

The document below is hereby signed.

Signed: June 10, 2015



*S. Martin Teel, Jr.*

S. Martin Teel, Jr.  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLUMBIA

In re	)	
	)	
STEPHEN THOMAS YELVERTON,	)	Case No. 09-00414
	)	(Chapter 7)
Debtor.	)	
_____	)	
	)	
STEPHEN THOMAS YELVERTON,	)	
	)	
Plaintiff,	)	
	)	Adversary Proceeding No.
v.	)	14-10046
	)	
DISTRICT OF COLUMBIA DEPT.	)	
OF PUBLIC WORKS,	)	
	)	
Defendant.	)	<b>Not for Publication in West's Bankruptcy Reporter.</b>

MEMORANDUM DECISION AND ORDER DENYING  
MOTION TO ALTER OR AMEND DECISION PER FRCP, RULE 59(e)

The plaintiff Yelverton's *Motion to Alter or Amend Decision Per FRCP, Rule 59(e)* (Dkt. No. 16) must be denied for the reasons elucidated in my decision dismissing this adversary proceeding and as explained herein. In dismissing this adversary

proceeding, I held that Yelverton had failed to obtain permission to pursue the proceeding as required by the *Opinion and Order* entered on August 6, 2014, in *Stephen Thomas Yelverton v. Wendell W. Webster, et al. (In Re Yelverton)*, Case No. 1:13-cv-1544, reported at 526 B.R. 429. Alternatively, I held that: (1) the claim for relief under 11 U.S.C. § 544 (*i.e.*, avoidance of liens against Yelverton's Mercedes vehicle) was time-barred; and (2) the District Court's bankruptcy subject matter jurisdiction under 28 U.S.C. § 1334(b), exercised by this court pursuant to referral by the District Court under District Court Local Bankruptcy Rule 5011-1, did not extend to the nonbankruptcy law claims Yelverton was pursuing (*i.e.*, his claims for compensatory and punitive damages for the alleged unlawful conversion, taking, and use of the vehicle).

The harm that Yelverton clamors to litigate occurred long ago: his vehicle was impounded by the District of Columbia in *December 2008* and sold in *March 2009*. The District of Columbia ought not be required to defend such stale claims; indeed, it is clear, as described later in this decision, that the statute of limitations bars Yelverton's claims. In his motion, Yelverton advances facts not pled in his complaint in favor of finding subject matter jurisdiction. However, as will be seen, Yelverton has still failed to advance adequate facts to establish subject matter jurisdiction, and, in any event, any possible impact on

the estate is so remote, speculative, and unlikely to occur that abstention would be appropriate.

I

THE COURT PROPERLY VIEWED THE COMPLAINT AS BARRED BASED ON YELVERTON'S FAILURE TO OBTAIN PERMISSION TO FILE THE COMPLAINT

Yelverton contends that I have misinterpreted the District Court's *Opinion and Order* entered on August 6, 2014, in Case No. 1:13-cv-1544, reported at 526 B.R. 429. This court, by statute, is a unit of the District Court and exercises the bankruptcy subject matter jurisdiction of the District Court. I adhere to my interpretation of the District Court's *Opinion and Order*, requiring pre-filing authorization, as extending to adversary proceeding complaints filed by Yelverton in this court.

If Yelverton *had* moved this court to permit the filing of the complaint, the motion would have been deemed referred to this court to address in the first instance pursuant to District Court Local Bankruptcy Rule 5011-1, and I would have denied the request (or, if Fed. R. Bankr. P. 9033 were determined to apply, I would have recommended to the District Court that the request be denied) because of the alternative grounds I set forth that would require dismissal of the proceeding.

II

THE CLAIMS UNDER 11 U.S.C. § 544(a) ARE TIME-BARRED

The complaint asserts a claim under 11 U.S.C. § 544(a) to avoid the District's lien and the receipt of the proceeds of that

lien, and it sought a recovery of the transferred property under 11 U.S.C. § 550 upon those transfers being avoided. As noted in the prior decision, Yelverton is barred by the expiration of the limitations period of 11 U.S.C. § 546(a) from pursuing his § 544(a) claim.<sup>1</sup> As stated in *Shawhan v. Shawhan (In re Shawhan)*, Nos. NV-08-1049-JuKuK, NV-08-1052-JuKuK, 04-10196, 2008 WL 8462964 at \*10 (9th Cir. BAP July 7, 2008):

If the trustee would be barred by the passage of the § 546(a)(1) limitations period, debtor is too as debtor does not get greater rights than those of the trustee. See *Verner v. Verner (In re Verner)*, 318 B.R. 778, 792 (Bankr. W.D. Pa. 2005); *In re Steck*, 298 B.R. 244, 248 (Bankr. D.N.J. 2003); *Schroeder v. First Union Nat'l Bank (In re Schroeder)*, 173 B.R. 93, 94 (Bankr. D. Md. 1994), *rev'd on other grounds*, 183 B.R. 723 (D. Md. 1995).

Because Yelverton is barred from avoiding the transfers, his request to recover the transferred property must fail as well.<sup>2</sup>

Yelverton also contends:

---

<sup>1</sup> Under 11 U.S.C. § 101(54)(A), the creation of a lien is a transfer, as is a receipt of proceeds pursuant to enforcement of the lien. The power under 11 U.S.C. § 544 to avoid a transfer is a trustee power. However, when, as here, the trustee has no interest in pursuing avoidance of the transfer, 11 U.S.C. § 522(h) allows the debtor in certain circumstances to avoid the transfer "**if - (1) such transfer is avoidable by the trustee under § 544 . . . .**" (Emphasis added.) However, because the limitations period under § 546(a) expired before Yelverton filed his complaint, the transfer was no longer "avoidable by a trustee" within the meaning of § 522(h) when the complaint was filed, and thus § 522(h) does not apply.

<sup>2</sup> If a transfer is avoided under § 522(h), 11 U.S.C. § 522(i) allows the debtor to make a recovery, as could a trustee, under § 550. Because the transfer will *not* be avoided under § 522(h), the property transferred cannot be recovered under §§ 522(i) and 550.

The Decision, at pp. 7-8, erroneously finds that the Debtor's claims under 11 U.S.C. 544 are beyond the statute of limitations. However, such claims may be filed after the statute of limitations where they are "defensive." *In Re McKensie*, 757 F.3d 1034, 1041 (8th Cir. 2013); *In Re Mclean*, 196 B.R. 679, 676 (Bkrtcy. S.D.N.Y. 1996).

