Title Pawn Transactions in Bankruptcy

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Title Pawn Transactions in Alabama

Historically, pawn transactions consist of pledged goods that could be left with the pawnbroker, such as a stereo, an instrument, or a piece of jewelry—items that a borrower could arguably live without. In the early 1990s, small lenders in Alabama set up an operation similar to a pawn transaction whereby a lender would make a small, non-recourse loan secured by an automobile certificate of title. The loan was to be repaid within a short period of time, and during this time, the borrower was allowed to keep possession and use of the automobile. If the borrower defaulted on the loan and failed to redeem the certificate of title within the specified time, the lender's sole remedy was repossession and sale of the automobile. However, unlike other secured loans, the lender retained all proceeds from the sale of the repossessed automobile, even those in excess of the debt. By treating the transaction as a pawn agreement, lenders were allowed to charge interest rates in excess of those allowed under various usury laws. But unlike a stereo, instrument, or jewelry, most borrowers do not have extra automobiles they can leave with a lender. And in Alabama, where most areas lack public transportation options, it is difficult for a borrower to get to work, medical appointments, or even a grocery store without an automobile.

In May 1992, the Alabama Legislature enacted the Alabama Pawnshop Act (the "Pawnshop Act") to govern loans secured by "pledged goods or any purchase of pledged goods on the condition that the pledge goods are left with the pawnbroker and may be redeemed or repurchased by the seller for a fixed price within a fixed period of time." ALA. CODE. § 5-19A-2(3) (1975). The question then became whether the operation created by lenders to pawn automobile certificate of titles should be regulated by the Pawnshop Act or the Alabama's Small Loan Act (ALA. CODE. § 5-18-4(b)) ("Small Loan Act"). If regulated under the Pawnshop Act, these lenders could charge interest rates of 25% a month (which in some cases can be a 300% A.P.R. loan), compared to the Small Loan Act which would limit interest to 2-3% per month with maximum caps. ALA. CODE §§ 5-18-15, 5-19A-7(a). A "bona fide pawnbroking business" is exempt from the Small Loan Act. ALA. CODE § 5-18-4(b).

The first Alabama Supreme Court case to analyze title pawns under the Pawnshop Act was *Floyd v. Title Exchange and Pawn of Anniston, Inc.*, 620 So.2d 576 (Ala. 1993). The precise issue before the Court in *Floyd* was whether the practice of pawning a certificate of title should be regulated under the Pawnshop Act or the Small Loan Act. In other words, could a certificate of title to an automobile be a

"pledged good" under the Pawnshop Act? "Pledged goods" are defined under the Pawnshop Act as "tangible personal property other than choses in action, securities, or printed evidences of indebtedness, which property is purchased by, deposited with, or otherwise actually delivered into the possession of, a pawnbroker in connection with a pawn transaction." ALA. CODE § 5-19A-2(6).[1] Even though the Supreme Court of Alabama questioned whether a certificate of title was "tangible personal property" in a strict legal sense, it ultimately concluded that the transaction at issue in *Floyd* was not prohibited by the Pawnshop Act because a certificate of title was not a "chose in action" even in the broadest sense. *Floyd*, 620 So.2d at 578-79. Since the transaction was not specifically excluded from the definition of "pledged goods," the Court concluded that it was not prohibited. *Id*. at 579.

Additionally, the *Floyd* opinion included the following quote from the trial court: "[t]he language of [the Pawnshop Act] is sufficiently broad to encompass the practice of allowing a customer to retain physical possession of the pledge property with the pawnbroker retaining 'constructive possession' through exercise of actual physical possession of a set of keys and the endorsed, negotiable certificate of title to it." *Id*. However, ten years later in *Ex parte Coleman*, the Supreme Court of Alabama clarified that *Floyd* did not adopt the trial judge's opinion that a pawnbroker's possession of the keys and an endorsed title certificate to an automobile constitutes the pawnbroker's constructive possession of the car itself. 861 So. 2d 1080, 1086 (Ala. 2003). It noted that *Floyd* only held that an automobile certificate of title is "tangible personal property" within the meaning of the Pawnshop Act. *Id*. This has left some later courts in disagreement as to whether a pawnbroker can take constructive possession of an automobile under the Pawnshop Act.[2]

