



CSU
College of Law Library

Cleveland State Law Review

Volume 63 | Issue 4

Article

2015

The Chapter 13 Debtor's Absolute Right to Dismiss

Daniel J. Sheffner

Follow this and additional works at: <https://engagedscholarship.csuohio.edu/clevstlrev>



Part of the [Bankruptcy Law Commons](#)

[How does access to this work benefit you? Let us know!](#)

Recommended Citation

Daniel J. Sheffner, *The Chapter 13 Debtor's Absolute Right to Dismiss*, 63 Clev. St. L. Rev. 833 (2015)
available at <https://engagedscholarship.csuohio.edu/clevstlrev/vol63/iss4/8>

This Article is brought to you for free and open access by the Journals at EngagedScholarship@CSU. It has been accepted for inclusion in Cleveland State Law Review by an authorized editor of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.

THE CHAPTER 13 DEBTOR’S ABSOLUTE RIGHT TO DISMISS

DANIEL J. SHEFFNER*

I.	INTRODUCTION	833
II.	CHAPTER 13 AND THE VOLUNTARY RIGHT TO DISMISS: THE CIRCUIT SPLIT	840
	<i>A. Statutory Landscape</i>	840
	<i>B. Pre-Marrama Decisional Landscape</i>	842
	1. The Minority Position: <i>Molitor</i>	842
	2. The Majority Position: <i>Barbieri</i>	844
	<i>C. Marrama v. Citizens Bank of Massachusetts</i>	848
	1. The Decision	848
	2. Responses from the Lower Courts	851
	<i>a. Marrama Controls: Rosson and Jacobsen</i>	852
	<i>b. Marrama Does Not Control: In re Williams</i>	854
III.	<i>LAW V. SIEGEL</i>	857
IV.	<i>LAW V. SIEGEL</i> ’S IMPLICATIONS FOR THE CHAPTER 13 DEBTOR’S RIGHT TO DISMISS	860
V.	CONCLUSION	863

I. INTRODUCTION

Currently, the federal courts are in disagreement as to whether a debtor in a Chapter 13 bankruptcy proceeding has an absolute right to dismiss her case in the face of an opposing motion to convert it to a Chapter 7 liquidation proceeding.¹ Section 1307(b) of the United States Bankruptcy Code² states that “[o]n request by

* Law Clerk, Honorable Kenneth J. Meyers, United States Bankruptcy Court for the Southern District of Illinois. The views expressed in this Article are not necessarily shared by the judges of the Southern District of Illinois. I am grateful to Judge Kenneth Meyers, Chief Judge Laura Grandy, and Joan Binetsch, Esq. for their collective support, inspiration, and guidance.

¹ This is in contrast to the accord surrounding the extent of the Chapter 13 debtor’s right to convert to a Chapter 7. Section 1307(a) of the Bankruptcy Code states, in relevant part: “The debtor may convert a case under [Chapter 13] to a case under [C]hapter 7 of [title 11] at any time.” 11 U.S.C. § 1307(a) (2012). Section 1307(a) is widely acknowledged to create an absolute right. *See, e.g., In re DeFrantz*, 454 B.R. 108, 114-15 (B.A.P. 9th Cir. 2011); *In re Lassiter*, No. 08–31578, 2011 WL 2039363, at *7 (Bankr. E.D. Va. May 24, 2011); *In re Campbell*, 36 F. App’x 388, 389 (10th Cir. 2002); *In re Torres*, No. 99–02609, 2000 WL 1515170, at *2 (Bankr. D. Idaho Oct. 10, 2000); *In re Humphreys*, 64 B.R. 215, 216 (Bankr. D. Or. 1986); *In re Langston*, 40 B.R. 272, 274 (Bankr. W.D. Mich. 1983); *In re Doyle*, 11 B.R. 110, 111 (Bankr. E.D. Penn. 1981); *see also* FED. R. BANKR. P. 1017(f)(3) (providing that “[a] . . . [C]hapter 13 case shall be converted without court order when the debtor files a notice of conversion under . . . § 1307(a).”).

² § 1307(b). One of the primary purposes of the modern American bankruptcy system is “to relieve the honest debtor from the weight of indebtedness which has become oppressive” and allow him to make a “fresh start.” *Wetmore v. Markoe*, 196 U.S. 68, 77 (1904). This is in contrast to the country’s earliest conception of bankruptcy. The Framers of the U.S. Constitution viewed the establishment of federal bankruptcy laws as necessary for the

the debtor at any time . . . the court shall dismiss” a previously unconverted Chapter 13 case.³ Accordingly, a majority of courts hold that § 1307(b) imbues the Chapter 13 debtor with an absolute right to dismiss her case, leaving the court with no discretion on the matter.⁴ A large minority of jurisdictions, however, maintain that

prevention of interstate commerce conflicts. Charles Jordan Tabb, *The History of the Bankruptcy Laws in the United States*, 3 AM. BANKR. INST. L. REV. 5, 43 (1995). “The idea of a bankruptcy law as a means of providing a fresh start for distressed debtors was foreign to the framers.” *Id.* The country’s first federal bankruptcy law, the Bankruptcy Act of 1800, Ch. 19, 2 Stat. 19, only applied to merchant debtors and did not provide for voluntary bankruptcies, in line with the English Statute of George II, 5 Geo. 2, ch. 30 (1735), on which it was based. Tabb, *supra*, at 14. Of course, the debtor’s “fresh start” is not the American bankruptcy system’s only policy. Professor Kenneth Klee notes that the following are also “fundamental bankruptcy policies”: equality of distribution of similarly situated creditors; deterring a race of diligence by creditors; “discouraging secret liens”; maximization of the value of the bankruptcy estate; “favoring business, farmer, railroad or municipal organizations”; and “generally precluding the allowance of postpetition interest on prepetition unsecured claims.” KENNETH N. KLEE, BANKRUPTCY AND THE SUPREME COURT 242-43 (2009).

The Bankruptcy Code allows a debtor to receive a discharge of her debts through either liquidation or reorganization proceedings. *See id.* at 366-67. The avenue selected is determined by the chapter of the Code under which the debtor files her bankruptcy petition, as well as by the status of the debtor. Chapters 1, 3, and 5 of the Bankruptcy Code cover general matters relevant to all bankruptcy cases. Chapter 7 governs liquidation proceedings. *See* 11 U.S.C. §§ 701-784 (2012). Municipalities file for bankruptcy under Chapter 9. *See id.* §§ 901-946. Chapter 11 cases generally concern large and small corporate reorganizations. *See id.* §§ 1101-1174. Family farmers may pursue reorganization under Chapter 12. *See id.* §§ 1201-1231. Chapter 13 allows individuals to restructure their debts and enter into repayment plans. *See id.* §§ 1301-1330. And Chapter 15 concerns cross-border insolvency proceedings. *See id.* §§ 1501-1532. Chapters 7 and 13 are the most commonly used chapters. *See* United States Courts, Statistics, 2014 Bankruptcy Filings, <http://www.uscourts.gov/Statistics/BankruptcyStatistics/2014-bankruptcy-filings.aspx>; Katherine Porter, *The Pretend Solution: An Empirical Study of Bankruptcy Outcomes*, 90 TEX. L. REV. 103, 116 (2011).

This Article primarily concerns Chapters 7 and 13. In a proceeding filed under Chapter 7, all of the debtor’s nonexempt assets become the property of the bankruptcy estate. 11 U.S.C. § 541(a) (2012). The Chapter 7 trustee “collect[s] and reduce[s] to money the property of the estate” (i.e., liquidates the debtor’s assets) and distributes the proceeds to the debtor’s creditors. *Id.* § 704. After liquidation and distribution, the debtor receives a discharge of all pre-petition debts (even if the proceeds of the liquidation sale failed to fully satisfy all creditors), excepting the debtor’s non-dischargeable obligations. *Id.* § 524(a)(2).

Chapter 13 does not concern liquidation of assets, but rather repayment. Unlike the Chapter 7 debtor, the Chapter 13 debtor has the ability to keep his property. Andrew Harrell, Comment, *Marrama v. Citizens Bank of Massachusetts: A Dishonest Debtor’s Right to Convert to Chapter 13*, 33 OKLA. CITY U. L. REV. 861, 864 (2008). Instead of liquidation, the debtor enters into a repayment plan supervised by the bankruptcy court whereby he dedicates his post-petition income to his creditors in monthly installments. *Ransom v. FIA Card Services, N.A.*, 131 S. Ct. 716, 721 n.1 (2011); Harrell, *supra*, at 864. Payments are made to the Chapter 13 trustee who in turn makes disbursements to the debtor’s creditors. Alan M. White & Carolina Reid, *Saving Homes? Bankruptcies and Loan Modifications in the Foreclosure Crisis*, 65 FLA. L. REV. 1713, 1717 (2013). Upon completion of all required payments, the debtor receives a discharge. 11 U.S.C. § 1328(e) (2012).

³ § 1307(b).

⁴ *See Barbieri v. RAJ Acquisition Corp. (In re Barbieri)*, 199 F.3d 616, 619 (2d Cir. 1999); *In re Burba*, No. 93-6479, 1994 WL 709314, at *10 (6th Cir. Nov. 10, 1994); *In re*

the debtor's right to dismiss is conditioned on the presence of good faith, even though the text of the Bankruptcy Code contains no such requirement.⁵ Therefore, the nature and extent of the Chapter 13 debtor's right to voluntarily dismiss her case, as well as of the bankruptcy courts' abilities to police abuse and bad faith conduct, are dependent upon the district in which the Chapter 13 petition is filed.⁶

In 2007, the minority position was bolstered by the United States Supreme Court's decision in *Marrama v. Citizens Bank of Massachusetts*,⁷ in which the Court held that a Chapter 7 debtor's right to convert his case to one under Chapter 13 is tempered by a bad faith exception.⁸ While *Marrama* did not concern the same interplay of statutory provisions at issue in Chapter 13 dismissal cases, many courts, including the Fifth and Ninth Circuit Courts of Appeal, have cited *Marrama* in support of the proposition that a Chapter 13 debtor does not have an absolute right to dismiss.⁹

While admittedly persuasive, any support *Marrama* lent to the minority position, and indeed the minority position itself, was eliminated by the Court's 2014 decision in *Law v. Siegel*.¹⁰ In the case, Stephen Law filed a petition for bankruptcy under

Dulaney, 285 B.R. 10, 15 (D. Col. 2002); *Clearstory & Co. v. Blevins*, 225 B.R. 591, 592 (D. Md. 1998); *Elliott v. ITT Corp.*, 150 B.R. 36, 40 (N.D. Ill. 1992); *In re Frost*, 123 B.R. 254, 259 (S.D. Ohio 1990) (citing *In re Jourdan*, 108 B.R. 1020 (Bankr. N.D. Iowa 1989)); *In re Rippe*, No. 12-10220, 2013 WL 5701605, at *2 (Bankr. N.D. Ind. Sept. 25, 2013); *In re Mangual*, No. 10-00124, 2010 WL 5185392, at *2 (Bankr. D.P.R. Dec. 20, 2010); *In re Williams*, 435 B.R. 552, 560 (N.D. Ill. 2010); *In re Hamlin*, No. 09-05272-8, 2010 WL 749809, at *4 (Bankr. E.D.N.C. Mar. 1, 2010); *In re Campbell*, No. 07-457, 2007 WL 4553596, at *4 (Bankr. N.D. W. Va. Dec. 18, 2007); *In re Perez*, No. 07-12021, 2007 WL 4893515, at *1 (Bankr. N.D. Ind. Nov. 27, 2007); *In re Davis*, 352 B.R. 758, 764 (D.S.C. 2006); *In re Aupperle*, 352 B.R. 43, 45 (Bankr. D.N.J. 2005); *In re Terry*, No. 01-12750C-7G, 2003 WL 21219818, at *1 (Bankr. M.D.N.C. May 23, 2003); *In re LeGree*, 285 B.R. 615, 617 n.3 (Bankr. E.D. Pa. 2002); *In re Parrish*, 275 B.R. 424, 425 n.1 (Bankr. D.D.C. 2002); *In re Whitmore*, 225 B.R. 199, 202 (Bankr. D. Idaho 1998); *In re Rosenthal*, 117 B.R. 710, 711 (Bankr. M.D. Fla. 1990); *In re Redick*, 81 B.R. 881, 885 n.7 (Bankr. E.D. Mich. 1987); *Matter of Rementer*, 58 B.R. 723, 724 (Bankr. D. Del. 1986).

⁵ See *Jacobsen v. Moser (In re Jacobsen)*, 609 F.3d 647, 661 (5th Cir. 2010); *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764, 772 (9th Cir. 2008); *Molitor v. Eidson (In re Molitor)*, 76 F.3d 218, 220-21 (8th Cir. 1996); *In re Mitrano*, 472 B.R. 706, 710 (E.D. Va. 2012); *In re Gaudet*, 132 B.R. 670, 675 (D.R.I. 1991); *In re Youngblood*, No. 13-71071, 2013 WL 5592904, at *7 (Bankr. C.D. Ill. Oct. 10, 2013); *In re Mattick*, 496 B.R. 792, 799-800 (Bankr. W.D.N.C. 2013); *In re Kotche*, 457 B.R. 434, 439-40 (Bankr. D. Md. 2011); *In re Taylor*, 462 B.R. 527, 530-31 (Bankr. W.D. Pa. 2011); *In re Norsworthy*, No. 05-15098, 2009 WL 6499238, at *1 (Bankr. N.D. Ga. May 27, 2009); *In re Letterese*, 397 B.R. 507, 512 (Bankr. S.D. Fla. 2008).

