

Who Receives Post-Petition Appreciation in the Value of a Home After Plan Confirmation in a Chapter 13 Case?

By: Wes Bulgarella
Maynard Nexsen P.C.

A recent opinion issued by Judge Brian T. Fenimore in the United States Bankruptcy Court for the Western District of Missouri raises a unique question that could have wide-ranging implications for chapter 13 debtors: in a chapter 13 proceeding after plan confirmation, is the debtor or the estate entitled to receive the proceeds constituting equity after the sale of a home? This issue, ripe for adjudication by the Eleventh Circuit, is one that challenges courts to consider competing provisions of the Bankruptcy Code, as well as competing interests of the debtor and the estate.

The Marsh Opinion

In *In re Marsh*,¹ Judge Fenimore considered the issue and, ultimately, determined that the post-petition appreciation in the value of a home after the post-plan confirmation sale of the home belongs to the debtors' estate. In *Marsh*, the debtors commenced a chapter 13 bankruptcy proceeding and listed a \$140,000 ownership interest in their residence and also claimed a \$15,000 homestead exemption.² The debtors' mortgagee asserted a \$124,842.71 lien against the residence.³ The debtors' chapter 13 plan, which was confirmed in November 2018 and confirmed as modified in May 2021, provided that the trustee would make payments on the mortgagee's secured claim, but the debtors' non-priority unsecured creditors would receive nothing.⁴

In April 2022, the debtors filed a motion to sell their residence for the purchase price of \$210,000, which would result in approximately \$78,000 in net proceeds to the debtors.⁵ No parties objected to the sale motion, and the sale motion was approved.⁶ In July 2022, the debtors filed a motion to retain the net proceeds of the sale of their residence.⁷ The trustee filed an objection, arguing that the debtors must remit the proceeds of the sale to the trustee for distribution to pay 100% of the claims of allowed, non-

priority unsecured claims against the debtors' estate.⁸

Judge Fenimore's opinion explains that the issue presented in *Walsh* "arises from a conflict between the provisions of the Bankruptcy Code that define property of the estate in a chapter 13 case and the provision that vests all property of the estate in the debtor at plan confirmation."⁹ Section 541 of the Bankruptcy Code broadly defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case", as well as "[p]roceeds, product, offspring, rents, or profits of or from property of the estate."¹⁰ Section 1306 clarifies that, in chapter 13 cases and in addition to the property specified in § 541, the estate includes all property "of the kind" specified in § 541 "that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted ... whichever occurs first."¹¹ Accordingly, §§ 541 and 1306 appear to work in conjunction to provide that property of the estate includes all property owned by the debtor as of the petition date and all property acquired by the debtor while the debtor's chapter 13 bankruptcy proceeding is pending. However, § 1327 presents a conflict to this framework. Section 1327 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 . . . free and clear of any claim or interest of any creditor provided for by the plan."¹² Thus, § 1327 suggests that property is moved out of the estate and into possession of the debtor upon confirmation of the plan.¹³

Acknowledging this conflict, Judge Fenimore explained that five approaches have been crafted by bankruptcy courts to address this conflict:

1. **The Estate Termination Approach**, which provides that because § 1327 vests all property in the debtor at confirmation, "the chapter 13 estate terminates at confirmation except as provided in the debtor's plan."¹⁴
2. **The Estate Preservation Approach**, which provides that the estate continues after plan confirmation

¹ 647 B.R. 725 (Bankr. W.D. Mo. 2023).

² *Id.* at 728.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 729.

⁹ *Id.*

¹⁰ *Id.* (quoting 11 U.S.C. § 541(a)(1), (6)).

¹¹ *Id.* (quoting 11 U.S.C. § 1306(a)).

¹² *Id.* at 729-30 (quoting 11 U.S.C. § 1327(b)-(c)).

¹³ *Id.* at 730 (citing *In re Chang*, 438 B.R. 77, 81 (Bankr. M.D. Pa. 2010)).

¹⁴ *Id.* at 731.

and retains all pre-confirmation property as well as any property the debtor acquires after plan confirmation.¹⁵

3. **The Conditional Vesting Approach**, which concludes that §§ 1306 and 1327 make property simultaneously property of the debtor and property of the estate. Under this approach, §1327 gives the debtor the right to future enjoyment of the estate, but the right is not final until the plan is completed and a discharge is obtained.¹⁶

4. **The Estate Transformation Approach**, which provides that estate consists of the property and future earnings of the debtor dedicated to fulfillment of the Chapter 13 plan, regardless of whether the debtor acquires that property before or after confirmation.¹⁷

5. **The Estate Replenishment Approach**, which provides that pre-confirmation property of the estate becomes property of the debtor of confirmation, while post-confirmation property acquired by the debtor becomes a part of and “replenishes” the estate.¹⁸

