



Post-Confirmation Jurisdiction in Chapter 13: Is Vesting an Issue?

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By Robert G. Drummond

The filing of a chapter 13 petition creates a bankruptcy estate consisting of the legal and equitable interests of the debtor.¹ Property of the chapter 13 estate also includes property acquired after commencement of the case, including earnings from services performed by the debtor.² When the chapter 13 plan has been confirmed, estate property reverts in the debtor unless otherwise ordered by the court.³

Property reverting with the debtor upon plan confirmation has created tension among the courts regarding post-confirmation jurisdiction and procedure. This article examines the various theories of vesting and the court's continuing jurisdiction over post-confirmation administration of the chapter 13 case.

The Five Theories of Vesting

Five different theories of reverting upon confirmation of the chapter 13 plan have emerged among the courts. These different theories can affect post-confirmation protections afforded to the debtor and post-petition administration of the confirmed plan. Those five theories are the (1) estate-termination approach; (2) estate-transformation approach; (3) estate-replenishment approach; (4) estate-preservation approach; and (5) conditional-vesting approach. The five approaches demonstrate that tension and disarray exists among the courts regarding the post-confirmation administration of the chapter 13 plan.

The Estate-Termination Approach

This theory holds that the chapter 13 estate itself terminates upon confirmation except as provided in the debtor's plan.⁴ Thus, a post-petition estate does not exist at all under this

theory. This theory gives no effect to § 1306 regarding post-petition property acquired by the debtor.

This reasoning fails to recognize that the trustee continues to administer the estate, collect receipts and make disbursements up to dismissal or completion of the plan. These courts have held that the bankruptcy court is divested of jurisdiction over property acquired post-confirmation because there is no estate to take possession of the property. A trustee wishing to access post-petition property must do so with a modified plan that reserves post-petition property to the estate.⁵

The Estate-Transformation Approach

This theory holds that an estate consists of property and future earnings of the debtor that are necessary to the fulfillment of the chapter 13 plan. Under this theory, post-petition income necessary to make plan payments becomes property of the estate and is administered by the trustee. It attempts to enforce, in part, the vesting provision of § 1327(b) while acknowledging the inclusive language of § 1306(a).⁶ The post-petition estate property is generally limited to the plan payment.

The Estate-Replenishment Approach

Under this theory, preconfirmation property of the estate becomes property of the debtor upon confirmation. All post-confirmation property becomes property of the estate without vesting in the debtor. The chapter 13 estate continues to exist and refills with post-petition property under § 1306 without regard to whether the property is necessary for performance under the plan.⁷ Property that the debtor acquires after confirmation is not subject to § 1327(b) because it was not in existence at the time of confirmation.⁸

The Estate-Preservation Approach

Under this theory, § 1327(b), regarding plan confirmation, does not remove any property from the bankruptcy estate. Both pre-petition and post-petition property remains in the estate until it has been closed, dismissed or converted. Under this theory, § 1327 only fixes the debtor's right to possess and deal with the estate property after confirmation. The estate continues to be populated with all property that is in the debtor's possession.

The Conditional-Vesting Approach

Under this theory, the debtor has the right to use property of the estate. However, that right is not final until the debtor has completed the plan.⁹ The estate captures post-petition property but it does not vest “free and clear” upon confirmation. This approach gives the debtor a right to use estate property upon confirmation.

Jurisdiction After Vesting

Nothing in the Bankruptcy Code contains explicit statutory language changing post-confirmation jurisdiction after confirmation of the chapter 13 plan. However, diverse opinions about continuing jurisdiction arise out of the Code’s vesting provision, not in the jurisdictional provisions of title 28.

Section 157 lists core matters upon which the bankruptcy court may enter final orders, but only five of those matters reference “the estate.” The six matters are (1) administration of the estate,¹⁰ (2) claim allowance against the estate,¹¹ (3) counterclaims against third parties,¹² (4) turning over property of the estate,¹³ (5) liquidation of assets of the estate,¹⁴ and (6) other proceedings affecting the liquidation of assets of the estate.¹⁵

If the estate goes out of existence upon confirmation (estate termination), then the bankruptcy court cannot enter final orders on these core matters after plan confirmation. If property of the estate reverts with the debtor at confirmation, or if post-petition property does not populate the estate, then such core matters as turnover of property and liquidation of assets are no longer subject to final order of the bankruptcy court.

The remaining sections of the jurisdictional grant under § 157 make no reference to “the estate.” Those matters are (1) obtaining credit,¹⁶ (2) preferences,¹⁷ (3) automatic stay,¹⁸ (4) fraudulent conveyances,¹⁹ (5) dischargeability,²⁰ (6) objections to discharge,²¹ (7) validity and priority of liens,²² (8) confirmation of a plan,²³ (9) use or lease of property and cash collateral,²⁴ (10) sale of property,²⁵ and (11) foreign proceedings.²⁶ These matters are jurisdictional without referencing the estate, so vesting property of the estate upon confirmation does not change the jurisdiction of the court related to those matters.