⁶ In fact, in some districts the nature of the Chapter 13 debtor's right to dismiss is dependent on the judge hearing the case. Compare *In re Johnson*, 228 B.R. 663, 668 (Bankr. N.D. Ill. 1999) (Schmetterer, J.) (holding that there is no absolute right to dismiss under § 1307(b)), with *Williams*, 435 B.R. at 560 (Wedoff, J.) (holding that there is an absolute right to dismiss under § 1307(b)).

⁷ 549 U.S. 365 (2007).

⁸ *Id.* at 372-73.

⁹ See *Jacobsen*, 609 F.3d at 649; *Rosson*, 545 F.3d at 767.

¹⁰ 134 S. Ct. 1188 (2014).

Chapter 7 in 2004.¹¹ The debtor represented to the bankruptcy court in his schedule of prepetition debts¹² that his house, which he valued at \$363,348, was secured by a note and deed of trust held by Washington Mutual Bank for \$147,156.52, and a note and deed of trust held by “Lin’s Mortgage & Associates” for \$156,929.04.¹³ In addition, Law applied the State of California’s \$75,000 homestead exemption to his house.¹⁴ The combined value of the two deeds of trust listed in Law’s schedule was greater than the nonexempt value of his house,¹⁵ rendering the house allegedly bereft of any equity recoverable by his remaining creditors.¹⁶ Soon after Law filed his bankruptcy petition, the Chapter 7 trustee,¹⁷ Alfred H. Siegel, instituted adversary proceedings,¹⁸ alleging that the “Lin’s Mortgage & Associates” deed of trust was

¹¹ *Id.* at 1193.

¹² A debtor must file with the court schedules listing his assets and liabilities, as well as his expenditures and income. 11 U.S.C. § 521(a)(1)(B)(i), (ii) (2012).

¹³ *Law*, 134 S. Ct. at 1193. Law’s residence was also encumbered by three judgment liens. *In re Law*, 401 B.R. 447, 449 (Bankr. C.D. Cal. 2009).

¹⁴ *Law*, 134 S. Ct. at 1193; CAL. CIV. PROC. § 704.730(a)(1) (West 2015).

¹⁵ *Law*, 134 S. Ct. at 1193.

¹⁶ *Id.*

¹⁷ The bankruptcy trustee is the representative of the bankruptcy estate. 11 U.S.C. § 323(a) (2012). The Chapter 7 trustee, for example, is responsible for liquidating the assets of the estate. *Id.* § 363(b)(1).

¹⁸ Adversary proceedings are “full blown federal lawsuits within the larger bankruptcy case,” governed by Part VII of the Federal Rules of Bankruptcy Procedure. *Matter of TransAmerican Natural Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992) (internal citations omitted). Rule 7001 states that adversary proceedings consist of the following:

- (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002;
- (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d);
- (3) a proceeding to obtain approval under § 363(h) for the sale of both the interest of the estate and of a co-owner in property;
- (4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§ 727(a)(8), (a)(9), or 1328(f);
- (5) a proceeding to revoke confirmation of a chapter 11, chapter 12, or chapter 13 plan;
- (6) a proceeding to determine the dischargeability of a debt;
- (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
- (8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;
- (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or
- (10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. § 1452.

FED. R. BANKR. P. 7001.

merely Law's attempt to remove all equity from his house and, therefore, defraud his remaining creditors.¹⁹

Law claimed that a woman named Lili Lin was the lender of the sum secured by the deed of trust.²⁰ Two Lili Lins, however, responded to the trustee's adversary complaint: a Lili Lin of Artesia, California, and a Lili Lin of Guangzhou, China.²¹ So began the tale of two Lilis. Lili Lin of Artesia acknowledged in a stipulated judgment with the trustee that she had not made a loan to Law and that, in fact, Law had sought to include her in an attempt to institute a foreclosure of the deed of trust that would result in the fraudulent transfer of the house's remaining equity to his ex-wife.²²

The bankruptcy court was not convinced by the other Lili Lin's representations. Lili Lin of China never physically appeared before the court, and the court found it suspiciously remarkable that, "despite her inability to speak English and her frequent lack of representation [she] managed to file . . . numerous motions, declarations, and appeals in pro per – all written in English, without record of translation."²³ Further, the court mistrusted Lili Lin of China's written filings to the court because they were stylistically similar to Law's and advocated the same positions, and because, for the purpose of her filings, she used Law's address (as well as another California address).²⁴

Unpersuaded by Law's and Lili Lin of China's averments, the court determined that "the loan was a fiction, meant to preserve [Law's] equity in his residence beyond what he was entitled to exempt as a homeowner, and a fraud on his creditors and the court."²⁵ As a remedy for the considerable time and money (over \$500,000 in attorneys' fees) expended by the trustee during the adversary proceeding, the bankruptcy court ordered that Law's \$75,000 homestead exemption be surcharged and applied to the trustee's administrative expenses.²⁶ Law appealed the surcharge order.²⁷

The Ninth Circuit Bankruptcy Appellate Panel ("BAP") upheld the bankruptcy court's surcharge remedy, holding that under Ninth Circuit precedent²⁸ a bankruptcy

¹⁹ *Law*, 134 S. Ct. at 1193.

²⁰ *In re Law*, 401 B.R. 447, 449 (Bankr. C.D. Cal. 2009).

²¹ *Id.* at 451–52.

²² *Id.* at 450–52.

²³ *Id.* at 452–53. The term "pro per," short for "pro persona," means "on one's own behalf" in Latin. Pro persona, BLACK'S LAW DICTIONARY (10th ed. 2012). Pro per is synonymous with the more common "pro se." *See id.*

²⁴ *Law*, 401 B.R. at 453.

²⁵ *Id.*

²⁶ *Id.* at 454–55.

²⁷ *Law v. Siegel (In re Law)*, BAP No. CC–09–1077, 2009 WL 7751415, at *4. (B.A.P. 9th Cir. 2009).

²⁸ District courts have appellate jurisdiction over bankruptcy court decisions. 28 U.S.C. § 158(a)(1)–(3) (2012). Each federal circuit may, however, create a BAP, consisting of a three-judge panel staffed by full-time bankruptcy judges, which hears appeals from the bankruptcy courts in place of the district court. *See id.* § 158(b), (c). BAP decisions are appealed to the

court may surcharge a debtor's claimed exemptions when the debtor's fraudulent conduct restricts the trustee's access to nonexempt property of the bankruptcy estate.²⁹ On subsequent review, the Ninth Circuit Court of Appeals upheld the BAP's affirmance.³⁰

The Supreme Court granted certiorari to determine "whether a bankruptcy court . . . may order that a debtor's exempt assets be used to pay administrative expenses as a result of the debtor's misconduct."³¹ Justice Scalia, writing for a unanimous Court, determined that it could not, and held that the bankruptcy court had exceeded its statutory and inherent powers in surcharging Law's homestead exemption.³²

The issue in *Law*—that of the liability of statutory exemptions to a trustee's administrative expenses—is irrelevant, in the abstract, to the Chapter 13 debtor's right to dismiss. In fact, the question at issue in *Marrama*—whether the Chapter 7 debtor's right to convert is conditioned on good faith conduct—is substantively and procedurally more akin to the problem posed by § 1307(b). *Law*, however, in unmistakable terms, pronounced limits on bankruptcy courts' authority to police bad faith conduct, and in so pronouncing rendered groundless the minority position's support of a non-textually-based bad faith exception to § 1307(b).³³ This the Court did while explicitly refusing to recognize *Marrama* as standing for the proposition that otherwise unqualified statutory rights are able to be limited by judicial fiat.³⁴ The decision, therefore, is directly applicable to the bankruptcy courts' authority to place limitations on the Chapter 13 debtor's right to dismiss and, in fact, controls the question.

Part II discusses the current state of the Chapter 13 dismissal circuit split, providing an overview of § 1307(b) and other relevant sections of the Bankruptcy Code, illustrative pre-*Marrama* case law on either side of the divide, and the *Marrama* decision itself. This Part examines *Marrama*'s role in shifting the debate from one based primarily on § 1307's text to that of the bankruptcy courts' general powers to sanction bad faith conduct, as well as lower courts' responses to that decision. Part III examines *Law*, paying special attention to the Court's discussion of the limitations placed on bankruptcy courts' statutory and inherent powers to police bad faith and abuse of the bankruptcy process. Lastly, Part IV details *Law*'s implications for the Chapter 13 dismissal context, concluding that the Supreme Court's decision in *Law* indicates that the minority position's assertion that § 1307(b) is limited by an extra-statutory bad faith exception is in violation of the

relevant circuit court of appeal. Jonathan Remy Nash & Rafael I. Pardo, *An Empirical Investigation into Appellate Structure and the Perceived Quality of Appellate Review*, 61 VAND. L. REV. 1745, 1757-58 (2008). Only the First, Sixth, Eighth, Ninth, and Tenth Circuits have BAPs. *Id.* at 1757.

²⁹ *Law*, 2009 WL 7751415, at *7 (citing *Latman v. Burdette*, 366 F.3d 774 (9th Cir. 2004)).

³⁰ *Law v. Siegel (In re Law)*, 435 F. App'x 697, 698 (9th Cir. 2011).

³¹ *Law v. Siegel*, 134 S. Ct. 1188, 1192 (2014).

³² *Id.* at 1195.

³³ *See id.* at 1194-95.

³⁴ *Id.* at 1197.

constraints imposed by the Bankruptcy Code on bankruptcy courts' abilities to rout out bad faith.³⁵

³⁵ There is a relative lack of literature in this area. Practitioners and bankruptcy judges have discussed the issue to some extent. See, e.g., Frank Volk, *A Debtor's Right of Voluntary Dismissal under § 1307(b) Following Marrama*, AM. BANKR. INST. J., Dec.-Jan. 2011, at 14; David S. Kennedy & R. Spencer Clift, III, *Reasonable and Necessary Expenses Under Section 1325(b) of the Bankruptcy Code, Postconfirmation Considerations, and the Effect of Conversion and Dismissal of Chapter 13 Cases*, 32 U. MEM. L. REV. 789, 869-70 (2002); Timothy D. Moratzka, *A Conditional Escape Hatch: 11 U.S.C. § 1307(b) and (c)*, AM. BANKR. INST. J., May 2000, at 31, 31; David S. Kennedy, *Chapter 13 Under the Bankruptcy Code*, 19 MEM. ST. U. L. REV. 137, 156 (1989). The most critical study on the matter is a student comment written by Gabriel Gonzalez. See Gabriel C. Gonzalez, Comment, *Dismissal of a Bankruptcy Chapter 13 Filing: A Debtor's Unconditional Right or Subject to the Court's Discretion Based on Bad Faith?*, 16 TEX. WESLEYAN L. REV. 295 (2010). Gonzalez provides a thorough analysis of the decisional and statutory landscape of the circuit split. The article details the history of Chapter 13 and the arguments for and against the Chapter 13 debtor's absolute right to dismiss, examines the plain meaning doctrine of statutory interpretation and the policies and legislative history of Chapter 13, and discusses the tools courts may use to prevent abuse of the bankruptcy process. *Id.* at 297-99, 301-05, 305-12, 313-18; see also *Current Circuit Splits*, 7 SETON HALL CIRCUIT REV. 103, 107 (2010) (discussing the circuit split); Joseph J. Wielebinski & Davor Rukavina, *Bankruptcy*, 64 SMU L. REV. 49, 66-67 (2011) (summarizing the Fifth Circuit's opinion in *Jacobsen v. Moser (In re Jacobsen)*, 609 F.3d 647 (5th Cir. 2010)).

The dearth of scholarly commentary may stem from the absence of a Supreme Court decision on point. *Marrama* and the debtor's right to convert a Chapter 7 to a Chapter 13 proceeding, however, has received a similar reception, with most analyses and commentaries written by practitioners or law students. See Volk, *supra* note 35; Gonzalez, *supra* note 35; Harrell, *supra* note 2; Avi Goldenberg, *Supreme Court Rules that a Debtor Has No Absolute Right to Convert from Chapter 7 to Chapter 13*, 125 BANKING L.J. 84 (2008); John Rao, *Impact of Marrama on Case Conversions: Addressing the Unanswered Questions*, 15 AM. BANKR. INST. L. REV. 585 (2007); William C. Heuer, *Marrama v. Citizens Bank of Massachusetts: Bad Faith Forfeits Right to Convert to Chapter 13*, AM. BANKR. INST. J., Apr. 2007, at 10, 10; Jeffrey W. Warren & Shane G. Ramsey, *Revisiting the Inherent Equitable Powers of the Bankruptcy Court – Does Marrama v. Citizens Bank of Massachusetts Signal a Return to Equity?*, AM. BANKR. INST. J., Apr. 2007, at 22, 22.