After analyzing the positives and negatives of each approach, Judge Fenimore determined that the estate replenishment approach best dealt with the conflicts posed by the competing Bankruptcy Code provisions at issue. According to Judge Fenimore, by vesting property acquired by the debtor after plan confirmation in the estate, “[t]he estate replenishment approach gives effect to § 1306 by including in the estate, at least temporarily, all property the debtor acquires after the petition date but before the case is closed, dismissed, or converted.”¹⁹ Additionally, the estate replenishment approach establishes a “clear demarcation” between pre-confirmation property that vests in the debtor and post-confirmation property that vests in the estate, thereby creating more predictability.²⁰

After determining that the estate replenishment approach best resolved the conflict among the competing provisions of the Bankruptcy Code, Judge Fenimore turned to the issue of whether the proceeds from the sale of the debtors’ residence are property of the estate under this approach. The debtors asserted that the proceeds from the

post-confirmation sale of their residence vested in the debtors at confirmation because that is also when the residence vested in the debtors.²¹ The trustee alternatively argued that the proceeds of the sale of the residence are

distinct from the residence itself and under § 1306 are brought into the estate as property “of the kind” specified in §541 that the debtors acquired after the petition date.²² Agreeing with the trustee, Judge Fenimore determined that the proceeds from the sale of the residence were distinct from the residence itself and were acquired after the plan confirmation date, thus making the proceeds property of the estate.²³

Eleventh Circuit Treatment of Similar Issues

While the Eleventh Circuit has not directly addressed the issues presented by the somewhat unique factual circumstances presented in *Marsh*, the Eleventh Circuit has addressed the apparent conflict between §§ 541, 1306(a), and 1327(b). In *In re Waldron*,²⁴ a chapter 13 debtor moved for approval of the settlement of a personal injury claim arising from a post-confirmation car accident, and the issue presented was whether the proceeds from the settlement constituted property of the debtor or of the debtor’s estate.²⁵ The Eleventh Circuit reasoned as follows:

We conclude, based on the plain language of section 1306(a), that [the debtor’s] claims are property of the estate. [One of the debtors] acquired his claims for underinsured-motorist benefits after the commencement of [the debtor’s] bankruptcy case but before [the] case was dismissed, closed, or converted. Section 1306(a) does not mention the confirmation of the debtor’s plan as an event relevant to what assets are property of the estate, . . . and section 1327(b) does not address assets acquired after confirmation. Section 1327(b) does not, as [the debtors] argue, automatically vest in the debtor assets acquired after confirmation. ‘If Congress had intended for confirmation to so dramatically affect the expansive definition of property of

¹⁵ *Id.*

¹⁶ *Id.* at 732.

¹⁷ *Id.*

¹⁸ *Id.* at 733.

¹⁹ *Id.* at 734.

²⁰ *Id.*

²¹ *Id.* at 735.

²² *Id.*

²³ *Id.*

²⁴ 536 F.3d 1239 (11th Cir. 2008).

²⁵ *Id.* at 1242.

the estate found in [section] 1306, it knew how to draft such a provision.²⁶

Given the Eleventh Circuit's holding in *Waldron*, it is interesting to consider whether the same outcome would result if the issue were presented in the context of possession of proceeds of a residence sold post-confirmation. In other contexts, bankruptcy courts have come to differing conclusions.²⁷

Practical Considerations

The determination of how to resolve the apparent conflict between §§ 1306 and 1327 has significant implications both on chapter 13 debtors and their bankruptcy cases, specifically for the issue of the sale of homes post-plan confirmation. For example, the applicability of the automatic stay and the ability to file an administrative expense claim for preservation of estate property could hinge on whether property is or is not considered property of the estate. In addition, and specifically as it relates to the issue of proceeds of the sale of a debtor's residence, the determination that proceeds of the sale of a home constitute property of the estate would render debtors unable to retain such proceeds in many instances and could preclude such debtors from buying a new home. This issue, one with real-world implications for chapter 13 debtors, is worthy of consideration for practitioners and courts alike.

Wes is an Associate at Maynard Nexsen P.C. where he is a member of the Bankruptcy and Restructuring Practice Group. He can be reached at wbulgarella@maynardnexsen.com.

Annual Student Bankruptcy Award at Cumberland School of Law

The Alabama State Bar Bankruptcy and Commercial Section continued its support of the Cumberland School of Law's annual Student Bankruptcy Award. This year's recipient was law student Thomas Barnes. Christopher Messer of Jennings & Messer, P.C. attended the awards ceremony on behalf of the Section to present the award.



²⁶ *Id.* (quoting *Sec. Bank v. Neiman*, 1 F.3d 687, 691 (8th Cir. 1993)).

²⁷ See *In re Gilbert*, 526 B.R. 414 (Bankr. N.D. Ga. 2015) (debtor's inherited proceeds of sale from late parent's home more than 180 days postpetition but before case was closed, dismissed, or converted, constitutes property of the estate); *In re McAllister*, 510 B.R. 409 (Bankr. N.D. Ga. 2014) (insurance proceeds received by debtor-husband as a result of debtor-wife's death more than 180 days postpetition do not constitute property of the estate); *In re Frausto*, 259 B.R. 201 (Bankr. N.D. Ala. 2000) (proceeds of settlement of prepetition cause of action were not included in property of postconfirmation estate);