In all chapters, courts generally recognize the need to exercise post-confirmation jurisdiction over matters that “affect the successful implementation and consummation of the Plan.”²⁷ However, the debtor operating under the terms of a confirmed chapter 13 plan does not receive a discharge until he has made all of the payments under the plan, which may extend

from three to five years. In chapter 13, rights of the parties depend on the debtor's successful plan completion. The plan is not completed until all payments have been made.

Plan provisions cannot expand post-confirmation jurisdiction of the bankruptcy court beyond the jurisdictional powers granted through the statute.²⁸ However, a plan's failure to include retention of jurisdiction does not limit the court's post-confirmation jurisdiction over the binding effect of the plan, the debtors' compliance with the plan provisions, and the binding effect on creditors.²⁹

Some courts have strained to make sense of this in chapter 13 cases. One court held that "related to" jurisdiction ceases for property that vests in the debtor at confirmation if it is not reasonably necessary to the debtor's performance under the plan.³⁰ The court reasoned that property that leaves the estate at confirmation becomes property of the debtor but is still protected from action by pre-petition creditors because of the binding effect of the chapter 13 plan.³¹ Another court held that revesting strips the bankruptcy court of jurisdiction over exemption issues.³² Those issues, it reasoned, only deal with property of the estate. However, in the chapter 13 context, these courts could reasonably find jurisdictional grounds for deciding these matters because the rights of the parties ripen upon plan completion.

Continuing In Rem Jurisdiction

Bankruptcy jurisdiction is principally in rem jurisdiction.³³ The bankruptcy court's jurisdiction is ordinarily premised on the debtor and his estate — not on the creditors.³⁴ The in rem nature of bankruptcy jurisdiction recognizes that if a matter is referred to the bankruptcy court, it will have "exclusive jurisdiction of all the property, wherever located, of the Debtor as of the commencement of the case, and of property of the estate."³⁵

The estate-termination approach dismantles the court's in rem jurisdiction after confirmation of the plan. Ongoing in rem jurisdiction is compatible with the other four estate-termination approaches.

"Related to" Jurisdiction

District courts have exclusive jurisdiction of all civil proceedings arising under, arising in or related to cases under the Bankruptcy Code.³⁶ Proceedings "arising under" the Code involve causes of action created or determined by the Code itself. Proceedings "arising in" would not exist outside of bankruptcy, even though they are not specifically created by the Code.

“Related to” jurisdiction generally depends on whether a matter has a “close nexus” to the bankruptcy plan, or whether a “close nexus” to the bankruptcy plan or proceeding are sufficient to uphold bankruptcy court jurisdiction.³⁷ In a chapter 13 case, the parties’ rights are ultimately determined by the debtors’ completion of the plan regardless of vesting. Thus, “related to” jurisdiction can be broadly construed to apply in chapter 13 cases.

Equitable Jurisdiction

The Bankruptcy Code provides that the court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of title 11.³⁸ In addition, the bankruptcy court has continuing equitable jurisdiction to interpret its own orders.³⁹ The bankruptcy court is a court of equity and may invoke equitable principles unless their application would be inconsistent with the Code.⁴⁰ Thus, the court may, in its discretion, exercise post-confirmation jurisdiction acting as a court of equity regardless of vesting in a chapter 13 case.

In Personam Jurisdiction

By filing a bankruptcy petition, the debtor voluntarily submits himself/herself to in personam jurisdiction. By filing a proof of claim, a creditor becomes subject to in personam jurisdiction.⁴¹ Thus, the court may, in its discretion, exercise in personam jurisdiction over bankruptcy- and claim-related issues regardless of vesting in a chapter 13 case.

Post-Confirmation Issues Related to Vesting

Debtors and creditors should consider the below vesting-related issues in chapter 13 cases.

Relief from Stay

Section 362 of the Bankruptcy Code imposes a stay “against property of the estate” that continues until such property is no longer property of the estate. Thus, where plan confirmation revests the property in the debtor, no prohibition exists for post-petition creditors seeking to enforce action against that property. This also raises issues regarding domestic-support obligations and the ability of a domestic-support-obligation creditor to collect against post-petition wages. Post-confirmation tax claims may be asserted against revested property without violating the stay.⁴² A chapter 13 debtor may wish to retain property of the estate in the plan for these reasons.

Sales of Property

The jurisdictional grant under 28 U.S.C. § 157(b)(2)(M) does not reference “the estate.”

Section 363 of the Bankruptcy Code authorizes sales of property of the estate. If the property remains property of the estate, the debtor’s sale of property would be subject to the approval of the bankruptcy court. A chapter 13 debtor utilizing the Code’s protection while marketing and selling a property may wish to reserve property of the estate in the plan.⁴³

Compensation of Attorneys

Section 330(a)(4)(B) grants the court authority to allow reasonable compensation to the debtor’s attorney for representation in connection with the bankruptcy case based on the necessity of such services to the debtor. Thus, the bankruptcy court may allow compensation for the debtor’s attorney regardless of whether property of the estate has vested at confirmation.