Law, only recently decided, has (understandably) received less coverage than *Marrama*. In an article appearing in a recent issue of the *Norton Journal of Bankruptcy Law and Practice*, Ashley Champion argues that the Court's opinion in *Law* has the potential to severely limit bankruptcy courts' equitable powers. See Ashley D. Champion, *Closing the Door but Opening a Window: The Equitable Power of Bankruptcy Courts after Law v. Siegel*, 23 No. 4 J. BANKR. L. & PRAC. 3 (2014). Champion's article is the most focused examination of *Law*. For other pieces that discuss the decision, see Christopher W. Frost, *Section 105(a), Inherent Powers, and Surcharging Exempt Property: Law v. Siegel*, 34 No. 4 BANKR. L. LETTER 1 (2014); Ferve E. Ozturk, *Law v. Siegel: U.S. Supreme Court Limits Reach of § 105(a)*, AM. BANKR. INST. J., May 2014, at 28; Ashley M. McDow & Michael T. Delaney, *Critical Vendors – Necessity or Nullity*, 33 CAL. BANKR. J. 25, 45 (2014) (briefly discussing *Law*'s implications on the payment of critical vendors); Ward Benson, *Nonmonetary "Historical" Defaults Should Not Always Prevent Assumption of Executory Contracts: State Contract Law as the Standard for the Cure Requirement in § 363(b) of the Bankruptcy Code*, 23 No. J. BANKR. L. & PRAC. 1 (2014) (referencing *Law* in a footnote).

This Article is different in topic and scope from the pieces mentioned in the paragraph above. Applying the *Law* Court's discussion of the bankruptcy courts' limited abilities to police abuse under § 105(a) of the Bankruptcy Code, as well as its analysis of the *Marrama* decision, to the Chapter 13 dismissal concept, this Article argues, as stated above, that the

II. CHAPTER 13 AND THE VOLUNTARY RIGHT TO DISMISS: THE CIRCUIT SPLIT

Presently, the courts are split as to the extent of the Chapter 13 debtor's right to dismiss. The majority rule—that such a right is absolute—has largely rested on the plain meaning of § 1307(b), which mandates that a court “shall dismiss” a previously unconverted Chapter 13 case upon the debtor's request.³⁶ Courts in the majority also support this conclusion by reference to the voluntary nature of Chapter 13.³⁷ Before the Supreme Court's decision in *Marrama*, the minority position was largely based on the view that a mechanical reading of § 1307(b) provides the dishonest debtor an unfair “escape hatch”³⁸ and renders the court's ability to convert a Chapter 13 proceeding “for cause,” pursuant to § 1307(c) of the Code, a dead letter.³⁹ After *Marrama*, the minority rule was augmented by many courts' expansive readings of the bankruptcy courts' statutory and inherent powers to sanction bad faith.

This Part provides an overview of the circuit split. Subpart A briefly summarizes those sections of the Bankruptcy Code relevant to the Chapter 13 dismissal context. Subpart B examines the pre-*Marrama* decisional landscape, focusing on two opinions issued by the Second and Eighth Circuits that illustrate the pre-*Marrama* arguments for and against the Chapter 13's debtor's absolute right to dismiss. Lastly, Subpart C examines *Marrama* and responses to that decision by the lower courts.

A. Statutory Landscape

Section 1307(b) of the Code is the source of the Chapter 13 debtor's right to dismiss. That section states:

On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of [title 11], the court shall dismiss a case under [Chapter 13].⁴⁰

Section 1307(b) is written in mandatory terms and is the basis for the majority's position that, absent a previous conversion, the Chapter 13 debtor's motion to dismiss may not be denied by the court.

Conversely, a large minority of courts maintain that § 1307(b) is qualified by § 1307(c) of the Code. Section 1307(c) states, in pertinent part:

Chapter 13 debtor has an absolute right to dismiss his proceeding subject only to the text of § 1307(b). Hopefully, this Article will provide guidance to courts wading through the many bankruptcy, district, and circuit court opinions on this issue, and provide a clear path supported not only by statute and policy, but also by the Supreme Court's own limitation of judicial power and authority to correct and prevent abuses of the bankruptcy system.

³⁶ See *infra* Part I.B. and C; 11 U.S.C. § 1307(b) (2012).

³⁷ See, e.g., *In re Harper-Elder*, 184 B.R. 403, 408 (Bankr. D.D.C. 1995) (stating that “the debtor's absolute right to dismiss her chapter 13 petition is directly in harmony with the purpose of chapter 13. Chapter 13 was intended to be [a] purely voluntary chapter, as demonstrated by [11 U.S.C.] § 303(a)[,] which provides that a chapter 13 case may not be commenced involuntarily.”).

³⁸ *Molitor v. Eidson (In re Molitor)*, 76 F.3d 218, 220 (8th Cir. 1996).

³⁹ See Part II.B; *Molitor*, 76 F.3d at 220; § 1307(c).

⁴⁰ § 1307(b).

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under [Chapter 13] to a case under [C]hapter 7 . . . or may dismiss a case under [Chapter 13] . . . for cause . . .⁴¹

Bad faith⁴² constitutes “cause” under § 1307(c).⁴³ Under the minority view, the majority’s interpretation of § 1307(b), which mandates dismissal of the debtor’s case

⁴¹ § 1307(c).

⁴² Courts determine bad faith under § 1307(c) by examining the “totality of the circumstances.” See *In re Lilley*, 91 F.3d 491, 496 (3d Cir. 1996); *In re Alt*, 305 F.3d 413, 419 (6th Cir. 2002); *Matter of Love*, 957 F.2d 1350, 1355 (7th Cir. 1992); *Molitor*, 76 F.3d at 220; *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999); *In re Gier*, 986 F.2d 1326, 1329 (10th Cir. 1993); *In re Sullivan*, 326 B.R. 204, 211 (B.A.P. 1st Cir. 2005); *In re Farber*, 355 B.R. 362, 366-67 (Bankr. S.D. Fla. 2006). Courts take into account many factors in examining the totality of the circumstances. The First Circuit BAP in *In re Sullivan*, for example, noted that bankruptcy courts assess the following:

- (1) debtor’s accuracy in reporting his expenses and obligations;
- (2) debtor’s honesty in the bankruptcy process, which includes any misrepresentations to or attempts to mislead the court;
- (3) whether the debtor is unfairly manipulating the Bankruptcy Code;
- (4) the type of debt debtor is seeking to discharge;
- (5) whether the debt is dischargeable under Chapter 7 of the Code; and
- (6) debtor’s motivation in seeking relief under Chapter 13.

Sullivan, 326 B.R. at 212.

⁴³ *In re Gress*, 257 B.R. 563, 567 (Bankr. D. Mont. 2000). Section 1307(c) contains a non-exhaustive list of instances that constitute cause under the statute:

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1321 of [title 11];
- (4) failure to commence making timely payments under section 1326 of [title 11];
- (5) denial of confirmation of a plan under section 1325 of [title 11] and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed plan;
- (7) revocation of the order of confirmation under section 1330 of [title 11], and denial of confirmation of a modified plan under section 1329 of [title 11];
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
- (9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a);
- (10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or
- (11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

§ 1307(c)(1)-(11). Note that bad faith is not listed in § 1307(c). “[D]espite the absence of any statutory provision specifically addressing the issue, the federal courts are virtually unanimous

even if there is a motion to convert due to bad faith under § 1307(c), would render the latter provision a nullity.

One other provision is important in the debate over the Chapter 13 debtor's right to dismiss. Section 105(a) of the Code⁴⁴ states:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11]. No provision of [title 11] providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.⁴⁵

Courts in the minority, increasingly so post-*Marrama*, maintain that § 105(a)'s reference to the bankruptcy court's ability to "prevent an abuse of process" is further evidence of the existence of a bad faith exception to § 1307(b).⁴⁶ The majority counters that § 105(a) cannot be used by bankruptcy courts to, in effect, amend the Bankruptcy Code through the creation of an extra-statutory exception.⁴⁷

B. Pre-*Marrama* Decisional Landscape

The debtor's right to dismiss his Chapter 13 proceeding has resulted in numerous trial and appellate court opinions on either side of the divide.⁴⁸ While the *Marrama* decision greatly influenced the debate, pre-*Marrama* case law provides a glimpse into the bare statutory and policy arguments that form the basis of each position's conclusion, free from the influence of the persuasive, yet non-binding (in the Chapter 13 dismissal context), *Marrama* decision. Therefore, before examining *Marrama* and its progeny, Section 1 of this Subpart discusses the Eighth Circuit case of *Molitor v. Eidson (In re Molitor)*,⁴⁹ and Section 2 discusses the Second Circuit's opinion in *Barbieri v. RAJ Acquisition Corp. (In re Barbieri)*,⁵⁰ two cases that illustrate each side of the circuit split.

1. The Minority Position: *Molitor*

In *Molitor*, the Eighth Circuit held that Chapter 13 debtors do not have an absolute right to dismiss. Edward Molitor consistently shirked his obligations under a contract for deed⁵¹ for a three-bedroom house. Prior to the initiation of the case that eventually reached the Eighth Circuit, Molitor twice filed for bankruptcy to benefit

that pre-petition bad-faith conduct may cause a forfeiture of any right to proceed with a Chapter 13 case." *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007).

⁴⁴ 11 U.S.C. § 105(a) (2012).

⁴⁵ *Id.*

⁴⁶ *See, e.g., In re Mitrano*, 472 B.R. 706, 710-11 (Bankr. E.D. Va. 2012).

⁴⁷ *See, e.g., In re Williams*, 435 B.R. 552, 560 (Bankr. N.D. Ill. 2010).

⁴⁸ *See supra* notes 4 and 5.

⁴⁹ 76 F.3d 218 (8th Cir. 1996); *see infra* Part II.B.2.

⁵⁰ 199 F.3d 616 (2d Cir. 1999); *see infra* Part II.B.1.

⁵¹ A contract for deed, also termed an installment land contract, is "[a] conditional sales contract for the sale of real property." BLACK'S LAW DICTIONARY 320 (7th ed. 1999).

from the automatic stay of the Bankruptcy Code.⁵² The owners of the house, John and Patricia Galle, eventually sold the home to Gary Eidson and Jeffrey Schoenwetter after Molitor failed to exercise a purchase option.⁵³ One day before the county sheriff was to serve a writ of restitution on Molitor (who remained in the house even after it had been sold), the consummate evader filed for Chapter 13 bankruptcy yet again.⁵⁴ Eidson and Schoenwetter moved to convert the case to a Chapter 7 proceeding under § 1307(c), citing bad faith due to Molitor's fraudulent misrepresentation of tax liabilities exceeding \$100,000.⁵⁵ Molitor filed a motion to dismiss under § 1307(b), but the bankruptcy court denied the motion, granting instead Eidson and Schoenwetter's motion to convert.⁵⁶ Molitor appealed the order, arguing that he had an absolute right to dismiss his case under § 1307(b).⁵⁷ The district court affirmed.⁵⁸

On appeal, the Eighth Circuit upheld the district court's affirmance of the bankruptcy court's decision.⁵⁹ The court first assailed Molitor's argument on policy

⁵² *Molitor*, 76 F.3d at 219. Under § 362(a) of the Bankruptcy Code, upon the filing of a bankruptcy petition, collection activities are prohibited. 11 U.S.C. § 362(a)(1)-(8) (2012). Creditors may lift the automatic stay "for cause, including the lack of adequate protection," or if the debtor does not have equity in the property and the property "is not necessary to an effective reorganization . . ." *Id.* § 362(d)(1)-(2).

⁵³ *Molitor*, 716 F.3d at 219.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 219.

⁵⁸ *Id.*

⁵⁹ *Id.* at 221. The court based its analysis on its prior decision in *Graven v. Fink (In re Graven)*, 936 F.2d 378 (8th Cir. 1991), which concerned the Chapter 12 debtor's right to voluntarily dismiss his case. In *Graven*, Bobby Noah and Milly Ann Graven transferred substantial amounts of property to closely-held corporations and an irrevocable family trust for little or no consideration prior to and after they filed their petition for bankruptcy. *Id.* at 380-82. During a hearing concerning the Chapter 12 trustee's report on the Gravens' allegedly fraudulent transfers, the Gravens moved to dismiss pursuant to 11 U.S.C. § 1208(b). *Id.* at 381. The trustee then moved to convert the case to one under Chapter 7, pursuant to 11 U.S.C. § 1208(d). *Id.* The bankruptcy court granted the trustee's motion, and the district court affirmed. *Id.* at 382.

On appeal, the Eighth Circuit affirmed the district court, determining that debtors do not have an absolute right to dismiss their Chapter 12 case under § 1208(b). *Id.* at 380. Section 1208(b) states: "On request of the debtor at any time, if the case has not been converted under section 706 or 1112 of [title 11], the court shall dismiss a case under [Chapter 12]."

11 U.S.C. § 1208(b) (2012). Section § 1208(d) provides:

On request of a party in interest, and after notice and a hearing, the court may dismiss a case under [Chapter 12] or convert a case under [Chapter 12] to a case under [C]hapter 7 of [title 11] upon a showing that the debtor has committed fraud in connection with the case.

