS OF LAW

1. The Court has jurisdiction over this contested matter ~~proceeding~~ pursuant to 28 U.S.C. §§ 157 and 1334. This contested matter is a core proceeding under 28 U.S.C. §§ 157(b)(1) and 157(b)(2)(E), and is constitutionally core. *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015); *Stern v. Marshall*, 131 S. Ct. 2594 (2011).

2. The Plan contains no explicit provisions addressing post-confirmation conversion to chapter 7.

3. Bankruptcy Code section 548 does not address what happens to property of the estate revested in a chapter 11 debtor if there is a post-confirmation conversion to chapter 7. *Cobalis*, 517 B.R. at 173; *Captain Blythers*, 311 B.R. at 535 ("There is no direct answer in the Code to the question of what happens to property of the debtor in a post-confirmation conversion").

4. This Court "must interpret a problematic section of the Bankruptcy Code in light of the structure of the Code as a whole, including its object and policy." *In re Brown*, --- F.3d ---, (9th Cir., Mar. 23, 2020), 2020 WL 1329662, *2 (interpreting section 548(f)(1) following a post-confirmation conversion from chapter 13 to chapter 7) citing *Hawkins v. Granchise Tax Bd.*, 769 F.3d 662, 666 (9th Circ. 2014) (citing *Children's Hosp. & Health Ctr. v. Belshe*, 188 F.3d 1090, 1096 (9th Cir. 1999)).

5. "A reorganization plan resembles a consent decree and therefore, should be construed basically as a contract."

Hillis Motors, 997 F.2d at 588. California law directs this Court "to interpret the Plan so 'as to give effect to the mutual intention of the parties as it existed at the time of contracting'" and also provides that ambiguities in the Plan are to be "construed against the drafter" here, the Debtor. *Captain Blythers*, 311 B.R. at 536 citing Cal. Civ. Code § 1636 and *Ponder v. Blue Cross of Southern Cal.*, 145 Cal. App. 3d 709, 718 (1983).

6. In the Ninth Circuit, property of the estate that vested in the reorganized debtor upon confirmation revests in the estate when the case is converted to chapter 7 where [1] the plan provides for the distribution of future proceeds of an asset to creditors and [2] the bankruptcy court retains broad powers to supervise the implementation of the plan. *Pioneer*, 264 F.3d at 807 citing *Hillis Motors*, 997 F.2d at 589 (concluding that assets revested in estate after confirmation because, although plan did not explicitly so provide, plan's clear purpose was to pay back creditors, and plan stated that bankruptcy court would be closely involved in administering Chapter 11 estate); *Cobalis*, 517 B.R. at 173; *Captain Blythers*, 311 B.R. at 535.

7. Neither the object nor policy of the Bankruptcy Code would be furthered by creating a different rule, and a different result, where the chapter 11 debtor is an individual rather than an entity. There is no logical basis to reward a reorganized individual debtor whose material default under a confirmed plan leads to conversion of the case to chapter 7 pursuant to Bankruptcy Code section 1112(b)(4)(N).

8. In this District, if a chapter 11 case converts to chapter 7 post-confirmation and the plan of reorganization at issue does not address what happens to property dealt with in the plan upon conversion, then Local Bankruptcy Rule 3020-1(d) operates as a default plan provision and provides ~~the default rule~~ that "… the property of the reorganized debtor … that has not been distributed under the plan shall be vested in the chapter 7 estate, except for property that would have been excluded from the estate if this case had always been one under chapter 7." *See* Local Bankruptcy Rule 3020-1(d); *In re Kenny G Enter., LLC*, (B.A.P. 9th Cir., Aug. 20, 2014), 2014 WL 4100429, *13 (quoting LBR 3020-1(d) and determining that "[n]o provision was made in the Plan for anything other than this default rule. Accordingly, KGE's assets became property of the chapter 7 estate upon conversion of the case").