This argument fails. Yelverton appears to have mis-cited *Grant, Konvalinka & Harrison, P.C. v. Still (In re McKenzie)*, 737 F.3d 1034, 1041 (6th Cir. 2013), and *United States Lines, Inc. v. United States (In re McLean Indus., Inc.)*, 196 B.R. 670, 676 (S.D.N.Y. 1996).

*McKenzie* and *McLean Industries* dealt with the use of a trustee's avoidance power in invoking the estate's defense to a proof of claim under 11 U.S.C. § 502(d).<sup>3</sup> Section 502(d) essentially provides for disallowance of a claim if the creditor has not undone an avoidable transfer. The majority position (exemplified by *McKenzie* and *McLean Industries*) holds that in objecting to a claim pursuant to § 502(d), the trustee may invoke the avoidability of the claim even though the trustee would be

---

<sup>3</sup> Section 502(d) provides:

Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

unable to avoid and recover the transfer at issue because the statute of limitations contained in 11 U.S.C. § 546(a)(1) bars avoidance of the transfer.

Unlike the trustees in *McKenzie* and *McLean Industries*, Yelverton is not using an avoidance power defensively under 11 U.S.C. § 502(d) in objecting to a proof of claim. Instead, Yelverton's complaint seeks affirmative relief: avoidance of all liens against the vehicle and compensatory damages. Yelverton's § 544(a) claims are barred by the statute of limitations because they seek affirmative relief, not defensive relief under § 502(d).

### III

#### YELVERTON'S CONTENTIONS REGARDING HIS NONBANKRUPTCY LAW CLAIMS ARE MERITLESS

Yelverton next contends:

The Decision, at pp. 7-8, erroneously finds that the Debtor's state law claims are unrelated to the Bankruptcy and are beyond the statute of limitations. However, they are claims for continuing Torts for damages to property of the Estate, and thereby the proceeds would go to the Estate to pay Creditors. Although the Debtor filed for an Exemption of this property from the Estate, the Exemption was never recognized by the Bankruptcy Court. But as Exempt property, the proceeds would nevertheless go to a coowner of the property, Alexandra Senyi de Nagy-Unyom, who is a Creditor of the Estate as to the property.

These contentions include erroneous statements that can be readily brushed aside:

- The court specifically did not decide whether the

nonbankruptcy law claims were untimely;<sup>4</sup> instead, it held that the court lacked subject matter jurisdiction over the nonbankruptcy law claims.

- It is untrue that an exemption claim "was never recognized by the Bankruptcy Court."<sup>5</sup>
- The state law claims have been abandoned *in toto* to Yelverton and thereby ceased to be property of the estate being administered by the chapter 7 trustee. In turn, the proceeds of those claims will not belong to the estate, and thus they are not proceeds that the chapter 7 trustee would potentially distribute to creditors after paying administrative claims. Any recovery in this proceeding would belong to Yelverton, and it is thus untrue that "the proceeds would go to the Estate to pay Creditors."

That leaves Yelverton's contention that the court erred in finding no subject matter jurisdiction over the nonbankruptcy law

---

<sup>4</sup> However, as discussed later, it is clear that the claims are time-barred.

<sup>5</sup> As noted above, this court held:

The nonbankruptcy law litigation claims (or, more precisely, the portion of their value claimed to be exempt) became exempted from the estate pursuant to 11 U.S.C. § 522(1).

*Yelverton v. D.C.*, Adv. Pro. No. 10-10045 (Dec. 4, 2013) (Memorandum Decision on Remand, p. 12).

claims and specifically erred in that regard because "the proceeds would nevertheless go to a coowner of the property, Alexandra Senyi de Nagy-Unyom, who is a Creditor of the Estate as to the property." In part IV, below, I address why, despite this contention, I did not err in concluding that the complaint failed to establish subject matter jurisdiction, and I note that even if there were subject matter jurisdiction, Yelverton's nonbankruptcy law claims against the District of Columbia would appropriately be claims as to which the court should abstain.

In part V, below, I observe that Yelverton has failed to allege facts establishing that he has any enforceable nonbankruptcy claims against the District. This presents another reason why (pursuant to the *Opinion and Order* entered on August 6, 2014, in *Stephen Thomas Yelverton v. Wendell W. Webster, et al. (In Re Yelverton)*, Case No. 1:13-cv-1544) permission should not be given to Yelverton to file the complaint.

Finally, in part VI, below, I address why the abandonment to Yelverton of the claims against the District of Columbia had no retroactive effect on the statutes of limitations that bar his claims.



IV

THERE WAS NO ERROR IN CONCLUDING THAT THE COMPLAINT DID NOT ESTABLISH SUBJECT MATTER JURISDICTION, AND ABSTENTION WOULD BE APPROPRIATE EVEN IT THERE WERE SUBJECT MATTER JURISDICTION

The court appropriately concluded that the complaint failed to establish subject matter jurisdiction. None of the additional facts he now advances would establish such jurisdiction, and, in any event abstention would be appropriate if there were jurisdiction.

A.

YELVERTON DID NOT PLEAD FACTS  
ESTABLISHING SUBJECT MATTER JURISDICTION

Under Fed. R. Civ. P. 8(a), Yelverton was required to plead in his complaint facts establishing that this court had subject matter jurisdiction over his claims. See *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936) (“[The plaintiff] must allege in his pleading the facts essential to show jurisdiction.”). This he failed to do.

Yelverton’s complaint did not plead what he now alleges, namely, that “the proceeds would nevertheless go to a coowner of the property, Alexandra Senyi de Nagy-Unyom, who is a Creditor of the Estate as to the property.” If he thinks that subject matter jurisdiction can be premised on that, he needs to seek leave to file a complaint that *does* include those allegations.

For reasons explored below, even if Yelverton were to file a motion for leave to file a complaint that included those

allegations, and leave were granted to allow the complaint to be filed, the complaint would not survive a motion to dismiss.<sup>6</sup>

B.

YELVERTON HAS NOT SHOWN THAT THE CLAIMS ARE RELATED TO THE BANKRUPTCY CASE BASED ON HIS NEW ALLEGATIONS

Yelverton's nonbankruptcy law claims did not arise in the bankruptcy case and did not arise under the Bankruptcy Code. If subject matter jurisdiction exists here under the pertinent statute, 28 U.S.C. § 1334(b), it could only exist if the claims are "related to" the bankruptcy case. Yelverton's complaint failed to plead facts establishing "related to" jurisdiction.