Id. § 1208(d). Acknowledging that there is a potential conflict between §§ 1208(b) and 1208(d), *Graven*, 936 F.2d at 385, the court stated that "the purpose of the bankruptcy code is to protect the honest debtor, not to provide a shield for those who exploit the code's

grounds, reminding the debtor that “the purpose of the bankruptcy code is to afford the honest but unfortunate debtor a fresh start, not to shield those who avoid the bankruptcy process in order to avoid paying their debts,” and castigated him for “us[ing] section 1307(b) as an escape hatch.”⁶⁰ Next, the court directed its attention to the interaction between §§ 1307(b) and 1307(c), writing that, were the Chapter 13 debtor’s dismissal rights absolute even in the face of an opposing motion to convert, § 1307(b) would prevent full application of § 1307(c).⁶¹

Thus, the Eighth Circuit, based on policy concerns and the supposed incompatibility of § 1307(b) and (c), held that bad faith under § 1307(c) is an exception to the debtor’s right to dismiss his Chapter 13 case.⁶²

2. The Majority Position: *Barbieri*

Conversely, in 1999, the Second Circuit, in *Barbieri*, became the first appellate court to hold that the Chapter 13 debtor’s right to dismiss is absolute.⁶³ In *Barbieri*, Nina Marie Barbieri filed for bankruptcy under Chapter 13.⁶⁴ In her Chapter 13 plan, Barbieri proposed to disavow a contract she entered into pre-petition with RAJ Acquisition Corp. for the sale of a multi-family apartment building for \$585,000.⁶⁵ This fact notwithstanding, she then sought the bankruptcy court’s permission to sell the apartment building to New York Property Holding Corp. for \$687,500.⁶⁶ During a hearing on her application to sell the property, Barbieri moved to dismiss the case following the bankruptcy judge’s statement of intention to convert the case to a Chapter 7 liquidation proceeding.⁶⁷ The bankruptcy court dismissed Barbieri’s

protection.” *Id.* An absolute right to dismiss under § 1208(b), in the court’s estimation, would not only lead to abuse, but also “would render [§ 1208(d)] useless.” *Id.*; *cf. Molitor*, 716 F.3d at 220. Interestingly, the *Graven* court found support for its decision in the Chapter 13 dismissal context, writing that its decision “is consistent with the interpretation some bankruptcy courts have accorded 11 U.S.C. § 1307(b) and (c) . . .” 936 F.2d at 386.

Accordingly, the court held that “the broad purpose of the bankruptcy code, including Chapter 12, is best served by interpreting section 1208(d) to allow a court to convert a case to Chapter 7 upon a showing of fraud even though the debtor has moved for dismissal under subsection (b).” *Id.* at 385.

⁶⁰ *Molitor*, 716 F.3d at 220.

⁶¹ *Id.* Specifically, the court wrote: “To allow *Molitor* to respond to a motion to convert by voluntarily dismissing his case with impunity would render section 1307(c) a dead letter and open up the bankruptcy courts to a myriad of potential abuses. We decline to do so.” *Id.*

⁶² *Id.* at 220-21. The *Molitor* court also considered *Molitor*’s argument that the bankruptcy court had improperly granted *Eidson* and *Schoenwetter*’s motion absent any showing of fraud. *Id.* at 220-21. The court held that “[n]o such showing is required to convert a case under Chapter 13” because § 1307(c) allows conversion “for cause,” which includes the bad faith filing of a bankruptcy petition. *Id.* at 220; *see supra* Part I.A.

⁶³ *Jacobsen v. Moser (In re Jacobsen)*, 609 F.3d 647, 654 (5th Cir. 2010) (stating that “the Second Circuit became the first court of appeals to hold that no [bad faith] exception existed.”).

⁶⁴ *Barbieri v. RAJ Acquisition Corp. (In re Barbieri)*, 199 F.3d 616, 618 (2d Cir. 1999).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

motion, declaring: “The Court, pursuant to Section 105(a) of the Code and Section 1307(c) is today sua sponte converting this Chapter 13 case to a case under Chapter 7.”⁶⁸ The district court affirmed.⁶⁹

On appeal, the Second Circuit reversed, writing that Barbieri “had the right voluntarily to dismiss her Chapter 13 petition . . . notwithstanding the clearly stated intention of the Bankruptcy Court to convert the case to Chapter 7 pursuant to § 1307(c).”⁷⁰ The court’s decision rested largely on the plain meaning of § 1307(b).⁷¹ That section, recall, states that the court “shall” order dismissal of a Chapter 13 case on motion by the debtor.⁷² The court wrote that the word “shall” is a mandatory term, one of command that prevents the application of discretion by the court.⁷³ If a court “shall” dismiss the debtor’s case upon motion by the debtor, the court has no authority to deny the motion based on allegations of bad faith, even if such allegations form the basis of a prior motion to convert under § 1307(c). The only limitation on the Chapter 13 debtor’s right to dismiss, then, according to the majority position, is § 1307(b)’s lack of previous conversion requirement.⁷⁴

After discussing subsection (b) of § 1307, the court turned to subsection (c), characterizing that provision as permissive.⁷⁵ Subsection (c) states that “the court may convert” a Chapter 13 case to a Chapter 7 on motion by another party, due to, among other things, allegations of bad faith.⁷⁶ Relying on the canon of statutory construction that there exists a distinction between words of permission, such as “may,” and words of command, such as “shall,”⁷⁷ when used in the same provision,

⁶⁸ *Id.* (internal quotation marks omitted). The text of § 1307(c) provides that a party or the trustee may move to dismiss a Chapter 13 case, but does not state that the court may do so sua sponte. 11 U.S.C. § 1307(c) (2012). “[T]here is no doubt,” however, “that the bankruptcy court may also convert on its own motion.” *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764, 771 n.8 (9th Cir. 2008) (citing 11 U.S.C. § 105(a) (2012)).

⁶⁹ *In re Barbieri*, 226 B.R. 531, 532 (E.D.N.Y. 1998).

⁷⁰ *Barbieri*, 199 F.3d at 622-23.

⁷¹ It is a maxim of statutory interpretation that “where the language of an enactment is clear, and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken as the final expression of the meaning intended.” *U.S. v. Missouri Pac. R. Co.*, 278 U.S. 269, 278 (1929); *see also* Arthur W. Murphy, *Old Maxims Never Die: The “Plain Meaning Rule” and Statutory Interpretation in the “Modern” Federal Courts*, 75 COLUM. L. REV. 1299, 1299 (1975); Bradley C. Karkkainen, “Plain Meaning”: Justice Scalia’s Jurisprudence of Strict Statutory Construction, 17 HARV. J.L. & PUB. POL’Y 401, 433 (1994).

⁷² 11 U.S.C. § 1307(b) (2012).

⁷³ *Barbieri*, 199 F.3d at 619.

⁷⁴ *Id.*; *see* § 1307(b).

⁷⁵ *Barbieri*, 199 F.3d at 619.

⁷⁶ 11 U.S.C. § 1307(c) (2012) (emphasis added).

⁷⁷ *See* *Shea v. Board of Selectmen of Ware*, 615 N.E.2d 196, 198 (Mass. App. Ct. 1993); Karl N. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes are to be Construed*, 3 VAND. L. REV. 395, 406 (1950) (citing *Koch & Dryfus v. Bridges*, 45 Miss. 247 (1871); HENRY CAMPBELL BLACK, CONSTRUCTION AND INTERPRETATION OF THE LAWS § 130 (2d ed. 1911)).

the court held that Congress's insertion of the word "may" in subsection (c) (which, of course, immediately follows subsection (b)) indicates that the plain meaning of "shall" in subsection (b) was intended and, therefore, that the bankruptcy court has no discretion in ruling on a debtor's motion to dismiss an unconverted Chapter 13 case.⁷⁸

Aside from the text of § 1307, the *Barbieri* court also supported its conclusion by reference to Chapter 13's voluntary nature.⁷⁹ Chapter 13 is unique as compared to the other oft-used Bankruptcy Code chapters—Chapters 7 and 11—in that a debtor may not be forced to enter a Chapter 13 bankruptcy pursuant to the filing of an involuntary petition by his creditors.⁸⁰ Because the Chapter 13 debtor's post-petition income is dedicated to the debtor's creditors (i.e., the debtor, in effect, is mandated to work for his creditors),⁸¹ Congress, in drafting the Bankruptcy Code in 1978, feared that allowing the commencement of involuntary Chapter 13 proceedings would violate the Thirteenth Amendment to the U.S. Constitution's prohibition of involuntary servitude.⁸² The *Barbieri* court determined that the concept of a

⁷⁸ *Barbieri*, 199 F.3d at 619-620. The court explicitly dismissed the Eighth Circuit's reasoning in *Molitor* that construing § 1307(b) as conferring an absolute right to dismiss would render § 1307(c) null. *Id.* at 620; see *Molitor v. Eidson (In re Molitor)*, 76 F.3d 218, 220 (8th Cir. 1996). Said the court:

It is true that if a court grants a debtor's motion to dismiss under § 1307(b), the court will be deprived of the option, afforded by § 1307(c), of converting the case for cause. But that is no more significant than the fact that an order granting a creditor's motion to convert under § 1307(c) would foreclose dismissal under § 1307(b).

Barbieri, 199 F.3d at 620. Either party, noted the court, could make the same argument. *Id.*

⁷⁹ Susan Block-Lieb, *Why Creditors File So Few Involuntary Petitions and Why the Number is Not Too Small*, 57 BROOK. L. REV. 803, 803-04 (1991); Benjamin Weintraub & Alan N. Resnick, *Involuntary Petitions Under the New Bankruptcy Code*, 97 BANKING L.J. 292, 293-93 (1980). Under § 303(b) of the Code, involuntary petitions may be instituted by three or more creditors who are "holder[s] of a claim against [the debtor] that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount" and which, together, are at least \$15,325 more than any liens securing the creditors' claims or, if there are fewer than twelve creditors, by at least one creditor whose claim is at least \$15,325. 11 U.S.C. § 303(b)(1), (b)(2) (2012). Relief will be afforded against the involuntary debtor if she is not paying her obligations (unless there is a bona fide dispute), *id.* § 303(h)(1), or a custodian has been appointed or taken possession "within 120 days before the date of the filing of the petition," *id.* § 303(h)(2).

⁸⁰ Wesley H. Avery, *Involuntary Bankruptcy Petitions: The Ultimate Debt Collection Device?*, 116 BANKING L.J. 683, 684 (1999). Creditors may not file involuntary bankruptcy petitions under Chapters 9 or 12 either. *Id.*

⁸¹ Erwin Chemerinsky, *Constitutional Issues Posed in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 79 AM. BANKR. L.J. 571, 586 (2005).

⁸² Margaret Howard, *Bankruptcy Bondage*, 2009 U. ILL. L. REV. 191, 195-96 (2009); U.S. CONST. amend. XIII. The House Judiciary Committee of the Ninety-Fifth Congress noted: "Though [the Thirteenth Amendment's prohibition of involuntary servitude] has never been tested in the wage earner plan context, it has been suggested that a mandatory Chapter 13, by forcing an individual to work for creditors, would violate this prohibition." H.R. Rep. No. 95-595, H. Comm. on the Judiciary, 95th Cong., 1st Sess., at 120 (1977) [hereinafter H.R. Rep. No. 95-595]. The committee also noted that involuntary Chapter 13 proceedings would be

voluntary Chapter 13 proceeding extends beyond the initiation of the case, but also to the decision to leave the same.⁸³ Other courts have dismissed the notion that Congress's fears that involuntary Chapter 13 petitions would violate the Thirteenth Amendment apply with equal force to a debtor's right to dismiss.⁸⁴ To the *Barbieri* court, however, the Chapter 13 debtor is a completely voluntary debtor, both as regards his decision to file, as well as to leave his Chapter 13 case.

In addition to examining the text of § 1307 and the voluntary nature of Chapter 13, the *Barbieri* court warned against expansively reading § 105(a) of the Code. In affirming the bankruptcy court's decision, the district court in *Barbieri* relied, in part, on § 105(a)'s provision of authority to bankruptcy courts to "tak[e] any action or mak[e] any determination necessary or appropriate . . . to prevent an abuse of process."⁸⁵ The Second Circuit viewed the district court's reliance on that section as

violative of public policy, remarking, "it would be unwise to allow creditors to force a debtor into a repayment plan. An unwilling debtor is less likely to retain his job or cooperate in the repayment plan, and more often than not, the plan would be preordained to fail." *Id.* In *Toibb v. Radloff*, 501 U.S. 157 (1991), the Supreme Court, in response to an *amicus* brief arguing that involuntary consumer bankruptcies under Chapter 11 conflict with Congress's position on involuntary Chapter 13 petitions, reiterated Congress's concerns, writing:

The argument overlooks Congress' primary concern about a debtor's being forced into bankruptcy under Chapter 13: that such a debtor, whose future wages are not exempt from the bankruptcy estate . . . would be compelled to toil for the benefit of creditors in violation of the Thirteenth Amendment's involuntary servitude prohibition.