9. Because this Court retained jurisdiction to:

a. Determine the Debtor's Adversary Proceedings prior to the distribution of funds to 99% of the secured claims and 97% of the unsecured claims;

b. Adjudicate requests for relief from the continued automatic stay (even as to property of the estate revested in the Debtor); and

c. Determine whether the Debtor was entitled to a discharge,

the Plan gave "the bankruptcy court broad powers to oversee implementation of the plan" under *Pioneer*. Because the Plan provided that relief relating to the Plan could not be sought in state court prior to the entry of a final decree, this Court had exclusive jurisdiction to grant relief relating to the Plan.

~~10. In the Ninth Circuit, upon conversion to chapter 7 after confirmation of a chapter 11 plan, property dealt with in the plan will vest in the chapter 7 estate if there is continuous ongoing jurisdiction over a debtor and estate assets and if the plan contained explicit provisions regarding the use of estate property to pay creditors. *See, Pioneer*, 264 F.3d at 807.~~

10. Because ~~this Court has had continuous ongoing jurisdiction over the Debtor and property of the estate and~~ the Plan contains specific provisions that rent proceeds from the Rental Properties were to be used to fund payments under the Plan, and that any surplus funds were to be distributed first to holders of allowed unsecured claims before reverting to the Debtor, the Plan includes specific provisions requiring the Debtor to administer the Rental Properties and her litigation claims for the benefit of the creditors ~~property of the chapter 11 estate vests in the chapter 7 estate~~ under *Pioneer*.

11. As both prongs of the test in Pioneer are satisfied, and because the Plan did not address what happens to estate property upon a post-confirmation conversion, Local Bankruptcy Rule 3020-1(d) operates as a default plan provision ~~is applicable~~ and any property of the

reorganized Debtor that was not distributed under the Plan vests in the chapter 7 estate.

12. The Calabasas Property, the Camarillo Property (and rents derived therefrom) and the Carmel Property (and the rents derived therefrom) are property of the chapter 7 estate.

13. The Sale Proceeds from the sale of the Henderson Property are property of the chapter 7 estate.

14. The Debtor's litigation claims, including those asserted in the Adversary Proceedings, are property of the chapter 7 estate.

15. Under 11 U.S.C. § 542(a), an entity in possession, custody, or control of property of the estate "shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value to the estate."

16. Because the Camarillo Property (and rent proceeds derived therefrom) is not "of inconsequential value or benefit to the estate", the Camarillo Property and all rent proceeds derived therefrom must be turned over to the Trustee. *See* 11 U.S.C. § 542(a).

17. Because the Carmel Property (and rent proceeds derived therefrom) is not "of inconsequential value or benefit to the estate", the Carmel Property and all rent proceeds derived therefrom must be turned over to the Trustee. 11 U.S.C. § 542(a).

18. Because the Sale Proceeds from the sale of the Henderson Property are not "of inconsequential value or benefit to the estate," ~~property of the chapter 7 estate; accordingly,~~ the Debtor shall turn over to the Trustee the sum of $315,078.12. Even if the Debtor was no longer in possession, custody or control of the Henderson Sale Proceeds on the date the Trustee filed his Turnover Motion, she is not relieved of the obligation to deliver to the Trustee the value of the Sales Proceeds. 11 U.S.C. § 542(a); *Shapiro v. Henson*, 739 F.3d 1198, 1201-02 (9th Cir. 2014) ("In sum, the phrases 'or the value of such property' and 'during the case' [in section 542] evidence the trustee's power to move for turnover against an entity that does not have possession, custody or control of property of the estate at the time the motion is filed").

~~19. Because the Sale Proceeds are not "of inconsequential value or benefit to the estate", the Sale Proceeds in the Debtor's possession as of the Conversion Date (or the value of the Sale Proceeds as of the Conversion Date to the extent the Debtor is no longer in possession of the Sale Proceeds) must be turned over to the Trustee. 11 U.S.C. § 542(a).~~

19. Accordingly, by separate order, the Court will grant the Turnover Motion ~~as set forth in the order~~.

/s/
Martin R. Barash
United States Bankruptcy Judge

Date: March 31, 2020