Yelverton's nonbankruptcy law claims against the District, which were estate property, were abandoned to him in December 2014.<sup>7</sup> For purposes of Yelverton's standing to pursue this adversary proceeding, I will assume in Yelverton's favor (and

---

<sup>6</sup> Yelverton's track record of filing meritless cases requires, pursuant to the *Opinion and Order* entered on August 6, 2014, in *Stephen Thomas Yelverton v. Wendell W. Webster, et al. (In Re Yelverton)*, Case No. 1:13-cv-1544), that he present a complaint that sets forth facts establishing a basis for jurisdiction before he can be allowed to file the complaint.

<sup>7</sup> Prior to the abandonment, Yelverton claimed a fixed dollar amount exemption with respect to the claims, but despite that exemption the estate remained the owner of the claims with Yelverton having only a right to recover, from the proceeds of the claims, his claimed exemption amount. See *Schwab v. Reilly*, 560 U.S. 770, 792 (2010) (when a debtor claims a dollar amount of an asset exempt, and the exemption is allowed, "title to the asset will remain with the estate pursuant to § 541, and the debtor will be guaranteed a payment in the dollar amount of the exemption").

without deciding the issue) that the abandonment is to be treated as retroactively effective as of the date of the commencement of this adversary proceeding in October 2014. The claims ceased to be property of the estate upon their abandonment. Accordingly, the complaint must be viewed as pursuing claims that are not property of the estate.

As observed in *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 n.6 (1995), the courts of appeals that have addressed the question of "related to" jurisdiction agree that there is no "related to" jurisdiction over "proceedings that have no effect on the estate of the debtor." See, e.g., *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (1984) ("An action is related to bankruptcy if the outcome could alter the [estate's] rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate."); *Elscint, Inc. v. First Wisc. Fin. Corp. (In re Xonics, Inc.)*, 813 F.2d 127, 131 (7th Cir. 1987) (a proceeding is "related to" the case if "it affects the amount of property available for distribution or the allocation of property among creditors") (internal citations omitted). Accordingly, when property leaves the bankruptcy estate, the bankruptcy court's jurisdiction typically lapses. *Id.*; *In re Hall's Motor Transit Co.*, 889 F.2d 520, 522 (3d Cir. 1989).

Yelverton's complaint pled no facts showing that this

adversary proceeding fits within an exception to the typical outcome noted in *Hall's Motor Transit*. As I noted in a previous decision:

[A]ny recovery by the debtor as the owner of the claims would have no apparent impact on the administration of the estate (the test for determining whether there is "related to" jurisdiction). See *Turner v. Ermiger (In re Turner)*, 724 F.2d 338 (2d Cir. 1983) (decided under similar jurisdictional statute); *In re McClellan*, 99 F.3d 1420, 1422-23 (7th Cir. 1996); *Ostroff v. Am. Home Mortg. (In re Ostroff)*, 433 B.R. 442 (Bankr. D.D.C. 2010) (no jurisdiction to adjudicate debtor's state law claim of lien invalidity on exempt property). See also *Ludwig & Robinson, PLLC v. Yelverton Law Firm, PLLC (In re Yelverton)*, 2011 WL 1628046 (Bankr. D.D.C. Apr. 28, 2011).

*Yelverton v. D.C.*, Adv. Pro. No. 10-10045 (Dec. 4, 2013)

(*Memorandum Decision on Remand*, p. 11). As I noted in *Ostroff*:

Section 1334(b) does not grant jurisdiction over proceedings that solely affect property that a debtor has exempted from the estate. *Turner v. Ermiger (In re Turner)*, 724 F.2d 338 (2d Cir. 1983); see also *In re McClellan*, 99 F.3d 1420, 1422-23 (7th Cir. 1996); *In re Graziadei*, 32 F.3d 1408, 1410 n.2 (9th Cir. 1994) (bankruptcy court lacked subject matter jurisdiction to order that fees owed to his former spouse's attorney pursuant to a postpetition divorce decree be paid out of proceeds of exempt property); *Menotte v. United States (In re Garcia)*, 2002 WL 31409580 (S.D. Fla. 2002).

433 B.R. at 449.

C.

YELVERTON HOLDS NO CLAIM AGAINST THE  
ESTATE FOR WHICH DISTRIBUTIONS FROM THE ESTATE  
COULD BE AFFECTED BY WHAT HE RECOVERS FROM THE DISTRICT

This adversary proceeding is not one by a creditor against a third party as to which a recovery by that creditor from the

third party would eliminate the creditor's claim against the estate, and thereby increase distributions to other creditors, such that "related to" jurisdiction exists. See *In re Xonics, Inc.*, 813 F.2d at 131-32 ("related to" jurisdiction exists if the plaintiff's recovery "would affect the recoveries of other creditors").<sup>8</sup> Instead, it is a proceeding by Yelverton (who is not a creditor of the estate) against a third party, the District of Columbia. The proceeds of the proceeding would belong to Yelverton, not to a creditor. Yelverton is the debtor in his bankruptcy case, not a creditor, and thus he holds no claim against the estate that could be eliminated via a recovery by him from the District. Accordingly, his recovery, to paraphrase *Xonics*, is not one that would affect the recoveries of creditors from the estate. Even if there were a surplus in the bankruptcy estate payable to Yelverton after all creditors' claims are fully satisfied, the amount of that surplus would be unaffected by the amount of Yelverton's recovery from the District.

---

<sup>8</sup> See also *Nuveen Mun. Trust ex rel. Nuveen High Yield Mun. Bond Fund v. WithumSmith Brown, P.C.*, 692 F.3d 283, 294 (3d Cir. 2012); Ralph Brubaker, *On the Nature of Federal Bankruptcy Jurisdiction: A General Statutory and Constitutional Theory*, 41 *Wm. & Mary L. Rev.* 743, 901 n.559 (2000) (collecting similar decisions); Jack Zarin-Rosenfeld, *Designing Related-to Bankruptcy Jurisdiction*, 89 *N.Y.U.L. Rev.* 390, 398 n.34 (Apr. 2014) (same).

D.

YELVERTON'S NEW ALLEGATIONS REGARDING SENYI  
DO NOT SUFFICE TO ESTABLISH "RELATED TO" JURISDICTION

Yelverton contends that "the proceeds would nevertheless go to a coowner of the property, Alexandra Senyi de Nagy-Unyom, who is a Creditor of the Estate as to the property." Yelverton did not include that allegation in his complaint. Even if he had, the allegation would not have sufficed to establish "related to" subject matter jurisdiction for two reasons.

First, Yelverton pled no facts establishing that Senyi is a co-owner of "the property." Even if Yelverton could establish that Senyi is a co-owner of the claims against the District, or has a claim against the District because she had an co-ownership interest in the motor vehicle the District seized, her recovery would belong to her as an owner, and not as a creditor of Yelverton. That would have no impact on the administration of the estate.