Id. at 165-66.

Congress's belief that involuntary Chapter 13 proceedings raise involuntary servitude implications extends to non-consensual conversions of Chapter 7 to Chapter 13 cases. H.R. Rep. No. 95-595, *supra*, at 120. Liquidation proceedings, however, do not raise Thirteenth Amendment concerns. *See In re Jacobsen*, 378 B.R. 805, 810 (Bankr. E.D. Tex. 2007). Therefore, involuntary conversion of a case under Chapter 13 to Chapter 7, pursuant to § 1307(c), is not violative of the Constitution. *Id.* at 810. As explained by the bankruptcy court in *In re Jacobsen*:

A statutory shield against involuntary servitude . . . is not a shield against the conversion of a case from Chapter 13 to Chapter 7. In contrast to the provisions in Chapter 13 compelling debtors to pay a portion of their future wages to creditors, debtors in Chapter 7 cases are not required to pay any future wages to creditors – rather, in a [C]hapter 7 case, non-exempt and unencumbered assets are liquidated and the proceeds distributed to creditors.

Id.

⁸³ In support of its determination, the court cited the Eastern District of Tennessee bankruptcy court's assessment in *In re Patton*, 209 B.R. 98 (Bankr. E.D. Tenn. 1997):

To allow a creditor to convert a Chapter 13 case to a Chapter 7 liquidation notwithstanding a pending motion to dismiss filed by the debtor would permit the creditor to effectuate an involuntary petition without the need to satisfy the requisites of § 303 Such a result flies in the face of the voluntary nature of [Chapter 13] and circumvents the standard for an involuntary liquidation set forth in § 303.

Id. at 102-03.

⁸⁴ *See Jacobsen*, 375 B.R. at 810.

⁸⁵ 11 U.S.C. § 105(a) (2012).

“misguided,” and wrote that fear of abuse does not give courts authority to amend the Bankruptcy Code.⁸⁶

Molitor and *Barbieri* exemplify the pre-*Marrama* minority and majority positions. The minority feared that an absolute right to dismiss merely created an “escape shaft” for dishonest debtors and believed that such a right rendered nugatory the authority to convert due to bad faith Chapter 13 cases under § 1307(c). Section 105(a)’s language also provided compelling statutory support in favor of a bad faith exception to § 1307(b). In contrast, the majority of courts found it unnecessary to go beyond the plain meaning of § 1307, finding subsection (b)’s text and the respective presence of mandatory and permissive language in subsections (b) and (c) conclusive. In addition, the majority position emphasized the voluntary nature of Chapter 13 and eschewed a reading of § 105(a) that would imbue courts with the authority to amend the Bankruptcy Code.

C. *Marrama v. Citizens Bank of Massachusetts*

The Supreme Court’s opinion in *Marrama v. Citizens Bank of Massachusetts*,⁸⁷ although concerning the Chapter 7 debtor’s right to convert to a Chapter 13, has dramatically influenced the Chapter 13 dismissal circuit split.⁸⁸ Until *Marrama*, the debate largely concerned competing Code sections and policy considerations. Post-*Marrama*, courts in the minority rely heavily on an expanded reading of § 105(a) and the bankruptcy courts’ inherent powers to sanction abuse in support of a non-statutory bad faith exception. Section 1 examines the *Marrama* decision.⁸⁹ Section 2 discusses prominent lower court responses to *Marrama* in the Chapter 13 dismissal context.⁹⁰

1. The Decision

In 2007, the Supreme Court granted certiorari in *Marrama* to determine whether a Chapter 7 debtor engaged in bad faith has an absolute right to convert his case to a Chapter 13.⁹¹ Robert Marrama filed for bankruptcy under Chapter 7 on March 11, 2003.⁹² His principal asset was his house in Maine.⁹³ While of significant worth, however, he represented in his relevant bankruptcy schedule that the house was valueless.⁹⁴ Further, he falsely denied having fraudulently transferred the house to a trust pre-petition in order to evade creditors.⁹⁵ Upon learning that the trustee intended

⁸⁶ *Barbieri v. RAJ Acquisition Corp. (In re Barbieri)*, 199 F.3d 616, 621 (2d Cir. 1999) (writing that “concerns about abuse of the bankruptcy system do not license us to redraft the statute.”).

⁸⁷ 549 U.S. 365 (2007).

⁸⁸ See *infra* Part II.C.2.

⁸⁹ See *infra* Part II.C.1.

⁹⁰ See *infra* Part II.C.2.

⁹¹ *Marrama*, 549 U.S. at 367.

⁹² *Id.* at 368.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

to acquire and liquidate the house, Marrama attempted to convert the case to a Chapter 13 proceeding pursuant to § 706(a) of the Bankruptcy Code.⁹⁶ The bankruptcy court, finding that the debtor had acted in bad faith, refused to convert the case.⁹⁷ On appeal to the First Circuit BAP,⁹⁸ Marrama argued that he had an absolute right to convert his case under § 706(a).⁹⁹ The BAP upheld the bankruptcy court's decision,¹⁰⁰ and the First Circuit Court of Appeals affirmed.¹⁰¹

Whether a debtor may convert his Chapter 7 to a Chapter 13 case is governed by §§ 706(a) and 706(d) of the Code.¹⁰² Section 706(a) states, in relevant part:

The debtor may convert a case under this chapter to a case under Chapter 11, 12, or 13 of [title 11] at any time, if the case has not been converted under section 1112, 1208, or 1307 of [title 11].¹⁰³

Section 706(d) states:

Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of [title 11] unless the debtor may be a debtor under such chapter.¹⁰⁴

Marrama argued that these provisions provide the debtor with a one-time opportunity to convert his case to one under Chapters 11, 12, or 13 “for any reason, and permits judicial inquiry into the conversion *only* [to determine] whether the debtor has previously converted the case” and to ensure that he is qualified to be a debtor under the chapter to which he wishes to convert.¹⁰⁵

⁹⁶ 11 U.S.C. § 706(a) (2012); *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 368-69 (2007).

⁹⁷ *Marrama*, 549 U.S. at 369.

⁹⁸ *Marrama v. Citizens Bank of Mass.*, 313 B.R. 525 (B.A.P. 1st Cir. 2004).

⁹⁹ *Marrama*, 549 U.S. at 370.

¹⁰⁰ *Id.*

¹⁰¹ *See id.* at 370-71.

¹⁰² 11 U.S.C. § 706(d) (2012).

¹⁰³ *Id.* § 706(a).

¹⁰⁴ *Id.* § 706(d).

¹⁰⁵ Brief for Petitioner at 12, *Marrama*, 549 U.S. 365 (2007). Marrama based his argument on congressional reports on the Bankruptcy Reform Act of 1978, Pub. L. 95-598, 92 Stat. 2549. The report of the Senate Judiciary Committee stated:

Subsection (a) of this section gives the debtor one-time absolute right of conversion of a liquidation case to a reorganization or individual repayment plan case. If the case has already once been converted from Chapter 11 or 13 to Chapter 7, then the debtor does not have that right. The policy of the provision is that the debtor should always be given the opportunity to repay his debts, and a waiver of the right to convert a case is unenforceable.

S. Rep. 95-989, S. Comm. on the Judiciary, 95th Cong., 2d Sess. (1978), at 94 [hereinafter S. Rep. 95-989]; *see also* H.R. Rep. No. 95-595, *supra* note 82, at 380. The Court was not persuaded by the above-quoted legislative history. “The Committee Reports’ reference to an ‘absolute right’ of conversion [was] more equivocal than [Marrama] suggest[ed].” *Marrama*,

The Supreme Court disagreed with Marrama, holding that a Chapter 7 debtor who engages in bad faith does not have an absolute right to convert to a Chapter 13.¹⁰⁶ In support of its conclusion, the Court primarily relied on § 706(d)'s requirement that the Chapter 7 debtor qualify as a debtor under the chapter to which she wishes to convert.¹⁰⁷ This mandate, in the case of an attempted conversion from a Chapter 7 to a Chapter 13, requires that the debtor qualify as a Chapter 13 debtor. Under § 1307(c), recall, a Chapter 13 case may be dismissed or converted to a Chapter 7 due to a debtor's bad faith.¹⁰⁸ The Court reasoned that a court's order pursuant to § 1307(c) dismissing or converting a former Chapter 7 case due to a debtor's bad faith conduct "is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13."¹⁰⁹ Therefore, the Chapter 7 debtor has an absolute right to convert her case to a Chapter 13, so long as she has not acted in bad faith.¹¹⁰

Section 1307(c) does not *mandate* conversion or dismissal; rather, whether a motion to convert or dismiss under that section is granted is in the discretion of the court. Because, theoretically, a court may deny a § 1307(c) motion seeking conversion or dismissal although the debtor has in fact acted in bad faith, some grant of authority in addition to § 706(d) is required to authorize bankruptcy courts to prohibit a bad faith Chapter 7 debtor from converting her case to a Chapter 13 under § 706(a). Seemingly for this reason, the Court invoked § 105(a) and the federal courts' inherent powers to sanction bad faith and abuse in support of its holding. Of § 105(a), the Court wrote:

[T]he broad authority granted to bankruptcy judges to take any action that is necessary or appropriate 'to prevent an abuse of process' . . . is surely adequate to authorize an immediate denial of a motion to convert filed under § 706 in lieu of a conversion order that merely postpones the allowance of equivalent relief and may provide a debtor with an opportunity to take action prejudicial to creditors.¹¹¹

549 U.S. at 372. First, the Court appeared skeptical that the phrase, "the debtor should always be given the opportunity to repay his debts," S. Rep. 95-989, *supra*, at 94, referred to Chapter 13 proceedings. *Marrama*, 549 U.S. at 372. Even if the phrase did refer to Chapter 13, the Court determined that the unqualified sentiment of the sentence was belied by the report's statement, invoking § 706(d), that the debtor has no absolute right to convert to a Chapter 13 if the case has previously been converted. *Id.* Second, and closely related, was the Court's conclusion that "the broad description of the right as 'absolute' fails to give full effect to the express limitation in subsection (d)." *Marrama*, 549 U.S. at 372; *see* S. Rep. 95-989, *supra*, at 94.

¹⁰⁶ *Marrama*, 549 U.S. at 371, 374.

¹⁰⁷ *Id.* at 372-73; 11 U.S.C. § 706(d) (2012).

¹⁰⁸ 11 U.S.C. § 1307(c) (2012); *see supra* Part II.A.

¹⁰⁹ *Marrama*, 549 U.S. at 373-74.

¹¹⁰ The Court also stated that Marrama may have been barred from converting to a Chapter 13 pursuant to 11 U.S.C. § 109(e), which prohibits Chapter 13 bankruptcy debtors who owe obligations over certain amounts from filing. *Id.* at 372.

¹¹¹ *Id.* at 375 (footnotes omitted) (citing 11 U.S.C. § 105(a)). The Supreme Court explored the contours of the federal courts' inherent powers in *Chambers v. NASCO, Inc.*, 501 U.S. 32

The Court further remarked that courts' inherent powers "might well provide an adequate justification for a prompt, rather than a delayed, ruling on an unmeritorious attempt to qualify as a debtor under Chapter 13."¹¹² Little did the Court know that these quotations would dramatically influence the Chapter 13 dismissal split.

Marrama, therefore, stands for the bright line rule that bankruptcy courts need not grant a motion to convert to a Chapter 13 filed by a Chapter 7 debtor alleged to have acted in bad faith. *Marrama* did not hold, and the facts of the case did not present the opportunity to so hold, that bankruptcy courts may deny a § 1307(b) motion to dismiss due to bad faith. Many lower courts, nonetheless, have held exactly that.

2. Responses from the Lower Courts

Marrama dramatically influenced Chapter 13 dismissal jurisprudence. At this point, it is unclear whether the circuit split can be aptly described as consisting of a contest between a "majority" position and a "minority" position as this Article has labeled the competing rules, for courts are still assessing the *Marrama* decision's effects in the Chapter 13 dismissal context, and reaching opposite results. In fact, the minority position post-*Marrama* is gaining momentum, and in the near future the majority of courts may well hold that § 1307(b) does not confer an absolute right to dismiss a Chapter 13 case, if they remain unaware of *Law*'s dispositive effect on the matter.

This Section discusses the lower courts' responses to *Marrama* in the Chapter 13 dismissal context, beginning with an overview of the Ninth Circuit's decision in *Rosson v. Fitzgerald (In re Rosson)*,¹¹³ and the Fifth Circuit's decision in *Jacobsen v. Moser (In re Jacobsen)*,¹¹⁴ both of which declared that, under *Marrama*, no absolute right to dismiss exists.¹¹⁵ Then, this Section examines the Bankruptcy Court for the Northern District of Illinois's decision in *In re Williams*,¹¹⁶ which provides a compelling, modern riposte to the bad faith exception argument as modified by *Marrama*.¹¹⁷

(1991). The Court wrote that "[i]t has long been understood that '[c]ertain implied powers must necessarily result to our Courts of justice from the nature of their institution,' powers 'which cannot be dispensed with in a Court, because they are necessary to the exercise of all others.'" *Id.* at 43 (quoting *United States v. Hudson*, 7 Cranch 32, 34 (1812)). These powers include the ability to discipline members of the court's bar, punish contempt engaged in both before and outside the presence of the court, and sanction fraud and abuse of the judicial process. *Id.* at 44-45.

