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Rules Are Made to Be Broken ... if in Conflict with the Code

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In the business bankruptcy context, bankruptcy courts and academics celebrate debtors' creativity to propose plans that are confirmable and crafted through creditor collaboration. Although sometimes such carefully crafted plans are not as successful before the highest court of the nation,[1] bankruptcy courts at the local level leave the chapter 11 business debtor to drive the case and to propose a reorganization plan that best fits the needs of the debtor and parties-in-interest. This freedom permeates the Bankruptcy Code and makes bankruptcy a dynamic and rewarding area of practice. Bankruptcy courts that allow a debtor flexibility when proposing a plan in chapter 11 are welcoming and attractive venues. Unbridled by burdensome (possibly dogmatic) local rules and practice concerning chapter 11 plans, chapter 11 debtors may propose (and ultimately confirm) a successful reorganization plan, albeit within the confines of §§ 1123 and 1129.

In contrast, there seems to be special "protection" (to put it nicely) provided to and imposed on debtors in consumer cases under chapter 13. Bankruptcy courts clearly do not intend to make life harder for their debtors beyond what is already mandated by the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure. However, some local rules appear intended to save chapter 13 debtors from themselves, in the way a parent may keep their toddler safe on a leash at the county fair. Other local rules are ancient relics of a bygone era, yet are enforced by judges and trustees without memories of their origins.[2]

The additional impositions may, at times, be at odds with the consumer debtors' desires and, more importantly, their rights under the Code. A recent case in point is in *Trantham v. Tate*,[3] where the Fourth Circuit confronted a conflict between a local form and a chapter 13 debtor's statutory options when proposing a chapter 13 plan. The opinion underscores the need to allow debtors to make their own choices and exercise their rights under the Code, even if a bankruptcy judge or chapter 13 trustee would advise otherwise.

Statutorily Unremarkable Choice Challenged by Local Practice

Sheila Ann Trantham filed a chapter 13 petition in the Western District of North Carolina.[4] She proposed a chapter 13 plan providing that property of the estate would vest in her at confirmation.[5] Statutorily, this act was nothing of note.

Quite simply, the Bankruptcy Code provides that the "debtor shall file a plan,"[6] which Trantham did. A chapter 13 plan "may ... provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity."[7] Trantham's plan provided that property of the estate vested in her at confirmation. With vesting at confirmation, she would retain ownership and control over her property,[8] but would be able to use or sell her property outside the ordinary course of business as she saw fit.[9] Trantham would not have to file a motion, notice a hearing, pay a filing fee, pay her attorney or ultimately obtain court approval.[10] Based on a plain reading of the statute and a review of the plan, the proposed vesting provision merited little controversy under the Code. It appears that Congress specifically protected her choice to vest the property of the estate in herself at confirmation.[11]

However, the chapter 13 trustee objected to the plan because the local form chapter 13 plan required vesting at the entry of the final decree.[12] Significantly, the form plan did not even provide space to make an election under § 1322(b)(9) — it simply contained boilerplate language that "[a]ll property of the Debtor remains vested in the estate and will vest in the Debtor upon entry of the final decree."[13] Trantham merely struck through the form language, and asserted her option to propose a plan

1 *See, e.g., Harrington v. Purdue Pharma LP*, 144 S. Ct. 2071 (2024). As a side note, ABI held a webinar shortly after the Supreme Court issued its decision in this case, *available at* abi.org/newsroom/videos. ABI also published a digital book, *The Purdue Papers*, *available at* store.abi.org.

2 Courts amend their local rules, proactively adapting for the changing times. *See, e.g.*, General Order Governing Complex Chapter 11 Case Procedures, Bankr. D.N.J. Aug. 1, 2024 (enacted by New Jersey bankruptcy court "to implement procedures to better serve the bench, bar and public"); *see also* Proposed Change to Bankr. S.D.N.Y. Local Rule 1007-1, Comments (noting that Rule 1007-1(c)(1) was amended in 2024 to remove CDs as an acceptable electronic format).

3 *Trantham v. Tate*, 112 F.4th 223 (4th Cir. 2024).

4 *Id.* at 229.

5 *Id.*

6 11 U.S.C. § 1321.

7 11 U.S.C. § 1322(b)(9).

