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SIXTH CIRCUIT CASE SUMMARIES
CBA BANKRUPTCY COMMITTEE MEETING
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In re Brown, ___ F.3d ____ (March 20, 2017).

The debtor owned a home that was undersecured. She surrendered her home in a chapter 7 proceeding without claiming any homestead or other exemption. When the trustee asked the bankruptcy court's permission to sell the home, the debtor sought to amend her exemptions under 11 U.S.C. §522(d)(1) and (d)(5) "for the value of the redemption rights she enjoyed under Michigan law." The bankruptcy court granted the trustee's motion to sell the property and denied the debtor's exemptions.

The Sixth Circuit affirmed. After disposing of the trustee's mootness and standing arguments in favor of the debtor, the court ruled that the debtor had no right to claim an exemption in her redemption rights under Michigan law. The court restated the reasoning in one of its prior rulings, *In re Baldridge*, 553 F. App'x at 599, where it held that, "any exemption on the basis of the value of the debtor's redemption rights must attach to some equity held by the debtor after satisfaction of the secured liens on the property. *Id.* Absent such equity, the debtor had no interest to which the claimed exemption could attach. *Id.*" It further cited *Baldridge* and stated that "Section 522 will not support an exemption on the basis of state-law redemption rights in a piece of property if the proceeds from the sale of that property are 'insufficient to satisfy the prior obligations owed to the secured creditors.' *Baldridge*, 553 F. App'x at 599."

In re Corbin, ___ F.3d ____ (February 23, 2017).

The debtor sought to pay her property taxes through her chapter 13 plan at an interest rate of 12% which is the statutory rate of interest under Tennessee law. The Metro Government of Nashville held a lien for those property taxes on the debtor's home. That lien was oversecured. Nashville objected to only being paid 12% on its lien. It argued that it should be paid 12% in interest plus 6% in penalty interest under a 2014 Tennessee law that stated the following:

> For purposes of any claim in a bankruptcy proceeding pertaining to delinquent property taxes, the assessment of penalties pursuant to this section constitutes the assessment of interest.

The bankruptcy court ruled that 12% was the proper rate under 11 U.S.C. §511(a) which states:

> If any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, or the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be the rate determined under applicable nonbankruptcy law.

The BAP affirmed, holding that the 2014 Tennessee statute cited above was not "applicable nonbankruptcy law" under §511(a). It deemed the Tennessee statute to be a bankruptcy law because it applied only in bankruptcy cases.

The Sixth Circuit affirmed. Under Sixth Circuit precedent, "state and federal legislatures share concurrent authority to promulgate bankruptcy laws." Under that authority, Congress allowed the states to "set generally applicable interest rates, but not interest rates specific to bankruptcy proceedings." Because Tennessee's law was directed only at bankruptcy proceedings, it was *not* a "nonbankruptcy law." The court stated, "We find that the appropriate way to read 'applicable nonbankruptcy law' is as referring to any law that is not aimed solely at bankruptcy proceedings."

Meoli, Trustee v. Huntington National Bank, ___ F.3d ____ (February 8, 2017).

The trustee sought recovery of fraudulent transfers from a fraudulent company (Teleservices) to Huntington Bank. Teleservices was created by Cyberco to engage in a Ponzi scheme. Both were in bankruptcy. The trustee sought to recover payments made to Huntington by Teleservices; payments made to Cyberco by Teleservices; and excess deposits made by Teleservices to Cyberco at Huntington Bank.

The trustee won in bankruptcy court and district court. The lower courts allowed the trustee to recover $72 million in loan repayments and excess deposits to Huntington from the bankrupt companies. Both parties appealed.

The Sixth Circuit held that the excess deposits made to Huntington were not recoverable by the trustee. The court applied the "dominion and control" test which requires that a transferee have dominion over the asset and the right to use the funds for its own purpose in order to be a transferee for fraudulent conveyance purposes. Huntington did not have that kind of dominion or control because the companies had the right to remove their deposits at any time. Likewise, the grant of a security interest in the deposits to Huntington did not rise to the level of dominion or control over them.

As to loan repayments made to Huntington, the Sixth Circuit upheld the bankruptcy court's decision that Huntington did not accept Cyberco's payments in good faith after it became aware of Cyberco's principal's fraudulent past.