Second, even if the proceeds somehow went to Senyi in her capacity as a creditor of the estate holding nondischargeable claims, Yelverton has not articulated how that could have an impact upon the administration of the estate. Senyi would be entitled to collect her nondischargeable claims by executing on any recovery by Yelverton from the District of Columbia (assuming no other entity beat her to the punch in obtaining a judgment and executing), but because of the respective amounts of monies at

stake, Yelverton has not shown that Senyi would receive full satisfaction of her allowed claims from the proceeds of any recovery by Yelverton against the District of Columbia. And, crucially, only *full* satisfaction of Senyi's allowed claims would eliminate her claims as claims against the estate entitled to a pro rata distribution, because until she has fully collected her claims (from the estate and from any non-estate sources), her pro rata distribution from the estate would be based on the allowed amount of her claims without regard to the amounts collected from non-estate sources. *See, e.g., In re Del Biaggio*, 496 B.R. 600, 603 (Bankr. N.D. Cal. 2012) (citing *Ivanhoe Bldg. & Loan v. Orr*, 295 U.S. 243 (1935), for the proposition that "the amount [of] the creditor's claim in the bankruptcy case is not affected by third-party payments, except to the extent payment from the [estate] would produce a double recovery").

Examining the amounts and attributes of Senyi's claims makes this clearer. Yelverton has not alleged that *full* satisfaction of Senyi's nondischarged claims against the estate will occur via distributions in the case and via Senyi's collecting from Yelverton any funds he recovers from the District, and it is doubtful that he could allege that because:

- The only apparent meaningful asset of the estate is a \$110,000 settlement the trustee reached with Yelverton's siblings, and because approval of that

settlement has necessitated the trustee's having counsel,<sup>9</sup> and because the trustee has had counsel address other litigation in the case, it is likely that a substantial portion of that \$110,000 will be consumed by administrative claims before there is any distribution to creditors like Senyi.

- Yelverton's complaint against the District seeks only damages of at least \$18,900, plus interest, and punitive damages of at least \$250,000.
- But Senyi is owed nondischargeable claims consisting of \$329,000 in spousal support claims (for the period prior to the parties' divorce), and alimony claims of \$17,000 per month (so long as Senyi remained single) accruing after the conversion of the case to chapter 7.<sup>10</sup>
- For years, Yelverton has repeatedly sought waivers of appeal fees in his bankruptcy case and related adversary proceedings, claiming that he has

---

<sup>9</sup> This court approved that settlement, the District Court affirmed this court's orders dealing with the approval of the settlement, and the Court of Appeals affirmed the District Court's ruling by a per curiam order in *Yelverton v. Webster (In re Yelverton)*, Case No. 14-7147, 2015 WL 1606965 (D.C. Cir. Mar. 9, 2015).

<sup>10</sup> See *Memorandum re Cross-Motions for Summary Judgment* of September 24, 2012, in *Yelverton v. Senyi de Nagy-Unyom (In re Yelverton)*, Adversary Proceeding No. 12-10011 (Bankr. D.D.C.), reported at 2012 WL 4434087.



insufficient income and assets to pay the fees.

Accordingly, it is not likely he has been able to make any payment on the nondischargeable claims.

Because (a) Senyi's proof of claim (by reason of *Ivanhoe Bldg. & Loan*) would entitle her to a pro rata distribution from the estate based on the total amount of her allowed claims until she fully recovers the aggregate amount of those claims<sup>11</sup> and (b) Yelverton has not suggested (and could not seriously suggest) that the point would be reached that pro rata distributions to Senyi (in combination with Senyi's recoveries on her nondischarged claims from Yelverton's recoveries from the District) would result in her having been paid more than the full amount of her allowed claims against the estate, then (c) any collection by Senyi of any recovery by Yelverton against the District of Columbia will not impact the administration of the

---

<sup>11</sup> Senyi and Yelverton were divorced on August 11, 2010. The debtor's case was converted to chapter 7 on August 20, 2010. However, the Superior Court delayed the effective date of its judgment for 30 days. Most or all of the \$329,000 claim for pre-divorce support arose before the conversion of this case to chapter 7 on August 20, 2010, and thus most or all of the \$329,000 claim was properly asserted against the estate. See 11 U.S.C. §§ 348(d) and 502(b)(5). However, the \$17,000 per month of alimony that accrued after conversion of the case to chapter 7 is not a proper claim against the estate. See 11 U.S.C. § 502(b)(5). Senyi is entitled to collect her post-conversion claims (which are not allowed claims against the estate) before collecting her pre-conversion claims that are allowed claims against the estate.

estate.<sup>12</sup>

E.

EVEN IF YELVERTON HAD PLED FACTS SHOWING THAT SENYI'S COLLECTION OF FUNDS COULD AFFECT DISTRIBUTIONS TO OTHER CREDITORS, THAT POSSIBILITY IS SO SPECULATIVE AND INDIRECT THAT IT IS QUESTIONABLE WHETHER "RELATED TO" JURISDICTION WOULD EXIST, AND DISCRETIONARY ABSTENTION WOULD BE APPROPRIATE

Even disregarding the foregoing deficiencies in Yelverton's attempt to show that "related to" jurisdiction exists, there is serious doubt that his reliance on the speculative possibility that Senyi might collect the proceeds of this proceeding (and that down the road such collection might affect distributions to other creditors in the case) could suffice to establish "related to" jurisdiction. As noted in *Pacor*, "[t]here must be some nexus between the 'related' civil proceeding and the title 11 case," 743 F.2d at 994, and as observed in *Celotex*, 514 U.S. at 308, "a bankruptcy court's 'related to' jurisdiction cannot be

---

<sup>12</sup> Senyi has also asserted prepetition claims of a dischargeable character, but Yelverton has objected to the allowance of those claims. To the extent those claims are allowed, the recoveries from the District of Columbia would not affect those claims, and the assets of the estate, after administrative claims are paid, would almost certainly not suffice to pay those claims. In that event, the claims against the District would have no impact on the administration of the estate, and there could not be subject matter jurisdiction over the claims against the District.