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[1] For comparison, the Georgia Pawnshop Act, Ga. Code Ann. § 44-12-130(5), defines "pledged goods" to include, "without limitation, all types of motor vehicles or any motor vehicle certificate of title," and the Florida Pawnbroking Act, Fla. State. Ann § 539.001(2)(o), specifically excludes from "pledged goods" "titles or any other forms of written security in tangible property in lieu of actual physical possession, including, but not limited to . . . certificate of title and other instruments evidencing title to separate items of property, including motor vehicles."

[2] *See In re Jones*, 206 B.R. 569, 572 (Bankr. M.D.Ala. 1997) (holding a pawnshop customer could give constructive possession of an automobile to another while retaining actual possession of the automobile); *In re Jones*, 304 B.R. 462 (Bankr. N.D. Ala. 2003) (holding that the Pawnshop Act was applicable even though pawnbroker only obtained possession to certificate of title while debtor obtained possession of the automobile); *In re Bramlett*, 483 B.R. 244 (Bankr. N.D. Ala. 2012) (holding that transaction whereby debtor obtained a loan by providing lender with title to his automobile and contractually agreeing that lender obtained constructive possession of the automobile was a pawn transaction); *In re Thompson*, 609 B.R. 443 (Bankr. M.D. Ala. 2019) (holding that pawnshop lender could have constructive possession under the Pawnshop Act); *TitleMax of Alabama v. Barnett*, 2021 WL 426218 (N.D. Ala. 2021) (concluding that constructive possession of a vehicle makes a vehicle a pledge good under the Pawnshop Act); *but see Mattheiss v. Title Loan Express (In re Mattheiss),* 214 B.R. 20, 26 (Bankr.N.D.Ala.1997), disagreed with on other grounds, *Charles Hall Motors, Inc. v. Lewis (In re Lewis),* 137 F.3d 1280, 1282 (11th Cir.1998)

However, in cases since *Floyd*, the Supreme Court of Alabama has stated conclusively that "an automobile certificate of title is tangible personal property within the meaning of the Alabama Pawnshop Act" and that "money-lending transactions involving the transfer of automobile certificates of title for the purpose of giving security are 'pawn' transactions." *Blackmon v. Downey*, 624 So. 2d 1374, 1376 (Ala. 1993); *Ex parte Coleman*, 861 So. 2d 1080, 1086 (Ala. 2003). So, what happens when the borrower files bankruptcy? How have courts treated title pawn agreements in bankruptcy?

Title Pawn Agreements in Bankruptcy

When properly documented, a title pawn loan is also deemed a secured transaction. Specifically, the Pawnshop Act provides that a pawnbroker "shall have a lien on the pledged goods pawned for the money advanced and the pawnshop charge owed," but it is "subject to the rights of other persons who have an ownership interest or prior liens in the pledge goods." ALA. CODE § 5-19A-10(a). In *State ex rel. Morgan v. Thompson*, 791 So. 2d 977 (Ala. Civ. App. 2001), the Court of Civil Appeals of Alabama held that prior to the maturity date of a pawn agreement, a pawn broker is a *bona fide* lienholder so long as the lien is properly documented. *Id.* at 978. The Pawnshop Act and the Alabama Uniform Commercial Code are not mutually exclusive—a pawn transaction may also qualify as a security agreement and a pawnbroker may obtain both a pawnshop lien and a UCC security interest on the same pledged goods, or collateral, from the same transaction. *In re Jones*, 544 B.R. 692, 698 (Bankr. M.D. Ala. 2016).[3] Given that a pawnbroker holds a claim secured by personal property prior to maturity, can a chapter 13 debtor modify the pawnbroker's rights under 11 U.S.C. § 1322(b)(2)?