Post-Confirmation Assets

Debtors sometimes become entitled to post-petition inheritances, insurance proceeds, post-petition claims and other post-petition assets. Rule 1017 of the Federal Rules of Bankruptcy Procedure requires debtors to amend their schedules to list post-petition assets. Trustees wishing to capture the value of post-petition assets for the benefit of creditors may be required to do so by modification of the plan that retains post-petition assets as property of the estate.

Impairment of Liens

Creditors holding judicial liens that are avoided may wish to object to revesting. This remedy avoids the risk of a debtor avoiding a lien and the creditor losing its status by sale of the property prior to the debtor’s discharge or dismissal of the case.⁴⁴

Conclusion

Although several different theories of vesting have been established, the bankruptcy court inevitably must find ways to deal with ongoing issues that arise after confirmation of the chapter 13 plan. Debtors, trustees and creditors all need certainty about post-confirmation and pre-discharge administration of the case. Bankruptcy courts should recognize that they may exercise jurisdictional discretion when dealing with post-confirmation chapter 13 issues.

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- 1 11 U.S.C. § 541(a).
- 2 11 U.S.C. § 1306(a).
- 3 11 U.S.C. § 1327(b).
- 4 California Franchise Tax Bd. v. Jones (In re Jones), 420 B.R. 506, 512-13 (B.A.P. 9th Cir. 2009).
- 5 In re Madrid, 2023 WL 3563019 (Bankr. W.D. Wash. 2023).
- 6 In re Clouse, 446 B.R. 690, 701 (Bankr. E.D. Pa. 2010).
- 7 See City of Chicago v. Fisher (In re Fisher), 203 B.R. 958, 962-63 (N.D. Ill. 1997).
- 8 Fritz Fire Prot. Co. v. Chang (In re Chang), 438 B.R. 77, 83 (Bank M.D. Pa. 2010).
- 9 Woodard v. Taco Bueno Rests. Inc., 2006 WL 3542693 (Bankr. W.D. Tex. 2006).
- 10 28 U.S.C. § 157(b)(2)(A).
- 11 28 U.S.C. § 157(b)(2)(B).
- 12 28 U.S.C. § 157(b)(2)(C).
- 13 28 U.S.C. § 157(b)(2)(E).
- 14 28 U.S.C. § 157(b)(2)(N).
- 15 28 U.S.C. § 157(b)(2)(O).
- 16 28 U.S.C. § 157(b)(2)(D).
- 17 28 U.S.C. § 157(b)(2)(F).
- 18 28 U.S.C. § 157(b)(2)(G).
- 19 28 U.S.C. § 157(b)(2)(H).
- 20 28 U.S.C. § 157(b)(2)(I).
- 21 28 U.S.C. § 157(b)(2)(J).
- 22 28 U.S.C. § 157(b)(2)(K).

- [23](#) 28 U.S.C. § 157(b)(2)(L).
- [24](#) 28 U.S.C. § 157(b)(2)(M).
- [25](#) 28 U.S.C. § 157(b)(2)(N).
- [26](#) 28 U.S.C. § 157(b)(2)(O).
- [27](#) *Binder v. Price Waterhouse Co. LLP (In re Resorts Int'l Inc.)*, 372 F.3d 154, 167 (3d Cir. 2004).
- [28](#) *Id.* at 161.
- [29](#) *United States Tr. v. Gryphon at the Stone Mansion*, 166 F.3d 552, 555-56 (3d Cir. 1999).
- [30](#) *Black v. U.S. Postal Serv. (In re Heath)*, 115 F.3d 521, 524 (7th Cir. 1997).
- [31](#) *EconoLube N' Tune Inc. v. Frausto (In re Frausto)*, 259 B.R. 201 (Bankr. N.D. Ala. 2000).
- [32](#) *Campbell v. Stewart (In re Campbell)*, 313 B.R. 313 (B.A.P. 10th Cir. 2004).
- [33](#) *Cent. Virginia Cmty. College*, 546 U.S. 356, 369 (2006).
- [34](#) *Id.* at 370.
- [35](#) 11 U.S.C. § 1334(e).
- [36](#) 11 U.S.C. § 1334(b).
- [37](#) *Binder v. Price Waterhouse Co. LLP (In re Resorts Int'l Inc.)*, 372 F.3d 154, 168 (3d Cir. 2004).
- [38](#) 11 U.S.C. § 105(a).
- [39](#) *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 146 (2009).
- [40](#) *Beaty v. Selinger (In re Beaty)*, 306 F.3d 914, 922 (9th Cir. 2002).
- [41](#) *Hong Kong and Shanghai Banking Corp. v. Simon*, 153 F.3d 991, 997 (9th Cir. 1998).
- [42](#) *Jones v. Kendall*, 420 B.R. 506, 516 (B.A.P. 9th Cir. 2009).
- [43](#) 11 U.S.C. § 363(b).

- [44](#) Guzman v. Flores, 2024 WL 2796265 (Bankr. D. Colo.).

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11 U.S.C. § 105

11 U.S.C. § 363

1334

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