Yelverton also objected to Senyi's claims of a nondischargeable character (the claims for spousal support pre-divorce and for alimony afterwards), but after he filed his objection to those claims, the Superior Court upheld Senyi's right to spousal support pre-divorce, and her right to alimony.

limitless." If there were "related to" jurisdiction here over the claims against the District for the reason that Senyi might collect from Yelverton the proceeds of the claims, and in turn that this could affect the administration of the estate, there would then be "related to" jurisdiction over:

- litigation of *any* monetary claims that Yelverton might pursue in the future (including monetary claims arising after the bankruptcy case commenced, such as Yelverton's claims for work performed postpetition); and
- any action that Senyi might bring to recover her claim from other assets that Yelverton might accumulate in the future

because the proceeds of such future litigation could be used to pay Senyi's claim. "Related to" jurisdiction does not extend that far: the impact must be more direct. See *In re FedPak Systems, Inc.*, 80 F.3d 207, 214 (7th Cir. 1996) ("[C]ommon sense cautions against an open-ended interpretation of the 'related to' statutory language 'in a universe where everything is related to everything else.'" (citing Gerald T. Dunne, *The Bottomless Pit of Bankruptcy Jurisdiction*, 112 *Banking L.J.* 957 (Nov.-Dec.

1995)).<sup>13</sup> Here, Yelverton has pled no facts showing that entry of a monetary judgment in favor of Yelverton against the District will alter any rights of the estate and directly affect the administration of the estate.

Senyi's potential collection from Yelverton of whatever he recovers from the District is at least one step removed from this adversary proceeding and is not certain to occur: some other postpetition creditor might seize the funds. Senyi's potential collection of the funds thus lacks that direct nexus to the estate that is required for "related to" jurisdiction to exist. To import the phrasing of *Pacor*, 743 F.2d at 995, Yelverton's recovering a monetary judgment in this proceeding against the District is "[a]t best . . . a mere precursor to the potential" second step of Senyi (instead of someone else) then obtaining the

---

<sup>13</sup> Consider, by way of analogy, *Tower Auto. Mex., S. De R.L. De C.V. v. Grupo Proeza, S.A. De C.V. (In re Tower Auto., Inc.)*, 356 B.R. 598, 602 (Bankr. S.D.N.Y. 2006) ("[A] debtor's distributable assets might consist exclusively of the stock of a multinational corporation, but that happenstance would not give the bankruptcy court jurisdiction of a patent or antitrust dispute involving that corporation, no matter how important to its financial well-being."). See also *Eastjun Coop., LLC v. Spike Club LLC (In re Wilson)*, Adv. Pro. No. 13-10019, 2013 WL 3880053, at \*1-2 (Bankr. D.D.C. July 25, 2013). The contrary holding in *8300 Newburgh Rd. P'ship v. Time Constr., Inc. (In re Time Constr., Inc.)*, 43 F.3d 1041, 1045 (6th Cir. 1995), is based on unpersuasive, skimpy reasoning and logically has no limits as it would require a court to find "related to" jurisdiction over litigation against any corporation in which the debtor held a share whose value could be impacted by the litigation. "Related to" jurisdiction is not that limitless.

proceeds of that monetary judgment for application to her nondischargeable claim against Yelverton. That type of indirect potential of an impact on the estate is insufficient under *Pacor* to support a finding of "related to" jurisdiction. "Mere potential impact upon the debtor's estate is insufficient." *Steel Workers Pension Trust v. Citigroup, Inc.*, 295 B.R. 747, 750 (E.D. Pa. 2003). See also *Black v. U.S. Postal Serv. (In re Heath)*, 115 F.3d 521, 524 (7th Cir. 1997) (defining "related to" as meaning "likely to affect").

However, it has been suggested by at least one commentator that such a restrictive reading of the "related to" language is inconsistent with the goals of the statute and that any concerns about the uncertainty that the litigation will have an impact on the administration of the estate should be addressed instead by way of abstention. See Ralph Brubaker, *On the Nature of Federal Bankruptcy Jurisdiction: A General Statutory and Constitutional Theory*, 41 Wm. & Mary L. Rev. 743 (2000). Some courts have agreed and have held that *Pacor* was too restrictive in this regard. See, e.g., *Lindsey v. O'Brien, Tanski, Tanzer & Young Health Care Providers of Conn. (In re Dow Corning Corp.)*, 86 F.3d 482, 491 (6th Cir. 1996) ("It has become clear following *Pacor* that 'automatic' liability is not necessarily a prerequisite for a finding of 'related to' jurisdiction."); *Nat'l Union Fire Ins. Co. v. Titan Energy, Inc. (In re Titan Energy, Inc.)*, 837 F.2d

325, 330 (8th Cir. 1988) ("related to" jurisdiction can exist over a third-party proceeding that "portends a mere contingent or tangential effect on a debtor's estate"). However, even if Senyi were to recover from Yelverton any funds he recovers from the District of Columbia, and even if that speculative possibility could suffice to establish "related to" jurisdiction, it is extremely unlikely that Senyi's recovery could have any impact upon the administration of the estate (because, as discussed above, Yelverton has not pled facts showing that Senyi would likely recover enough for full satisfaction of her claims), and thus the proceeding would be an obvious candidate for the exercise of permissive abstention, as discussed next.

The nature and circumstances of this case would make abstention under 28 U.S.C. § 1334(c)(1) warranted even if "related to" jurisdiction existed. This is not a case under chapter 11 of the Bankruptcy Code in which a confirmed plan was formulated with the view that any creditor's recovery from another source would be treated as reducing the creditor's claim against the estate even if the claim were not fully paid. See *In re Xonics, Inc.*, 813 F.2d at 131-32. Instead, it is a chapter 7 case in which the chapter 7 trustee will make whatever distribution is appropriate at the time he files a final report. Creditors have waited a long time for a distribution. For reasons already discussed, it is extremely unlikely that

Yelverton's recovery from the District could have an impact on the administration of the estate even if the recovery were in turn executed upon by Senyi towards collection of her nondischarged claims.

A court must bear in mind the command of 11 U.S.C. § 704(a)(1) that the trustee "collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest." Awaiting the outcome of Yelverton's claims against the District, when the likelihood of those claims having any impact on the administration of the estate is highly speculative and highly unlikely to occur, would not be compatible with the best interests of creditors.

In short, the possibility that the proceeds of the proceeding might be paid to Senyi; the possibility that, in turn, her nondischarged claims would be paid in full; and the possibility, in turn, that this could affect distributions to other creditors are possibilities that are entirely too remote, speculative, and unlikely to occur to warrant exercising jurisdiction over the proceeding even if Yelverton could establish that "related to" jurisdiction exists.

V

YELVERTON HAS NOT ALLEGED FACTS  
ESTABLISHING ANY ENFORCEABLE NONBANKRUPTCY LAW CLAIMS

Yelverton, in any event, has failed to allege facts

establishing that he has any enforceable nonbankruptcy law claims against the District.