Section 1322(b)(2) of the Bankruptcy Code allows a debtor to "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence…". 11 U.S.C. § 1322(b)(2). However, § 1322(b)(2) only allows modification to the extent that there is a claim to modify – once a debtor's claim to title is extinguished, § 1322(b) is no longer available. *Commercial Fed. Mortgage Corp. v Smith (In re Smith)*, 85 F.3d 1555 (11th Cir. 1996). Under the Pawnshop Act, even though a pawnbroker may be able to retain a lien on the pledged good if properly documented, it does not automatically obtain title to an automobile upon receipt of the certificate of title. Instead, the Pawnshop Act expressly provides that a pawnbroker cannot obtain legal title to any pledged good until the redemption period has run. Once the maturity date passes and the 30-day redemption period

[3] *See also In re Davis*, 269 B.R. 914 (Bankr. M.D. Ala. 2001) (holding that where a pawnbroker's security interest was not properly perfected and the pawn contract was still in the redemption period when the debtor filed bankruptcy, the security interest was subject to avoidance by the chapter 13 trustee).

expires without redemption by the borrower, the borrower's ownership interest in the pledged goods are automatically forfeited to the pawnbroker. ALA. CODE § 5-19A-6. Specifically, § 5-19A-6 of the Pawnshop Act states:

> A pledgor shall have no obligation to redeem pledged goods or make any payment on a pawn transaction. Pledged goods not redeemed within 30 days following the originally fixed maturity date shall be forfeited to the pawnbroker and absolute right, title, and interest in and to the goods shall vest in the pawnbroker.

Id. Thus, where the maturity date and redemption period expire prior to the bankruptcy petition date, a debtor no longer has any interest in a pawned automobile and cannot modify a pawnbroker's rights by curing the default through a chapter 13 plan. *Geddes v. Mayhall Enterprises, LLC. (In re Jones)*, 304 B.R. 462 (Bankr. N.D. Ala. 2003). However, what happens if a debtor files bankruptcy after the maturity date expires but prior to the expiration of the redemption period? Does the redemption period continue to run such that an asset can drop out of the bankruptcy estate? Or, alternatively, does the automatic stay or some other mechanism keep the redemption period from running and allow a debtor to redeem the pawned automobile through a chapter 13 plan?

Prior to the *Northington*[4] case, Judge Cadell addressed this issue in *In re Bramlett*, 483 B.R. 244 (Bankr. N.D. Ala. 2012). In *Bramlett*, the debtor argued that even though her title pawn matured prepetition, her redemption period had not expired prior to the filing, thus she maintained contractual rights in the collateral that could be modified pursuant to § 1322(b). Relying on the Eleventh Circuit's holding in *Charles R. Hall Motors, Inc. v. Lewis (In re Lewis)*, 137 F.3d 1280 (11th Cir. 1998), Judge Cadell concluded that a debtor cannot properly seek to exercise the right of redemption under a pawn agreement through a chapter 13 plan where the pawn matured prepetition but the redemption period had not expired prior to the bankruptcy filing. *In re Bramlett*, 483 B.R. at 246. Instead, a debtor must take "affirmative steps" to exercise the right of redemption, and while § 108(b) extends the redemption period for 60 days, § 362 does not further toll the running of the redemption period. *Id*. at 246 (citing *Moore v. Complete Cash Holdings (In re Moore)*, 448 B.R. 93, 102 (Bankr. N.D. Ga. 2011); *Miller v. GEM Financial Services (In re Miller)*, 2008 WL 7842089 (Bankr. N.D. Ga. 2008); *Oglesby v. Title Max (In re Oglesby)*, 2001 WL 34047880 (Bankr. S.D. Ga. 2001)). A few years after the *Bramlett* decision, the Eleventh Circuit took up this issue and concluded similarly that a debtor's right to redeem a pawned automobile, which had not yet expired as of the commencement of debtor's bankruptcy case, was not

[4] *Title Max. v. Northington (In re Northington),* 876 F.3d 1302 (11th Cir. 2017).

tolled indefinitely in bankruptcy by operation of the automatic stay or any other mechanism. *In re Northington*, 876 F.3d 1302, 1315 (11th Cir. 2017). Instead, the Eleventh Circuit held that upon the expiration of the redemption period, as provided under state law and extended under § 108, the pawned automobile ceases to be property of the debtor and drops out of the bankruptcy estate. *Id.*