¹¹² *Marrama*, 549 U.S. at 375-76 (citing *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 765 (1980)).

¹¹³ *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. 2008).

¹¹⁴ *Jacobsen v. Moser (In re Jacobsen)*, 609 F.3d 647 (5th Cir. 2010).

¹¹⁵ See *infra* Part II.C.2.a.

¹¹⁶ *In re Williams*, 435 B.R. 552 (Bankr. N.D. Ill. 2010).

¹¹⁷ See *infra* Part II.C.2.b.

a. Marrama Controls: Rosson and Jacobsen

The only federal appellate courts to rule on the Chapter 13 debtor's right to dismiss since *Marrama*—the Ninth and Fifth Circuits—have held that *Marrama* controls and, therefore, that the debtor does not have an absolute right to dismiss his or her Chapter 13 case. The crux of the courts' argument is that *Marrama* stands for an expansive reading of § 105(a) and courts' inherent powers such that, pursuant to those powers, courts are authorized to impose limitations on otherwise absolute statutory rights. These decisions in turn have prompted lower courts in other circuits to hold the same.¹¹⁸ Before addressing *Law* and its substantive effect on the circuit split, therefore, it is necessary to examine the Ninth and Fifth Circuits' opinions in *Rosson* and *Jacobsen*.

Prior to the Ninth Circuit's decision in *Rosson*, the Ninth Circuit BAP, in a pre-*Marrama* decision styled *Beatty v. Traub (In re Beatty)*,¹¹⁹ held that the debtor's right to dismiss under Chapter 13 is absolute.¹²⁰ In *Beatty*, after the bankruptcy court granted a motion to convert the debtor's Chapter 13 case to a Chapter 7, but before entering the order, the debtor sought dismissal under § 1307(b).¹²¹ The bankruptcy court granted the dismissal request, but later vacated the dismissal and converted the case to a Chapter 7.¹²² The BAP, based on the plain meaning of § 1307, "the purposes of Chapter 13," and Chapter 13's voluntary nature, reversed the order vacating the dismissal, holding that a debtor has an absolute right under § 1307(b) to voluntarily dismiss his Chapter 13 case if made before the court enters an order of conversion.¹²³

Rosson overturned *Beatty*, stating, "[a]fter *Marrama* . . . the 'absolute right' position is no longer viable."¹²⁴ The court's decision was influenced by another pre-*Marrama* decision issued by the Ninth Circuit BAP, *Croston v. Davis (In re Croston)*.¹²⁵ In *Croston*, a Chapter 7 case, the court held that the right to convert under § 706(a) is absolute.¹²⁶ The court grounded its decision on *Beatty*, writing that

¹¹⁸ See, e.g., *In re Kotche*, 457 B.R. 434, 440 (Bankr. D. Md. 2011).

¹¹⁹ *Beatty v. Traub (In re Beatty)*, 162 B.R. 853 (9th Cir. 1994).

¹²⁰ *Id.* at 857. In support of its holding, the court cited, among other cases, the Ninth Circuit's decision in *Nash v. Kester (In re Nash)*, 765 F.2d 1410 (9th Cir. 1985). In *Nash*, the Ninth Circuit held that a Chapter 13 debtor who previously dismissed her case without prejudice and without receiving a discharge is not prohibited by *res judicata* principles from listing debts from her prior Chapter 13 case in her present Chapter 13 case. *Id.* at 1413. This was so because "[u]nder § 1307(b), a debtor has an absolute right to dismiss a Chapter 13 petition." *Id.* The *Rosson* court explained this statement away as likely being dicta, it having been written in the context of the *res judicata* effect of a Chapter 13 debtor's dismissal, "not the potential conflict between § 1307(b) and § 1307(c)." *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764, 772 n.9 (9th Cir. 2008). It also held that, if the statement was not dicta, *Marrama* had abrogated it. *Id.*

¹²¹ *In re Beatty*, 162 B.R. at 855.

¹²² *Id.*

¹²³ *Id.* at 857.

¹²⁴ *Rosson*, 545 F.3d at 772.

¹²⁵ *Croston v. Davis (In re Croston)*, 313 B.R. 447 (B.A.P. 9th Cir. 2004).

¹²⁶ *Id.* at 451.

the § 706(a) and § 1307(b) analyses are “indistinguishable,” and so concluded that “the § 706(a) right to convert to chapter 13 is effectively absolute in the same manner as the corollary dismissal right under § 1307(b).” *Marrama* explicitly overturned *Croston*.¹²⁷

Without entertaining even a perfunctory examination of the relevant statutory landscape, the *Rosson* court agreed with the overturned *Croston* decision that “there is no analytical distinction” between §§ 706(a) and 1307(b).¹²⁸ Because the Supreme Court in *Marrama* conclusively determined that there was no absolute right to convert under § 706(a), the *Rosson* court felt obliged to conclude that a Chapter 13 debtor’s right to voluntarily dismiss her case is tempered by a bad faith exception.¹²⁹ The Ninth Circuit, however, did not merely support its decision by a less than searching comparison of §§ 706 and 1307. Significantly, the court wrote that “the most important point established by *Marrama* is that even unqualified rights in the debtor are subject to limitation by the bankruptcy court’s power under § 105(a) to police bad faith and abuse of process.”¹³⁰ This rationale marked a dramatic expansion of bankruptcy courts’ powers and, as discussed below, exhibited a fundamental misunderstanding of the difference between § 706 and § 1307’s statutory schemes.¹³¹

In *Jacobsen*, the Fifth Circuit similarly held that, after *Marrama*, the Chapter 13 debtor’s right to dismiss is tempered by a bad faith exception.¹³² Citing to *Rosson*, the Fifth Circuit determined that §§ 706(a) and 1307(b) were analytically indistinguishable.¹³³ *Jacobsen*’s interpretive exercise was less cursory than *Rosson*’s, but exhibited a similar lack of depth. After concluding that *Marrama* controlled, the court merely noted that §§ 1307(b) and 706(a) both left the decision to dismiss or convert to the debtor and, because the *Marrama* court found that the latter was qualified by a bad faith exception, the court concluded the former necessarily was, as well.¹³⁴ The court rejected out of hand the contention that § 706(d) added an analytical step absent in the Chapter 13 dismissal context, but provided no reason for this belief.¹³⁵ *Jacobsen* also continued *Rosson*’s expansive reading of bankruptcy courts’ § 105(a) and inherent powers, writing that *Marrama* stands for the broad directive that courts have the authority to limit otherwise unqualified statutory rights to sanction bad faith and abusive conduct.¹³⁶

¹²⁷ *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 365 (2007).

¹²⁸ *Rosson*, 545 F.3d at 773.

¹²⁹ *Id.* at 773-74 (internal quotation marks omitted) (citing 11 U.S.C. § 105(a) (2012)).

¹³⁰ *Id.* at 773 n.12.

¹³¹ *See infra* Part II.C.b.

¹³² *Jacobsen v. Moser (In re Jacobsen)*, 609 F.3d 647, 660 (5th Cir. 2010).

¹³³ *Id.* (citing *Rosson*, 545 F.3d at 773).

¹³⁴ *Id.* at 660-61.

¹³⁵ *Id.* at 661.

¹³⁶ *Id.*

Marrama, *Jacobsen*, and *Rosson* have influenced many lower courts in holding that § 1307(b) is tempered by a bad faith exception.¹³⁷ While the statutory schemes at issue in *Marrama* and in *Jacobsen* and *Rosson* are analytically distinct, the Fifth and Ninth Circuits' decisions to the contrary clothed an otherwise untenable statutory analysis and bright line rule with legitimacy. Those cases, however, have not persuaded all.¹³⁸

b. Marrama Does Not Control: In re Williams

The most persuasive and methodical counter to the position held by *Marrama*'s Chapter 13 progeny was authored by the Honorable Eugene R. Wedoff of the Bankruptcy Court for the Northern District of Illinois in *In re Williams*. In *Williams*, the Chapter 13 trustee moved to convert the debtor's case to one under Chapter 7 pursuant to § 1307(c).¹³⁹ The debtor, in response, sought dismissal.¹⁴⁰ The court

¹³⁷ The *Rosson* decision persuaded Bankruptcy Judge Robert E. Grossman of the Eastern District of New York, in *In re Armstrong*, 408 B.R. 559 (Bankr. E.D.N.Y. 2009), to declare that, "after the Supreme Court's decision in *Marrama*, the Second Circuit's decision in *Barbieri*, is no longer good law." *Id.* at 569. In *Armstrong*, the Chapter 13 debtor, Nancy C. Armstrong, owned real property she valued at \$1.8 million. *Id.* at 560. The trustee moved to dismiss Armstrong's case when, after the meeting of creditors, see 11 U.S.C. § 341(a), she failed to submit required documentation to the trustee. *Armstrong*, 408 B.R. at 560. Armstrong then filed a voluntary motion to dismiss. *Id.* The trustee, however, withdrew his motion, and argued that Armstrong's case should not be dismissed, alleging that Armstrong had, after filing her petition for Chapter 13 bankruptcy and without seeking the trustee or court's permission, contracted to sell her real property for \$1.5 million. *Id.*

The court held that *Marrama* controlled. *Id.* at 569. After engaging in an extensive examination of the circuit split up to that point, including the Second Circuit's decision in *Barbieri*, the Ninth Circuit's *Rosson* opinion, and *Marrama*, *id.* at 562-69, the bankruptcy court wrote that it was ultimately persuaded by *Marrama* and *Rosson* in holding that § 1307(b) was subject to a bad faith exception, *id.* at 569. The court enumerated four reasons for finding that *Marrama* overruled *Barbieri*. *Id.* at 570-72. Listed first, and seemingly believed to be foremost, of the reasons was the *Marrama* Court's application of § 105(a). *Id.* at 570. The *Barbieri* court, Judge Grossman reminded the parties, held that § 105(a) could not be applied in contradiction of the text of the Bankruptcy Code. *Id.*; see *Barbieri v. RAJ Acquisition Corp.* (*In re Barbieri*), 199 F.3d 616, 621 (2d Cir. 1999). "In *Marrama*," however, wrote the bankruptcy court, "the Supreme Court took a much more expansive view of section 105(a) and recognized the bankruptcy courts' need to exercise their inherent authority and their authority under section 105(a) to prevent abuse of the bankruptcy process." *Armstrong*, 408 B.R. at 570.

The court also supported its opinion by reference to the post-*Barbieri* enactment of 11 U.S.C. § 1307(e), which states that "the court shall dismiss or convert" a Chapter 13 proceeding if a party in interest or the United States Trustee asserts that the debtor failed to file tax returns required to be filed pursuant to relevant nonbankruptcy law. See *id.* § 1308(a). Because both subsections (b) and (e) state that the court "shall" dismiss, the court maintained that, "[f]aced with competing motions to dismiss under section 1307(b) and to convert under section 1307(e), a court could no longer rely on the reasoning of *Barbieri* to find that section 1307(b) trumps a creditor's right to seek conversion of the case." *Armstrong*, 408 B.R. at 572.

¹³⁸ See, e.g., *In re Procel*, 467 B.R. 297 (Bankr. S.D.N.Y. 2012); *In re Williams*, 435 B.R. 552 (Bankr. N.D. Ill. 2010); *In re Davis*, No. 06-1005-GLP, 2007 WL 1468681 (Bankr. M.D. Fla. 2007).

¹³⁹ *In re Williams*, 435 B.R. at 554.

¹⁴⁰ *Id.*

granted the debtor's request, holding that debtors have an absolute right to dismiss under § 1307(b), tempered only by that section's qualification that the case be not previously converted.¹⁴¹

Judge Wedoff believed that whether the Chapter 13 debtor has an absolute right to dismiss was a simple question of statutory construction.¹⁴² Three premises justified his proposition that § 1307(b) is not limited by a bad faith exception:

- 1) Section 1307(b)'s text establishes an unqualified right to dismiss unconverted Chapter 13 cases.
- 2) Only another statutory provision may limit § 1307(b) – courts may not modify statutes to achieve more favorable outcomes.
- 3) No other statute qualifies § 1307(b).¹⁴³

These simple assumptions constitute a textually superior framework to that of the minority jurisdictions' extra-statutory-based bad faith exception. Judge Wedoff analyzed each premise in turn.

Little ink was wasted examining the text of § 1307(b). That section's language, the court wrote, commands courts, "without equivocation," to dismiss an unconverted Chapter 13 case upon request by the debtor.¹⁴⁴ The court was also persuaded by the section's legislative history, the Senate report on the enactment of the Bankruptcy Reform Act of 1978,¹⁴⁵ which states:

Subsections (a) and (b) [of § 1307(b)] confirm, without qualification, the rights of a Chapter 13 debtor to convert the case to a liquidating bankruptcy case under Chapter 7 of Title 11, at any time, or to have the Chapter 13 case dismissed.¹⁴⁶

So was established the first premise.¹⁴⁷

Moving to the second premise, the court reminded the parties that courts lack the authority to amend legislation.¹⁴⁸ This limitation applies even though the court may be motivated by a commendable policy objective, although, given the range of sanctions available to courts to punish bad faith,¹⁴⁹ the *Williams* court found the

¹⁴¹ *Id.* at 553.