A.

First, as to claims arising under District of Columbia law, Yelverton has not pled facts showing that, under D.C. Code § 12-309,<sup>14</sup> any such claim ever accrued. The auction sale at issue was held on May 19, 2009. Yelverton's complaint makes evident that it is one for unliquidated damages but he does not plead he gave notice in writing to the Mayor as required by § 12-309. When a plaintiff has failed to give the Mayor such notice, no cause of action accrues. *Gwinn v. District of Columbia*, 434 A.2d 1376, 1378 (D.C. 1981) ("[U]nless timely notice is given, no 'right of action' or 'entitlement to maintain an action' accrues."). Section 12-309 "imposes a notice requirement on everyone with a tort claim against the District of Columbia, and compliance with its terms is 'mandatory as a prerequisite to filing suit against the District.'" *District of Columbia v.*

---

<sup>14</sup> D.C. Code § 12-309 provides:

An action may not be maintained against the District of Columbia for unliquidated damages to person or property unless, within six months after the injury or damage was sustained, the claimant, his agent, or attorney has given notice in writing to the Mayor of the District of Columbia of the approximate time, place, cause, and circumstances of the injury or damage. A report in writing by the Metropolitan Police Department, in regular course of duty, is a sufficient notice under this section.



*Dunmore*, 662 A.2d 1356, 1359 (D.C. 1995) (quoting *Hardy v. District of Columbia*, 616 A.2d 338, 340 (D.C. 1992)).

Accordingly, Yelverton's failure to plead timely compliance with § 12-309 results in his having not pled a cause of action that has accrued and would require that his common law tort claims under D.C. law against the District be dismissed.

B.

Yelverton also invokes 42 U.S.C. § 1983, a federal statute as to which D.C. Code § 12-309 (the mayor notice requirement) does not apply. However, he has not pled a valid claim under § 1983, which provides a cause of action for persons deprived of their constitutional or federal statutory rights "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." As observed in *Elkins v. District of Columbia*, 610 F. Supp. 2d 52, 58 (D.D.C. 2009):

In order to hold a municipality liable for the civil rights violations of its employees under 42 U.S.C. § 1983, a plaintiff must show not only a violation of his rights under the Constitution or federal law, but also that the municipality acted in accordance with a government custom or policy. *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); accord *Rogala v. District of Columbia*, 161 F.3d 44, 56 (D.C. Cir. 1998) (applying *Monell* to the District of Columbia); *Sanders v. District of Columbia*, 522 F. Supp. 2d 83, 88 (D.D.C. 2007) (same). A plaintiff must demonstrate an affirmative link between the District's policy and the constitutional violation alleged. *Carter v. District of Columbia*, 795 F.2d 116, 122 (D.C. Cir. 1986). A single incident is insufficient to impose such liability. *Reed v. District of Columbia*, 474 F. Supp. 2d

163, 168 (D.D.C. 2007); see also *Martin v. Malhojt*, 830 F.2d 237, 255 (D.C. Cir. 1987) ("One instance, however egregious, does not a pattern or practice make.").

Yelverton's complaint is devoid of any allegations of the District's employees having acted in accordance with a government custom or policy.

C.

Yelverton also appears to have pled constitutional torts against the District, but these claims and the § 1983 claims are barred by the statute of limitations. When no federal statute contains a statute of limitations for such claims, the appropriate statute of limitations for a federal civil rights or constitutional tort is the most analogous state statute of limitations. See *Doe v. U.S. Dept. of Justice*, 753 F.2d 1092, 1114 (D.C. Cir. 1985). Civil rights and constitutional tort claims are subject to the same statute of limitations as state personal injury actions. See *Wilson v. Garcia*, 471 U.S. 261, 279 (1985), *abrogated on other grounds as recognized by Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 377-83 (2004). Under D.C. Code § 12-301, the three possibly analogous statutes of limitations each fix a three-year deadline to pursue an action

after accrual of the right to maintain the action.<sup>15</sup>

Accordingly, Yelverton was required to sue on his claim within three years after it accrued.<sup>16</sup>

While state law provides the applicable statute of limitations, federal law controls when federal claims accrue. See *Wallace v. Kato*, 549 U.S. 384, 388 (2007) (“[T]he accrual date of a § 1983 cause of action is a question of federal law that is *not* resolved by reference to state law.”) (emphasis in original); *Genty v. Resolution Trust Corp.*, 937 F.2d 899, 919 (3d Cir. 1991).

Yelverton’s federal claims accrued at the time of the

---

<sup>15</sup> D.C. Code § 12-301 provides in relevant part that the limitations period is:

(2) for the recovery or personal property or damages for its unlawful detention-3 years;

(3) for the recovery of damages for an injury to real or personal property-3 years;

(8) for which a limitation is not otherwise specially prescribed-3 years[.]

<sup>16</sup> See *Savage v. District of Columbia*, No. 02-7135, 2003 WL 843326, at \*1 (D.C. Cir. Feb. 25, 2003) (“The district court properly applied a three-year statute of limitations in this case brought pursuant to 42 U.S.C. § 1983.”); *Carney v. Am. Univ.*, 151 F.3d 1090, 1096 (D.C. Cir. 1998) (“[I]n states with multiple statutes of limitations, claims under section 1983 are governed by the residual or general personal injury statute of limitations . . . .”); *McDonald v. Salazar*, 831 F. Supp. 2d 313, 319-20 (D.D.C. 2011) (applying the 3-year limitations period of D.C. Code § 12-301(8) instead of the shorter limitations period in D.C. Code § 12-301(4) for “for libel, slander, assault, battery, mayhem, wounding, malicious prosecution, false arrest or false imprisonment” to a *Bivens* claim).

seizure and auction of the car more than three years before Yelverton filed this adversary proceeding. Each discrete act gives rise to a separate claim for purposes of the statute of limitations; no "continuing violation doctrine" applies. See *Carpinteria Valley Farms, Ltd. v. County of Santa Barbara*, 344 F.3d 822, 829 (9th Cir. 2003). Accrual occurs "when the plaintiff has a complete and present cause of action." *Wallace*, 549 U.S. at 388 (internal citations and quotation marks omitted). See also *Eagleston v. Guido*, 41 F.3d 865, 871 (2d Cir. 1994) ("The claim accrues when the plaintiff knows or has reason to know of the harm.") (internal citations and quotation marks omitted); *Nasim v. Warden, Md. House of Correction*, 64 F.3d 951, 955 (4th Cir. 1995) (en banc) ("Under federal law a cause of action accrues when the plaintiff possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action."); *Sameric Corp. of Del., Inc. v. City of Phila.*, 142 F.3d 582, 599 (3d Cir. 1998) (same). Here, Yelverton should have known of the injury shortly after the seizure and auction of the car, which occurred more than three years before he filed his adversary complaint, and there is no continuing tort.