In *Northington*, the pawnbroker sought relief from automatic stay to exercise its rights in an automobile that the chapter 13 debtor pawned prepetition under the Georgia Pawnshop Act. Similar to the Alabama Pawnshop Act, the Georgia Pawnshop Act provides that if the pledged good is not redeemed within a statutorily prescribed grace period, then it shall be automatically forfeited to the pawnbroker by operation of law and any ownership interest of a borrower in the pledged item shall be automatically extinguished. *Id.* at 1305. The debtor entered into a pawn transaction pledging his car in exchange for a loan and ultimately defaulted on the loan by failing to repay it by the maturity date. *Id.* at 1306. Shortly before the redemption period expired, the debtor filed his chapter 13 bankruptcy case. *Id.* There was no dispute that, because the debtor filed for bankruptcy before the grace period lapsed, the car and the right of redemption became part of the bankruptcy estate under § 541(a)(1). *Id.* at 1309. However, the issue was whether the bankruptcy filing froze the debtor's assets in the estate such that the pawnbroker was only a holder of a secured claim whose rights could be modified under § 1322(b)(2) or, alternatively, whether the pawn statute continued to operate and upon the expiration of the redemption period postpetition, the automobile ceased to be property of the estate leaving no bankruptcy based claim. *Id.* at 1310.

As a preliminary matter, the Eleventh Circuit noted that property interests are created and defined by state law and, to determine a debtor's interest in property, a court must inquire into the operation of state law. *Id.* at 1310-1311 (citing to *Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 918, 59 L. Ed. 2d 136 (1979)). Then, looking to *BFP v. Resolution Trust Corp*., 511 U.S. 531, 114 (1994), the Eleventh Circuit pointed out that the Supreme Court has directed that courts interpreting the Bankruptcy Code must give credence to the validity and effect of state laws and traditional state regulation. Absent a "clear statutory requirement to the contrary," courts are to read state law as superseding the Bankruptcy Code unless there is a "clear and manifest" federal statutory purpose to "displace traditional state regulation," or an unambiguous implication to supersede state law property rules. *Northington*, 876 F. 3d at 1312. Adhering to those principles, the Eleventh Circuit could not find a clear textual indication or any implication that Congress intended the Bankruptcy Code to prevent or counteract the ordinary operation Georgia's pawn statute. *Id.* at 1312.

In looking at the text of the Bankruptcy Code, the Eleventh Circuit analyzed the automatic stay provisions of § 362 and the extension language in § 108(b) to determine if the intent of Congress was to toll an unexpired state law redemption period indefinitely. It reasoned that if the intent of Congress was that the automatic stay would serve to prevent state law redemption periods from having their usual effect, then § 108(b)'s extension would be entirely superfluous. Moreover, the Eleventh Circuit emphasized that the language of § 362(a) speaks to affirmative steps taken by creditors, not to actions that take place by operation of law. *Id.* at 1313-1314.

Lastly, the Eleventh Circuit considered whether § 541 could serve as a "freezing" mechanism by bringing in all of the debtor's legal or equitable interest in property into the bankruptcy estate "as of the commencement of the case." *Id.* at 1314. However, the Court noted that § 541 neither clearly says, nor unambiguously implies, that a bankruptcy estate, once created, remains static. *Id*. In contrast, the Bankruptcy Code takes the estate's constituent property interests as it finds them—"[i]f the asset is by its state-law nature static, then it remains so in the bankruptcy estate" but if the "state law imbues an estate asset with a sort of internal dynamism, then that characteristic will follow the asset into the estate." *Id.* The dynamism can increase, reduce, or even eliminate an estate asset's value. In reaching this conclusion, the Eleventh Circuit cited to other expressed textual examples in the Bankruptcy Code where the estate interests can expand or contract based on state law—postpetition interest on a deposit account and option contracts. *Id.* at 1315.