8 *See Trantham*, 112 F.4th at 232.

9 *See id.*

10 *See id.*

11 *See* 11 U.S.C. § 1327(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.").

12 *Trantham*, 112 F.4th at 230.

13 *Id.*

that vested property of the estate in her at confirmation.[14] The bankruptcy court sustained the trustee's objection, finding that while Trantham's proposed vesting was not contrary to the Bankruptcy Code, it contradicted the court's "long-standing policy" in the local form plan.[15] In support of its ruling, the bankruptcy court "explained that default provisions are essential for 'efficiency and consistency.'"[16]

To get a plan confirmed, Trantham was compelled to acquiesce and amend her plan to vest in conformity with local practice.[17] The bankruptcy court confirmed her amended plan, and she appealed. The district court affirmed the lower court's local practice, pointing to "risks and practical problems [that] would arise" if chapter 13 debtors were to propose one of the options explicitly provided for in § 1322(b)(9).[18] More specifically, allowing for property of the estate to vest at confirmation would leave the debtor's property "vulnerable to creditors and the trustee would lack sufficient oversight."[19] According to the district court, plans proposed in conformance with the Code but that contradict the local form "cannot be confirmed."[20]

Trantham appealed to the Fourth Circuit, which reversed the lower courts' imposition of local practice. The Fourth Circuit held that the bankruptcy court erred in two ways: by (1) requiring Trantham to justify her proposed vesting provision; and (2) rejecting the plan solely because it deviated from the local form plan. The court emphasized that it is the debtor's exclusive right to propose a plan and that the bankruptcy court's authority to reject plan provisions is limited by the Bankruptcy Code.[21]

The Fourth Circuit noted that while bankruptcy courts may use default vesting provisions in local form plans, they cannot make such provisions mandatory or reject a debtor's proposed vesting provision simply because it differs from the local form. The case was remanded for the bankruptcy court to assess whether Trantham's proposed vesting provision should be confirmed or rejected for a reason permitted by the Code.

Interestingly, the *Trantham* court deviated from an existing Seventh Circuit decision on the same topic. Section 1327(b) of the Bankruptcy Code 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."

In *In re Cherry*,[22] a bankruptcy court within the Seventh Circuit had a form plan that contained a checkbox option for debtors to elect to retain property in the estate for the plan's duration. The Seventh Circuit ultimately held that debtors needed to provide justification for deviation departing from the "norm" that property vests in the debtor at confirmation.

The *Trantham* court disagreed, noting that "[c]hapter 13, when read in its entirety, affords priority to the debtor's proposed provisions."[23] In *Trantham*, the court considered that the grounds under which a court can reject a plan are limited, and concluded that § 1327(b) preserved a debtor's right to propose her own vesting provision *without having to justify it*.

Rule 9029: A Reminder to Review

When proposing local rules and local forms, courts and the bar must remain vigilant that the added requirements remain consistent with statutory rights and nationally applicable rules and procedures. Rule 9029(a)(1) of the Federal Rules of Bankruptcy Procedure permits district courts to authorize bankruptcy judges "to make and amend rules of practice and procedure which are consistent with — but not duplicative of — Acts of Congress and" the other Bankruptcy Rules.[24]

Of course, local forms serve a valid purpose of efficiency for both debtors and creditors (and their counsel) in drafting filings. This is particularly beneficial in routine consumer matters in which debtors may not have sufficient resources for counsel to reinvent the wheel. It also is distinctly true of a local form chapter 13 plan. A local form aids debtors' counsel in proposing a plan and enables creditors familiar with the local form to review their treatment more quickly.

As the Fourth Circuit emphasized, a local "form plan can dictate *how* a debtor proposes her plan, but not *what* she proposes in it."[25] The Bankruptcy Code provides what a debtor's plan "shall" do and what it "may" do.[26] The timing of vesting of property of the estate is something a plan "may" do but need not do.[27] Even if optional, a local form plan by design cannot eliminate or restrict the debtor's options under the statute. The local chapter 13 form plan at issue in *Trantham* clearly was inconsistent with the flexibility afforded debtors under § 1322(b)(9).