¹⁴² *Id.* at 554.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 555.

¹⁴⁵ Act of Nov. 6, 1978, Pub. L. 95-598, 92 Stat. 2549.

¹⁴⁶ Bankruptcy Reform Act of 1978, S. Rep. 95-989, at 141.

¹⁴⁷ The court also noted that a majority of reported cases hold that the debtor's right to dismiss his unconverted Chapter 13 case is absolute. *In re Williams*, 435 B.R. at 555 & n.3 (citing cases).

¹⁴⁸ *Id.* at 556.

¹⁴⁹ Courts may, in response to bad faith conduct by the debtor, dismiss a case with prejudice, 11 U.S.C. § 349(a), exercise continuing control over the estate subsequent to dismissal, *id.* § 349(b)(3), impose sanctions, FED. R. BANKR. P. 9011, or refer a debtor's bad faith to the United States Attorney, 18 U.S.C. § 158(d); *see also* Gonzalez, *supra* note 35, at 316-18 (discussing the options available to courts in dealing with a bad faith debtor).

concern motivating courts in the minority position—that of preventing the creation of an unfair “escape hatch” for bad faith debtors—lacking in gravity.¹⁵⁰ Further, to judicially alter a statute in excess of statutory limitations is to sanction violation of congressional policies—in the case of § 1307(b), “the longstanding voluntary nature of Chapter 13.”¹⁵¹

Lastly, the court proved the third premise by explaining that the two statutory sources of the alleged bad faith exception, §§ 1307(c) and, increasingly after *Marrama*, 105(a), are inapposite to the Chapter 13 debtor’s voluntary right to dismiss.¹⁵² Noting the tension between §§ 1307(b) and 1307(c), the court held that, “under the basic rule of construction” that the more specific governs the more general provision, a court facing opposing motions under § 1307(b) and § 1307(c) must necessarily grant the debtor’s § 1307(b) motion.¹⁵³ This is so because subsection (b), which applies only to debtors in unconverted cases, is necessarily more specific than subsection (c), which allows dismissal by the court when requested by any “party in interest,” whether or not the case has been previously converted.¹⁵⁴

As for § 105(a), the *Williams* court opined that that section “cannot be employed to contradict another provision of the Code.”¹⁵⁵ Instead, § 105(a) may only be used to implement specific provisions of the Bankruptcy Code and, as such, must be tethered to a specific section, not to a policy objective unsupported by the statutory text.¹⁵⁶ Therefore, § 105(a) may not be invoked to implement a bad faith exception, not present in the text of § 1307, that limits the unqualified instruction that courts “shall” dismiss an unconverted Chapter 13 case on motion by the debtor.¹⁵⁷

Williams’s syllogistic reasoning provides a framework that courts can use to define the extent of the Chapter 13 debtor’s right to dismiss in a manner that is consistent with, and based on, the text of the Bankruptcy Code. The framework at once confronts the broader pre-*Marrama* statutory and policy arguments that continue to influence the debate by emphasizing the mandatory and permissive texts of § 1307(b) and (c) and the voluntary nature of Chapter 13, while at the same time undermining the post-*Marrama* obsession with § 105(a) as a fount of unconstrained equitable powers. This latter point is further supported by *Williams*’s comparison of *Marrama* and Chapter 7 conversions with § 1307 and Chapter 13 dismissals. *Marrama*, the court correctly noted, rested largely on § 706(d)’s mandate that debtors seeking conversion under § 706(a) must qualify as debtors under the chapter

¹⁵⁰ *In re Williams*, 435 B.R. at 556.

¹⁵¹ *Id.* at 557.

¹⁵² *Id.* at 558.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 159; 11 U.S.C. § 1307(b) & (c).

¹⁵⁵ *In re Williams*, 435 B.R. at 560.

¹⁵⁶ *Id.* at 560 & n.12 (internal citations and quotation marks omitted) (citing *Solow v. Kalikow* (*In re Kalikow*), 602 F.3d 82, 97 (2d Cir. 2010)) (writing that the text of § 105(a) itself “suggests that an exercise of section 105 power be tied to another Bankruptcy Code section and not merely to a general bankruptcy concept or objective.”).

¹⁵⁷ *Id.* at 560.

to which they wish to convert.¹⁵⁸ Section 1307(b), however, contains no such eligibility limitation.¹⁵⁹ “Without a separate statutory provision limiting § 1307(b) in the same way that § 706(d) limits § 706(a),” wrote the court, “the right that § 1307(b) accords debtors to obtain dismissal of unconverted cases cannot be limited.”¹⁶⁰ *Jacobsen* and *Rosson*'s shallow comparisons to the contrary are unsupported by the text of the statutes they purport to interpret.

Consistent with its limited interpretation of § 105(a), *Williams* also rejected the proposition, supported by *Jacobsen*, *Rosson*, and like courts, that *Marrama* stands for an expansive construction of that section.¹⁶¹ *Williams* explained that the *Marrama* Court used § 105(a) to implement § 706(d), not to effectuate a policy unsupported by the Bankruptcy Code's text.¹⁶² As discussed above, because § 1307(c) allows the court discretion in converting or dismissing a case due to bad faith, § 706(d)'s requirement that a debtor qualify as a debtor under the chapter to which he wishes to convert does not necessarily prohibit a bad faith Chapter 7 debtor from converting his case to a Chapter 13.¹⁶³ Because of this, and instead of using § 105(a) to reach an end in excess of the provisions of the Code, *Marrama* merely used § 105(a) to “avoid the ‘procedural anomaly’ of permitting Chapter 7 debtors to convert their cases to a chapter for which they were ineligible.”¹⁶⁴ The opposite position articulated by *Marrama*'s Chapter 13 progeny violates the principal that, in using its equitable powers, the bankruptcy court is constrained by the text of the Bankruptcy Code.¹⁶⁵

Judge Wedoff in *Williams* offered a thoughtful counter to *Marrama*'s Chapter 13 progeny, and to all minority jurisdictions. *Williams*'s decision is supported by the text of § 1307, Chapter 13 policy, and the contours of the rights and powers emanating from the Bankruptcy Code. Further, *Williams* carefully explained the salient features that distinguish *Marrama* and the Chapter 7 debtor's right to convert from § 1307(b) and the Chapter 13 debtor's voluntary right to dismiss. Unfortunately, many lower courts continue to follow *Rosson* and *Jacobsen*'s examples.¹⁶⁶

III. LAW V. SIEGEL

Like *Marrama*, *Law v. Siegel* does not concern the Chapter 13 debtor's right to dismiss. Rather, *Law* stands for the simple, bright line rule that a debtor's property exemptions are not liable for the payment of administrative expenses due to bad

¹⁵⁸ 11 U.S.C. § 706(d) (2012).

¹⁵⁹ *In re Williams*, 435 B.R. at 558.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 560.

¹⁶² *Id.*

¹⁶³ *See supra* Part II.C.1.

¹⁶⁴ *Id.* (citing *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 375 (2007)).

¹⁶⁵ *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988).

¹⁶⁶ *See, e.g., In re Criscuolo*, No. 09–14063–BKF, 2014 WL 1910078, at *3 (Bankr. E.D. Va. 2014).

faith.¹⁶⁷ The legal principles expounded in *Law* in support of its holding, however, concern the limits of the bankruptcy courts' powers to sanction abuse of the bankruptcy system and, as a general exposition of the law, are applicable to all bankruptcy cases. Further, through its discussion of *Marrama*, the decision proposes a general rule that is consistent with the *Williams* court's specific Chapter 13 dismissal framework and, thus, establishes that the right conferred by § 1307(b) is absolute. Before discussing *Law*'s implications in the Chapter 13 dismissal context, however, a summary of the decision is necessary.

Law was a case about exemptions. Section 522(b) of the Code¹⁶⁸ states that certain property of the debtor may be exempted from liquidation by the bankruptcy trustee¹⁶⁹ to make attainable the debtor's "fresh start" and prevent destitution.¹⁷⁰ Section 522(d)¹⁷¹ contains a list of twelve categories of property able to be exempted.¹⁷² Debtors may utilize the § 522(d) exemptions, or the exemption statutes of his or her state (as well as non-bankruptcy federal law).¹⁷³ States may opt out of the § 522(d) exemptions, in which case debtors of such states may only claim exemptions under state and non-bankruptcy federal laws.¹⁷⁴ A homestead exemption, such as that of which *Law* took advantage,¹⁷⁵ protects the debtor's equity in his home.¹⁷⁶

As in the dismissal and conversion contexts, the law of exemptions is not free from abuse. Some debtors conceal the existence or value of assets or otherwise impede the administration of the bankruptcy estate, thus decreasing in value the estate and the unsecured creditors' ultimate return.¹⁷⁷ Section 522(k) limits judicial reduction of the value exempted from property for the benefit of administrative expenses (subject to exceptions),¹⁷⁸ providing: "Property that the debtor exempts

¹⁶⁷ *Law v. Siegel*, 134 S. Ct. 1188, 1192 (2014).

¹⁶⁸ 11 U.S.C. § 522(b) (2012).

¹⁶⁹ *Id.* §§ 522(b)(1), (2).

¹⁷⁰ *See Augustine v. United States*, 675 F.2d 582, 584 (3d Cir. 1982); H.R. Rep. No. 95-595, *supra* note 82, at 126.

¹⁷¹ 11 U.S.C. § 522(d) (2012).

¹⁷² *Id.* §§ 522(d)(1)-(12). Exemptions are based either on value or an item of property itself. *In re Morrell*, 394 B.R. 405, 409 (Bankr. N.D. W. Va. 2008).

¹⁷³ 11 U.S.C. § 522(b)(3) (2012); *In re Abdul-Rahim*, 720 F.3d 710, 712 (8th Cir. 2013).

¹⁷⁴ *Abdul-Rahim*, 720 F.3d at 712.

¹⁷⁵ CAL. CIV. PROC. § 704.730(a)(1).

¹⁷⁶ Timothy R. Tarvin, *Bankruptcy, Relocation, and the Debtor's Dilemma: Preserving Your Homestead Exemption Versus Accepting the New Job Out of State*, 43 LOY. U. CHI. L.J. 141, 144 n.2 (2011).

¹⁷⁷ Warren E. Agin, *Laying Down the Law: Supreme Court to Consider Surcharge Remedy*, 2013 No. 8 NORTON BANKR. L. ADVISER 1 (2013).

¹⁷⁸ Section 522(k)'s exceptions state that the following exempt property may be liable for the payment of administrative expenses:

- (1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of [§ 522], or of recovery of such

under [§ 522] is not liable for the payment of any administrative expense”¹⁷⁹ Despite this prohibition, however, many courts prior to *Law* held that, pursuant to their inherent powers and § 105(a), bankruptcy courts were authorized to surcharge exempt assets to the extent of any loss caused by bad faith.¹⁸⁰

Law held definitively that federal law prohibits courts from surcharging exemptions to recover administrative expenses due to bad faith.¹⁸¹ The trustee in *Law* argued that his administrative costs incurred in the form of reasonable attorneys’ fees expended pursuing the adversary proceeding against *Law* could be recouped from proceeds equal to *Law*’s homestead exemption.¹⁸² The trustee argued, in effect, that § 522(k) was subject to a bad faith exception. In his brief before the Supreme Court, he argued that *Marrama* controlled the question at issue, that case, in his view, standing for the proposition that “bankruptcy courts have broad authority under Section 105(a) of the Code and their inherent powers to take any action that is necessary or appropriate to prevent an abuse of process,”¹⁸³ precisely the sentiment championed by *Marrama*’s Chapter 13 progeny.¹⁸⁴

The Supreme Court disagreed. Not one to mince words, Justice Scalia, in the opening lines of his analysis, declared: “It is hornbook law that § 105(a) ‘does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code.’”¹⁸⁵ Justice Scalia wrote that it is impossible to “carry out” the numerous provisions of the Bankruptcy Code by ordering actions in contravention of those very sections.¹⁸⁶ Therefore, that section may only be invoked to further an express grant of authority emanating from the Bankruptcy Code. Justice Scalia also cabined the courts’ inherent powers, opining that “[c]ourts’ inherent sanctioning powers are likewise subordinate to valid statutory directives and prohibitions.”¹⁸⁷ Because § 522(k) states that exempt property “is not liable for payment of any administrative expense,”¹⁸⁸ subject to two exceptions inapplicable to the facts in

property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and

- (2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of [§ 522], or of recovery of property under subsection (i)(1) of [§ 522], that the debtor has not paid.

11 U.S.C. § 522(k)(1)-(2) (2012).

¹⁷⁹ *Id.* § 522(k).

¹⁸⁰ Agin, *supra* note 177, at 1.

¹⁸¹ *Law v. Siegel*, 134 S. Ct. 1188, 1198 (2014).