After *Northington*, debtors involved in pawn transactions have made various arguments seeking to either undo the pawn agreement entirely or to provide for payment of the pawn debt through their chapter 13 plans. These arguments generally fall into three categories: (i) waiver of the automatic forfeiture provisions under the Pawnshop Act; (ii) waiver of forfeiture rights under judicial estoppel and/or doctrine of laches theories; and (iii) the timing of petition date resulting in a lien interest only going into the bankruptcy estate.

1. Waiver of Forfeiture Rights Under Automatic Provisions of the Pawnshop Act

In *In re Eldridge*, the debtor argued that the pawnbroker waived its forfeiture rights under the Pawnshop Act when it failed to transfer title immediately upon the expiration of the redemption period. 615 B.R. 657 (Bankr. S.D. Ala. 2020). The debtor pawned an automobile, and upon the maturity of the underlying pawn contract, the parties entered into successive pawn transactions. *Id.* at 659. In these successive transactions, the debtor did not redeem the automobile or enter into new contracts before the maturity date or within the 30-day statutory redemption period. *Id.* In fact, despite the terms of the pawn

agreement and the requirements under the Pawnshop Act, it was common practice for the debtor and pawnbroker to enter into new pawn agreements between 60 and 90 days after the last pawn maturity date. *Id.* During these periods, the pawnbroker did not take steps to repossess the automobile and, instead, continued to enter into successive pawn agreements beyond the 30-day redemption period. *Id*. The pawn agreements contained language that if the pledged good was not redeemed within the 30 days following the maturity date, then the goods shall be forfeited to the pawnbroker and "absolute right, title, and interest in and to the goods shall vest" in the pawnbroker. Additionally, the pawn agreements included specific language providing that the pawnbroker may waive or delay enforcing their rights without losing them. *Id.* at 660.

The pawnbroker objected to confirmation of the debtor's chapter 13 plan, which proposed to modify the pawnbroker's rights, and moved for a determination on the applicability of the automatic stay. The debtor argued that the forfeiture provisions of the Pawnshop Act are mandatory statutory provisions that are not discretionary in nature and could not be waived by agreement of the parties. *Id.* at 660-61. As a result, once the initial redemption period expired without a new contract, absolute right, title, and interest in the automobile vested in the pawnbroker. *Id.* Debtors have similarly argued in other cases that because the pawnbroker had absolute title and interest upon the expiration of the initial redemption period through the automatic forfeiture provision of the Pawnshop Act, any interest or fees charged after that time were excessive and voided the pawnshop agreement under § 5-19A-7 of the Pawnshop Act.[5] Additionally, because the pawnbroker had a legal obligation to promptly transfer title of the automobile upon forfeiture and failed to do so, it sat on its rights and any right to forfeiture and any interest it had in the automobile were waived.[6]

Holding that statutory forfeiture was waivable by the title pawnbroker, Judge Callaway disagreed with the debtor's argument that the use of absolute language in the Pawnshop Act was determinative. Specifically, he concluded that in many cases the use of "shall" in a statute is not determinative, and courts routinely find waivers of statute of limitations and other statutory rights even though they contain mandatory language. *In re Eldridge*, 615 B.R. at 662-63 (internal cites omitted). Additionally, Judge

[5] ALA. CODE § 5-19A-7(b) states that: "Any interest, charge, or fees contracted for or received, directly or indirectly, in excess of the amount permitted under subsection (a) shall be uncollectible and the pawn transaction shall be void.The pawnshop charge allowed under subsection (a) shall be deemed earned, due, and owing as of the date of the pawn transaction and a like sum shall be deemed earned, due, and owing on the same day of the succeeding month."

[6] See generally *In re Thompson*, 609 B.R. 443 (Bankr. M.D. Ala. 2019), aff'd by *Thompson v. TitleMax of Alabama, Inc.*, 621 B.R. 267 (M.D. Ala. 2020).