In short, Yelverton's complaint is precisely the type of frivolous filing that the District Court intended to be screened out by its *Opinion and Order* entered on August 6, 2014, in

*Stephen Thomas Yelverton v. Wendell W. Webster, et al. (In Re Yelverton)*, Case No. 1:13-cv-1544.

VI

THE NONBANKRUPTCY LAW CLAIMS  
CANNOT BE TREATED AS NOT BARRED BY THE STATUTE OF  
LIMITATIONS BASED ON THE RECENT ABANDONMENT OF THE CLAIMS

Yelverton also contends:

The Decision, at p. 7, erroneously finds that the Debtor had "slept on his rights" to compel an Abandonment from the Chapter 7 Trustee. However, there is no time limit on Abandonment during the Bankruptcy. See, 11 U.S.C. 554.

He undoubtedly makes that assertion as a basis for urging that abandonment rolled back the effective date of the assertion of the claims retroactively to a date making the assertion of the claims timely under any statute of limitations. Abandonment did not have that effect.

A.

Yelverton is correct that he was not time-barred from obtaining an abandonment of nonbankruptcy law causes of action that were property of the estate.<sup>17</sup> In saying that he slept on

---

<sup>17</sup> Yelverton also delayed pursuing his claim under 11 U.S.C. § 522(h) and § 544 to avoid the transfer to the District, with the consequence that such claim became time-barred by 11 U.S.C. § 546 for reasons discussed earlier. (Yelverton became entitled to pursue that claim by way of § 522(h), not by way of abandonment: even though an interest in property recovered by the trustee, or preserved for the benefit of the estate, pursuant to an avoidance power is property of the estate under 11 U.S.C. § 521(a)(3) and (4), the avoidance powers themselves are not property of the estate.)

his rights in pursuing abandonment I was merely noting that Yelverton's delay had led to the District of Columbia raising the defense of untimeliness.<sup>18</sup> Ultimately, because there was no subject matter jurisdiction over the abandoned nonbankruptcy law claims, I found it unnecessary to address whether pursuit of those nonbankruptcy law claims was time-barred. However, as explored previously, the claims are time-barred.

B.

Assuming, hypothetically, that this court would have subject matter jurisdiction over Yelverton's pursuit of the abandoned nonbankruptcy law claims in this adversary proceeding, Yelverton would likely argue that the doctrine regarding the retroactive effect of abandonment would make his claims timely if the statute of limitations had expired before he commenced the adversary proceeding. However, such an argument would fail because retroactivity cannot undo the untimeliness of a proceeding that was barred by the statute of limitations when it was filed. The retroactivity doctrine is this: upon abandonment of a property

---

<sup>18</sup> By the time Yelverton secured an abandonment, a final judgment had already been entered dismissing the first adversary proceeding he brought against the District on the entirely appropriate grounds that he lacked standing to pursue that adversary proceeding. As a dismissed adversary proceeding, that first adversary proceeding was no longer a vehicle for pursuing the abandoned claims. If he was to pursue the abandoned claims, he was required to pursue them in a new proceeding in a court of competent jurisdiction, but by the time the abandonment occurred he was likely time-barred from pursuing the abandoned claims.

from the estate in a bankruptcy case, title to the abandoned property reverts to the debtor, as of the petition date, so that she is treated as having owned it continuously. *Moses v. Howard Univ. Hosp.*, 606 F.3d 789, 795 (D.C. Cir. 2010). Thus, if:

(1) after the filing of a bankruptcy case the debtor timely commenced an adversary proceeding (or other civil action) on a cause of action when only the trustee had standing to pursue the cause of action, and

(2) the proceeding has not been dismissed, prior to abandonment, based on the debtor's lack of standing, then the abandonment retroactively confers standing on the debtor to pursue the cause of action in the pending adversary proceeding (or other pending civil action) as of the debtor's filing of the proceeding. *Barletta v. Tedeschi*, 121 B.R. 669, 673 (N.D.N.Y. 1990). See also *Williams v. United Tech. Carrier Corp.*, 310 F. Supp. 2d 1002, 1011-12 (S.D. Ind. 2004).

However, the retroactive effect of abandonment of a property does not roll back the clock to undo the lack of a timely complaint or other consequences adverse to the debtor that have arisen prior to abandonment regarding that property. See *United States v. Grant*, 971 F.2d 799, 805-06 (1st Cir. 1992) (en banc) (rejecting a debtor's argument that the relation back doctrine was available to defend a criminal prosecution for concealing property from a trustee in bankruptcy); *In re Salander*, 450 B.R.

37, 51-52 (Bankr. S.D.N.Y. 2011) (retroactive effect of abandonment of real property to petition date did not undo a postpetition release, pursuant to an approved settlement, of claims relating to the real property).

Accordingly, if the statute of limitations has run on a cause of action without a timely civil action having been commenced, that running of the statute of limitations is not undone by the retroactive effect of abandonment of the cause of action. As observed in *Wallace v. Lawrence Warehouse Co.*, 338 F.2d 392, 394 n.1 (9th Cir. 1964), relation back "is a fiction, and a fiction is but a convenient device, invented by courts to aid them in achieving a just result. It is not a categorical imperative, to be blindly followed to a result that is unjust."<sup>19</sup> If the statute of limitations ran before Yelverton commenced this adversary proceeding, it would be unjust to treat the retroactivity doctrine as making the adversary proceeding timely:

---

<sup>19</sup> Similarly, as I held in *Yelverton v. District of Columbia (In re Yelverton)*, Adv. Pro. No. 10-10045, 2014 WL 29671 (Bankr. D.D.C. Jan. 3, 2014), *aff'd*, 2014 WL 5002101 (D.D.C. Oct. 7, 2014), in dismissing Yelverton's first adversary proceeding against the District, the retroactive effect of abandonment does not undo a final order, prior to abandonment, dismissing a civil action for lack of standing. Even though retroactivity decisions could be viewed as deeming the debtor to have been the owner of abandoned cause of action all along, retroactivity does not undo the propriety of the court having dismissed Yelverton's first adversary proceeding based on the debtor having lacked standing when the order of dismissal was entered. That dismissed earlier adversary proceeding cannot be treated as a basis for treating this second adversary proceeding as filed when the earlier adversary proceeding was filed.



the District would be subjected to claims that long ago became stale and as to which Yelverton slept on his rights to put himself in a posture to pursue the claims in a timely fashion.