¹⁸² Brief for Respondent at 29, *Law v. Siegel*, 134 S. Ct. 1188 (2014) (No. 12-5196) (Oct. 22, 2013), 2013 WL 5765189.

¹⁸³ *Id.* (citations omitted) (internal quotation marks omitted).

¹⁸⁴ *See supra* Part II.C.2.a.

¹⁸⁵ *Law*, 134 S. Ct. at 1194 (quoting 2 COLLIER ON BANKRUPTCY ¶ 105.01[2], p. 105-06 (16th ed. 2013)).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ 11 U.S.C. § 522(k) (2012).

Law, the Court held that, in ordering that the value of Law's homestead exemption be applied to the payment of the trustee's attorneys' fees, the bankruptcy court exceeded its authority.¹⁸⁹

While Justice Scalia's discussion of the bankruptcy courts' authority under their inherent powers and § 105(a) was sufficient to dispose of the case, he saw fit to distinguish the present case from the Court's decision in *Marrama*. First, he distinguished the statutory schemes at issue in the respective cases, pointing out that § 522 does not contain a provision analogous to § 706(d) which, in conjunction with § 1307(c) and subject to the court's discretion, conditions the ultimate success of a conversion to Chapter 13 on good faith conduct.¹⁹⁰ Then, Justice Scalia directly confronted *Marrama*'s discussion of § 105(a) and the federal courts' inherent powers, concluding that the *Marrama* Court's declaration that its decision was supported by those powers was dictum.¹⁹¹ The justice wrote that the Court's stated reliance on those two sources of power merely stands for the proposition, at most, that courts may, at times, "dispense with futile procedural niceties in order to reach more expeditiously an end result required by the Code."¹⁹² This reaffirms his earlier conclusion that § 105(a) and the inherent powers could only be utilized to further a specific bankruptcy power. In the coup de grâce, Justice Scalia concluded: "*Marrama* most certainly did not endorse, even in dictum, the view that equitable considerations permit a bankruptcy court to contravene express provisions of the Code."¹⁹³

Therefore, the Supreme Court in *Law* held that bad faith is not sufficient to warrant deviation from the express terms of § 522(k).¹⁹⁴ In so ruling, the Court pronounced limitations on § 105(a) and the courts' inherent powers to sanction abuse of process in the form of the express provisions of the Bankruptcy Code.¹⁹⁵ As a logical extension of such limitations, Justice Scalia's opinion rejected any interpretation of *Marrama* that allows for the limitation of an otherwise unqualified right.¹⁹⁶

IV. *LAW V. SIEGEL*'S IMPLICATIONS FOR THE CHAPTER 13 DEBTOR'S RIGHT TO DISMISS

The Supreme Court's decision in *Law v. Siegel* renders hollow the minority rule's reliance on an extra-statutory exception to the Chapter 13 debtor's absolute right to dismiss. The exception has sometimes been found in § 1307(c) and that section's interaction with § 1307(b), at other times in § 105(a) and the inherent

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 1197; *see supra* Part II.C.1.

¹⁹¹ *Law*, 134 S. Ct. at 1197. This is misguided because, as discussed above, § 706(d) does not, alone, explicitly prohibit a bad faith Chapter 7 debtor from converting to a Chapter 13. *See supra* Part II.C.1.

¹⁹² *Law*, 134 S. Ct. at 1197.

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 1195.

¹⁹⁵ *Id.*

¹⁹⁶ *See id.* at 1197.

powers, as well, and has always been justified by fear of the insidious escape hatch through which all wicked debtors flee when courts adhere to the text of the Bankruptcy Code.¹⁹⁷ The bad faith exception to § 1307(b), however, is in fact nonexistent. *Law* confirms this proposition.

Law eviscerates the minority position's conclusion that § 1307(b) is tempered by a bad faith exception in two ways. First, the decision overturns by analogy the interpretation posited by many courts post-*Marrama* that *Marrama* applies to the Chapter 13 dismissal context and stands for an expansive reading of § 105(a) and courts' inherent powers to sanction abuse of process. *Marrama*'s Chapter 13 progeny maintain that §§ 706 and 1307 are indistinguishable. Because *Marrama* recognized a bad faith exception to a seemingly unqualified right in § 706(a), so the analysis goes, a similar qualification must inhere in § 1307(b).¹⁹⁸ But even more significantly, these courts conclude that *Marrama*, through its reference to § 105(a) and the inherent powers in support of its holding, embodies a dramatic expansion of judicial authority that allows courts to impose limitations on otherwise unqualified rights to satisfy laudable policies, such as that of preventing the creation of an unfair escape hatch for bad faith Chapter 13 debtors.¹⁹⁹

Law took the wind out of the sails of the statutory comparison, and undeniably foreclosed further reliance on a reading of *Marrama* that allows courts to, in the name of preventing injury due to abuse and bad faith conduct, achieve ends that are not sanctioned by the Bankruptcy Code. The Court in *Law* distinguished § 522 from § 706, interpreting § 522's allowance of exemptions to be discretionary in the debtor and, once exercised, unable to be dishonored by the court absent a specific statutory exception.²⁰⁰ While the Code does contain exceptions to this generally absolute right, no such exception applies to bad faith.²⁰¹ This conclusion is buttressed by § 522(k)'s specific prohibition that, but for its two delineated exceptions, is mandatory in its terms.²⁰² Section 522 is thus comparable to § 1307(b)'s mandatory text.²⁰³ The Court held that *Marrama* was not applicable in the exemption context because, unlike in that case, the debtor in *Law* did not violate an eligibility provision analogous to § 706(d).²⁰⁴ Because § 1307 contains no such eligibility provision, *Marrama* is similarly inapposite to the Chapter 13 dismissal context.

Even if *Marrama* is relevant to the absolute right circuit split, which *Law*'s statutory analysis belies, Justice Scalia could not have been clearer that *Marrama* does *not* stand for the proposition that, pursuant to their inherent powers and § 105(a), courts are authorized to limit statutory rights where no such qualification is

¹⁹⁷ See *supra* Part II.B.

¹⁹⁸ See *supra* Part II.C.2.a.

¹⁹⁹ *Law*, 134 S. Ct. at 1197.

²⁰⁰ *Id.* at 1196.

²⁰¹ See *id.* (writing that “§ 522 does not give courts discretion to grant or withhold exemptions based on whatever considerations they deem appropriate.”).

²⁰² See 11 U.S.C. § 522(k) (2012).

²⁰³ In fact, § 1307(b) contains less exceptions than § 522, the only qualification to the former being that the Chapter 13 case must be unconverted. See *id.* § 1307(b).

²⁰⁴ *Law*, 134 S. Ct. at 1197.

contained in the Code. Justice Scalia called into question the precedential viability of the *Marrama* Court's reference to those powers, labeling it dictum.²⁰⁵ Even so, Justice Scalia stated that *Marrama*'s reference was in no way an endorsement of courts' abilities to "contravene express provisions of the Code" in support of equitable considerations.²⁰⁶ Section 105(a) and the inherent powers of courts, then, were definitively limited to the text.²⁰⁷ Just as with § 522(k), the text of the Bankruptcy Code contains no bad faith exception to § 1307(b). By analogy, therefore, neither § 105(a), nor the courts' inherent powers, may be used to limit § 1307(b)'s mandatory language. *Law* thus invalidated the belief that *Marrama* stands for the proposition that "apparently unqualified right[s] [are] subject to an exception for bad faith . . ."²⁰⁸

No longer may bankruptcy courts rest on § 105(a) and courts' inherent powers to find a bad faith exception to § 1307(b)—or any other provision—where no such exception is located in the Bankruptcy Code. The debate, it would seem, should thus be reconstituted around its original statutory and policy arguments, excluding, of course, any such arguments based on § 105(a). Those arguments, exemplified by the Second and Eighth Circuits' decisions in *Barbieri* and *Molitor*, respectively, pit the plain language of § 1307 and Chapter 13's voluntary nature against § 1307(c) and the general policy against giving bad faith debtors an unfair escape hatch.²⁰⁹ The general proposition articulated by *Law*, however, that bankruptcy courts are not authorized to achieve ends unsupported by the Bankruptcy Code, similarly renders the pre-*Marrama* minority position in violation of the extent of the bankruptcy courts' powers. Section 1307(c) may no longer be relied on either as an explicit source of a bad faith exception, nor as an implicit limitation based on that section's otherwise nugatory nature next to a fully operable § 1307(b), because the text of § 1307(c) simply does not contradict or qualify § 1307(b)'s mandatory language. Any other conclusion would render meaningless the Supreme Court's directive in *Law* that general equitable considerations do not authorize courts to exercise specific powers not found in the Bankruptcy Code.²¹⁰ For this same reason the "escape hatch"

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ In this way, those powers were rendered much like the Necessary and Proper Clause of the United States Constitution. U.S. CONST. art. II, § 8, cl. 18 (authorizing Congress "[t]o make all Laws which shall be necessary and proper for carrying into Execution [Congress's enumerated] Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."). Containing no substantive force of their own, those powers may only be used to exercise authority "derivative of, and in service to, a granted power." *Nat'l Fed'n Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2592 (2012) (discussing the Necessary and Proper Clause). See Daniel B. Bogart, *Resisting the Expansion of Bankruptcy Court Power Under Section 105 of the Bankruptcy Code: The All Writs Act and an Admonition from Chief Justice Marshall*, 35 ARIZ. ST. L.J. 793, 876 (2003).

²⁰⁸ *In re Jacobsen*, 609 F.3d 647, 661 (5th Cir. 2010); see also *In re Rosson*, 545 F.3d 764, 773 n.12 (9th Cir. 2008).

²⁰⁹ See *In re Barbieri*, 199 F.3d 616, 619-20 (2d Cir. 1999); *In re Molitor*, 76 F.3d 218, 220 (8th Cir. 1996).

²¹⁰ *Law*, 134 S. Ct. at 1194-95 (quoting *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988)).

argument, supported by a noble objective that is nonetheless absent from the Code, is untenable.

Law mirrors the *Williams* court's analytical framework, which explicitly prohibits courts from finding a bad faith exception to the unqualified right to dismiss contained in § 1307(b). *Williams*'s three premises—that (1) § 1307(b)'s text unequivocally imbues Chapter 13 debtors with an absolute right to dismiss, (2) a statutory provision may only be qualified by other statutory provisions (with the corollary that courts may not amend statutes), and (3) no statutory provision qualifies § 1307(b)²¹¹—stand for a proposition that is but a specific articulation of *Law*'s general rule that statutory rights granted by the Bankruptcy Code are only able to be limited by other statutory provisions. Therefore, *Law*, in mirroring this framework, indicates that the § 1307(b) imbues Chapter 13 debtors with an absolute right to dismiss their cases, subject only to the requirement that the cases be not previously converted.

V. CONCLUSION

Currently, the majority of jurisdictions maintain that § 1307(b) imbues debtors with an absolute right to dismiss their Chapter 13 cases. The bankruptcy court in *Williams* articulated the most persuasive and statutorily grounded post-*Marrama* argument in favor of the majority rule, holding that, as no provision of the Bankruptcy Code qualifies § 1307(b), the unequivocal right guaranteed by that section is absolute. Conversely, the minority position asserts that 1307(b) is tempered by a bad faith exception. This exception has been found in § 1307(c) and, more frequently after the Supreme Court's decision in *Marrama*, § 105(a) and the courts' inherent powers to sanction abuse and bad faith conduct. Courts in the minority further argue that recognizing an absolute right to dismiss in the Chapter 13 debtor creates an escape hatch through which bad faith debtors may unfairly escape and thus promotes abuse of the bankruptcy system.

In *Law*, the Supreme Court held that bankruptcy courts are not authorized to recognize exceptions to the Bankruptcy Code that are not statutorily authorized. The decision mirrored *Williams*'s basic framework, and supports the majority position's conclusion that § 1307(b) is not tempered by a bad faith exception. No court has recognized this assertion, and one court has rejected it.²¹² Unless and until courts recognize *Law*'s importance, Chapter 13 debtors in many jurisdictions will continue to be denied a right guaranteed them by the Bankruptcy Code.

²¹¹ *In re Williams*, 435 B.R. 552, 554 (Bankr. N.D. Ill. 2010).

²¹² *In re Criscuolo*, No. 09-14063-BFK, 2014 WL 1910078, at *5 (Bankr. E.D. Va. 2014) (holding that *Law* was inapplicable). The trustee in *Criscuolo* moved to dismiss the debtor's Chapter 13 case with prejudice, alleging that the debtor concealed from the court and the trustee the fact that he earned over \$1 million in 2012. *Id.* at *2. The debtor, in response, moved to dismiss (without prejudice) under § 1307(b). *See id.* at *3. The court found ample evidence to grant the trustee's motion "under § 1307(c) based on the *Marrama* standard." *Id.* at *4. The debtor argued that *Law* limited *Marrama* and was proof that the right to dismiss under § 1307(b) is absolute. *Id.* at *5. Confining *Law* to a case concerning the limits of § 105(a), the court, without much explanation, held that it was *not* proof of the Chapter 13 debtor's absolute right to dismiss. *See id.*