By comparison, the "national" chapter 13 form plan (Official Form 113) provides the flexibility for a debtor to propose his/her own vesting provision. Part 7 of Official Form 113 provides checkboxes for when vesting of property of the estate occurs. A debtor in a jurisdiction using the Official Form chapter 13 plan may simply check a box for vesting to occur at plan confirmation, entry of discharge or at some other time by filling in the blank line reserved for that purpose.

Compared to local forms, national official forms and federal rules have the added benefit of a more robust review at the national level from many parties-in-interest. This thorough review endures a lengthy comment period, with ultimate review and approval passing through the hands of both the U.S. Supreme Court and Congress before going into effect. Even federal rules and forms require frequent amendments; likewise, it is imperative that bankruptcy courts continually review the appropriateness of their locally imposed requirements.

Collaboration of "Soldiers on the Ground"

Trantham and Bankruptcy Rule 9029(a) do not stand for the proposition that debtors have unfettered rights to propose anything in a chapter 13 plan, free from judicial review or

14 *Id.*
15 *Id.*
16 *Id.*
17 *See id.*
18 *Id.*
19 *Trantham v. Tate*, 647 B.R. 139, 145-46 (W.D.N.C. 2022) (reversed).
20 *Id.*
21 *Id.* at 235, 238.
22 *In re Cherry*, 963 F.3d 717, 718 (7th Cir. 2020).
23 *Trantham*, 112 F.4th at 238.
24 Fed. R. Bankr. P. 9029(a)(1).
25 *Trantham*, 112 F.4th at 235.
26 *Compare* 11 U.S.C. § 1322(a), *with* 11 U.S.C. § 1322(b).
27 11 U.S.C. § 1322(b)(9).

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objections from parties-in-interest. The insightful concurrence penned by Hon. J. Harvie Wilkinson III punctuates the importance of negotiation and collaboration in all aspects of the bankruptcy process.[28]

Trantham, the chapter 13 trustee and the lower courts took extreme positions. As Judge Wilkinson pointed out, "[t]he truth, as it so often does, lies somewhere in the middle."[29] She had "suggest[ed] that the broad choice-of-plan provisions allowed [to] her under § 1322(b) is subject only to the narrowest scope of review under § 1325(a)."[30] Trantham's position was too restrictive, suggesting that courts have minimal review power over plan provisions and that this leaves little for the courts, trustees and creditors to do; "[t]hey might as well not even be there."[31] Courts must still have discretion to review the plan and any objections thereto.

The district court's decision "swung too far in the other" direction.[32] The lower courts' views were too broad, suggesting that courts may reject any plan that alters the local form plan by including "a contradicting nonstandard provision."[33] Rejecting this broad view as "plenary and arbitrary," Judge Wilkinson emphasized a balance that allows continued oversight by the bankruptcy court to "reject for good reason proposed plan provisions on 'case-by-case' grounds."[34] Congress's word is definitive, yet there remains a role for "soldiers on the ground" (the various parties involved in bankruptcy proceedings) to work together in implementing and giving meaning to congressional decrees.[35]

Conclusion

Debtors make mistakes, and their mistakes often lead to bankruptcy petitions. Sometimes, later mistakes result in a dismissal or an inability to complete a confirmed plan, but debtors sometimes know what is best for them and their circumstances. Allowing autonomous control in proposing a plan in conformance with § 1322, free from unnecessarily burdensome local rules or local practice, allows a debtor the freedom to select the (seemingly) best path toward rehabilitation and a fresh start.

The *Trantham* decision brings to the consumer debtor main stage a battle that often arises among local forms, local practice and judge-specific requirements on the one hand, and the Bankruptcy Code and Federal Rules on the other. When in conflict, the latter should emerge victorious.

While Bankruptcy Rule 9029 gives courts some flexibility and discretion to make local rules to govern proceedings in their jurisdictions, courts must be careful not to abridge debtors' substantive rights in applying these additional restrictions. The time is always right to review (and re-review) local rules and local practice for consistency with the Code and Rules. Such vigilance and collaboration by the bankruptcy court, the trustees and the bar — both in the business and consumer contexts — ensures the freedom to exercise all parties' rights under the Bankruptcy Code. abi

28 *Id.* at 239-40.
29 *Id.* at 239.
30 *Id.*
31 *Id.*
32 *Id.*
33 *Id.*
34 *Id.* at 240.
35 *Id.*