C.

Yelverton may attempt to revisit the dismissal of prior efforts he made to sue the District of Columbia, but the orders effecting dismissal of those efforts are final judgments not subject to being vacated. Yelverton not only obtained an abandonment of some of his claims against the District, he also previously exempted a portion of the claims that were property of the estate. As this court previously noted in Yelverton's first adversary proceeding against the District:

[O]n July 26, 2012, more than a year after the adversary proceeding was dismissed, Yelverton filed in his bankruptcy case an amended Schedule C, which asserted, for the first time, an exemption claim regarding the nonbankruptcy law claims in this litigation. The claim of exemption listed the value of the nonbankruptcy law claims in this adversary proceeding as \$135,000 and listed the value of the claimed exemption as \$67,500. No one timely objected to that exemption claim. See Fed. R. Bankr. P. 4003(b)(1). The nonbankruptcy law litigation claims (or, more precisely, the portion of their value claimed to be exempt) became exempted from the estate pursuant to 11 U.S.C. § 522(1).

*Yelverton v. D.C.*, Adv. Pro. No. 10-10045 (Dec. 4, 2013)

(*Memorandum Decision on Remand*, p. 12). Like the later abandonment of the claims against the District, the exemption of \$67,500.00 of the potential proceeds of the claims could not resuscitate an adversary proceeding that was already dismissed

(Adv. Pro. No. 10-10045) nor alter the untimeliness of the pursuit in this adversary proceeding of the claims that were the subject of the exemption claim.

It was only upon abandonment of the claims that Yelverton became entitled to pursue the abandoned claims against the District.<sup>20</sup> In contrast to an abandonment of property, or an exemption of the entirety of a property, an exemption of only a fixed dollar amount of the value of a property is not an exemption of the asset itself and leaves title to the asset in the estate. See *Schwab v. Reilly*, 560 U.S. 770, 792 (2010) (when a debtor claims a dollar amount of an asset exempt, and the exemption is allowed, "title to the asset will remain with the estate pursuant to § 541, and the debtor will be guaranteed a payment in the dollar amount of the exemption"). Because such an asset remains property of the estate, the trustee retains the

---

<sup>20</sup> See *Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A. v. Alvarez (In re Alvarez)*, 224 F.3d 1273, 1279-80 (11th Cir. 2000) (holding that, because "[t]he bankruptcy trustee is the legal representative of the bankruptcy estate," the debtor may not pursue a cause of action which is the property of the bankruptcy estate unless the trustee abandons the claim or participates in the cause of action). See also *Auday v. Wet Seal Retail, Inc.*, 698 F.3d 902, 904-06 (6th Cir. 2012); *Vreugdenhil v. Hoekstra*, 773 F.2d 213, 215-16 (8th Cir. 1985). Here, the trustee declined to pursue the claims, and without his participating in the adversary proceeding, Yelverton was not entitled to pursue the claims. If the trustee had participated in the proceeding, he would have exposed the estate to any recovery by the District of costs if the District successfully defended the adversary proceeding. By not participating, he avoided exposing the estate to that risk.

exclusive standing to administer the asset. Specifically, when a debtor exempts only a set dollar amount of an asset, instead of exempting the property in its entirety, standing to administer the asset is *not* retroactively conferred on the debtor to administer the asset if the governing exemption statute does not alter the trustee's right to continue administering the asset. See *In re Salzer*, 52 F.3d 708, 712 (7th Cir. 1995) (under Indiana exemption statute, trustee continues to administer an exempted property until such time as its value is definitively determined not to exceed the amount of the claimed exemption). This rule has been applied to civil actions for which the debtor has exempted a fixed dollar amount of the eventual proceeds. A partially exempted lawsuit remains property of the estate, with the debtor only entitled to receive from the proceeds of the lawsuit the dollar amount exempted. The exemption does not confer standing on the debtor to pursue the lawsuit.<sup>21</sup>

---

<sup>21</sup> See *Jones v. Cendant Mortg. Corp. (In re Jones)*, 396 B.R. 638, 648 (Bankr. W.D. Pa. 2008); *In re Fetner*, 218 B.R. 262, 264-65 (Bankr. D.D.C. 1997) (exemption did not vest the debtor with control over pursuit of claims); *Ball v. Nationscredit Fin. Servs. Corp.*, 207 B.R. 869, 872 (N.D. Ill. 1997) and 201 B.R. 210, 214-15 (N.D. Ill. 1996) (under Indiana law, the trustee remained the party with standing to pursue the claims that were the subject of a partial exemption, and thus the debtor in *Ball* never became the party with standing to pursue the claims); *Bronner v. Gill (In re Bronner)*, 135 B.R. 645, 649 (9th Cir. BAP 1992) ("The Debtors' exemption was merely an interest in the lawsuit, a right to retain a sum of money up to \$15,800; it was not an absolute right to retain the lawsuit itself or all proceeds from the settlement of the lawsuit.").

Yelverton's exemption of the claims was not an exemption of the entirety of the claims.<sup>22</sup> It was only upon abandonment of the claims that Yelverton became entitled to pursue the abandoned claims against the District. Even if the rule were different, and the partial exemption conferred standing on Yelverton to pursue the nonbankruptcy law claims against the District, then, as in the case of abandonment, any retroactive effect of the exemption would not roll back an expired statute of limitations clock to permit Yelverton's pursuit of the claims (either in an adversary proceeding (Adv. Pro. No. 10-10045) already dismissed before the exemption was claimed or in *this* adversary proceeding) to be timely.

## VII

In accordance with the foregoing, it is

ORDERED that Yelverton's *Motion to Alter or Amend Decision Per FRCP, Rule 59(e)* (Dkt. No. 16) is DENIED. It is further

ORDERED that if the bankruptcy court was not authorized to

---

<sup>22</sup> The civil action in *Ball* was dismissed on the basis that the debtor, who had exempted only a dollar amount of the claims, had lacked standing to commence the civil action. To the extent that *Ball*, 207 B.R. at 873, suggests that standing must be tested as of the commencement of the action and cannot be cured by treating standing acquired later via an exemption of the entirety of the property as retroactively effective, that was unnecessary to its ruling, and disregards the rationale of such decisions as *Moses*. The retroactive effect of standing acquired by reason of property re-vesting *in its entirety* in the debtor ought not vary depending on whether the re-vesting arose via abandonment or arose instead via exemption.