Callaway noted that "[a]bsent affirmative indications in a statute of an intent to preclude waiver," both contractual and statutory rights are waivable. *Id.* (citing *United States v. Mezzanattoo*, 513 U.S. 196, 201, 115 S.Ct. 797, 130 L.Ed. 2d 697 (1995)). Because the redemption period expired prior to the petition date and debtor's waiver argument was rejected, the court found the automobile was not part of the debtor's estate. *In re Eldridge*, 615 B.R. at 662-63. The District Court for the Southern District of Alabama affirmed the case on appeal incorporating most of the bankruptcy court's analysis. *Eldridge v. Title Max of Alabama, Inc*., No. CV 1:20-00133-JB-B, 2021 WL 1759301 (S.D. Ala. Mar. 31, 2021). This case is currently on appeal to the Eleventh Circuit.

2. Waiver of Forfeiture Rights by Judicial Estoppel and/or Doctrine of Laches

Another argument that has been raised by debtors is that there is a waiver of forfeiture by the title pawnbroker as a result of the pawnbroker's failure to participate in the bankruptcy case. Specifically, debtors contend that waiver occurs when the pawnbroker fails to object to confirmation of a chapter 13 plan that includes provisions to modify the pawn debt and the plan is ultimately confirmed by the court. These cases procedurally come before the bankruptcy court on a motion by the pawnbroker for a determination on the applicability of the automatic stay as to the pawned automobile postconfirmation. For example, in *In re Cottingham*, Judge Robinson held that where the debtor's redemption period expired prepetition, the debtor included the pawnbroker's claim as a secured claim to be paid through the chapter 13 plan, the plan was confirmed without objection from the pawnbroker, the pawnbroker filed a proof of claim, and the pawnbroker accepted at least one payment from the plan, the pawnbroker waived its rights to assert ownership of the pawned automobile under state law and the automatic stay remained in place as to the automobile. 618 B.R. 555 (Bankr. N.D. Ala. 2020).[7]

Applying a similar analysis, Judge Callaway held in *In re Deakle,* that a pawnbroker's inaction can constitute a waiver of forfeiture. 617 B.R. 709 (Bankr. S.D. Ala. 2020). In *Deakle*, the title pawnbroker failed to object to confirmation or otherwise oppose a chapter 13 plan which proposed to modify the pawn agreement under § 1322(b). *Id.* at 711. Three months after the confirmation order entered, the pawnbroker filed a motion seeking a determination that the automatic stay was terminated or not applicable pursuant to *Northington*. *Id*. While not disputing it received notice of the bankruptcy case

[7] But in *In re Blanton*, BK 19-80638 (Bankr. M.D. Ala.), the bankruptcy court found that judicial estoppel did not apply to prevent the pawnbroker from asserting its interest in a pawned automobile where the debtor argued that the pawnbroker was judicially estopped since it took an inconsistent position in a prior bankruptcy case which was dismissed prior to confirmation of the plan. The court concluded that judicial estoppel could not apply because neither party's position was accepted by the court in the prior case.

and applicable deadlines, the pawnbroker argued that it was not bound by the confirmed plan under *United Student Aid Funds, Inc. v. Espinosa,* 559 U.S. 260, 130 S. Ct. 1367, 176 L.Ed. 2d 158 (2010) because the pawned automobile was never property of the debtor's bankruptcy estate. *In re Deakle,* 617 B.R. at 711.

Judge Callaway found that unlike in *Northington*, where the debtor's statutory redemption period expired preconfirmation and the pawnbroker took action to preserve its state law rights in the pawned automobile ***before*** the plan was confirmed, the pawnbroker in *Deakle* had "slept on its rights" and the res judicata effect of confirmation resulted in a waiver of forfeiture by the pawnbroker. *Id.* at 717. Judge Callaway also pointed out the hypocrisy of the same pawnbroker arguing in *Deakle* that it could waive its statutory forfeiture rights by entering into new pawn transactions after the statutory redemption period expired, but yet it could not waive forfeiture through the chapter 13 confirmation process. *Id.* On appeal, the District Court affirmed the bankruptcy court's decision. *TitleMax of Alabama, Inc. v. Deakle*, 2021 WL 1759302 (S.D. Ala. 2021). This case is also currently on appeal to the Eleventh Circuit.

3. Arguments Regarding the Property Interest that Goes Into Bankruptcy Estate

Another strategy utilized by debtors in an attempt to minimize the reach of *Northington* is to attack the underlying property interest that goes into the bankruptcy estate as of the commencement of the case. In *In re Womack*, the debtor filed her chapter 13 bankruptcy petition prior to the maturity date of the pawn agreement at issue in the case. 616 B.R. 420 (Bankr. M.D. Ala. 2020). She proposed to modify the terms of the pawn agreement in her chapter 13 plan and the pawnbroker objected to confirmation. *Id*. The pawnbroker argued that while the automobile was property of the estate as of the petition date, once the pawn matured and the redemption period expired as extended under § 108(b), the property fell out of the estate under *Northington*. *Id.* However, Judge Sawyer noted a clear distinction in facts from the *Northington* case, overruled the objection, and confirmed the plan. *Id.* at 428.

In his decision, Judge Sawyer observed that, unlike *Northington*, the pawn agreement had not matured prior to the petition date. *Id.* at 426-427. Referencing *In re Burnsed*, 224 B.R. 496 (Bankr. M.D. Fla. 1998) and *In re Lopez*, 163 B.R. 189 (Bankr. D. Col. 1994), Judge Sawyer reasoned that, because the debtor filed bankruptcy before the pawn contract matured and was not in default as of the petition date, the pawnbroker only held the title to the automobile as security for the pawn transaction. *Id*. Thus, the property interest that became property of the estate was not merely a right to redemption as it was in *Northington*. Instead, the debtor held legal title to the automobile and the pawnbroker only held a security interest which was subject to modification under § 1322(b)(2). *Id.* at 427.

On appeal, the District Court affirmed Judge Sawyer's decision and agreed that the Eleventh Circuit holding in *Northington* was distinct because, as of the petition date, the debtor in *Womack* was the owner of the automobile and not just a conditional possessor of the automobile with redemption rights. *TitleMax of Alabama v. Womack*, No. 2:20-CV-416-WKW, 2021 WL 1343051 (M.D. Ala. Apr. 9, 2021). Thus, because the debtor retained ownership of the automobile on the petition date, that ownership interest entered the estate and, unlike *Northington*, the debtor's ownership interest could not be reduced by the passage of time into a conditional interest. *Id.* at * 5-6. As a result, on the petition date all the pawnbroker retained was a secured claim in the automobile which was subject to modification under § 1322(b)(2). TitleMax appealed and the Eleventh Circuit recently affirmed. *Titlemax of Alabama, Inc. v. Womack (In re Womack),* No. 21-11476, 2021 WL 3856036 (11th Cir. Aug. 30, 2021).

In its opinion, the Eleventh Circuit reasoned that under Alabama law, the debtor in *Womack* had the right to title and possession of the pawned automobile as of the commencement of her bankruptcy case because the maturity date of the pawn had not expired. *Id.* at *2-3. Citing to *State ex rel. Morgan v. Thompson*, 791 So. 2d 977, 978 (Ala. Civ. App. 2001), the Eleventh Circuit noted that until the maturity date has expired on the pawn, under Alabama law a pawnbroker is a "lienholder" who is only entitled to the amount of its interest in the automobile. *Id.* Under *Northington*, the Bankruptcy Code brings into the property interest into the estate as it finds them. *Id.* at *3. Because the debtor in *Womack* held both the right to title and possession of the automobile under Alabama law on the day she filed her petition, § 541 brought that interest into her bankruptcy estate. Defining this interest as a fixed interest, the Eleventh Circuit distinguished *Womack* from *Northington*, which addressed a contingent, redemption interest. *Id.* Since the debtor's interest was not contingent, the automatic stay froze the interest of TitleMax as a lienholder with a security interest in the automobile, and this interest could be modified under § 1322(b)(2).

Conclusion

We now have some clarity regarding the timing of the petition and the property interest that comes into a bankruptcy estate when the pawn agreement has not matured. However, there are still factual nuances in many of the case with issues left unsettled that make it difficult for bankruptcy courts to apply a "one size fits all" approach to title pawns. It remains to be seen whether the outcome of those cases pending before the Eleventh Circuit will resolve with finality how all title pawn transactions should be treated in bankruptcy.