UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

July 31, 2025 at 11:00 a.m.

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1. 23-90111-E-11 MICHAEL HOFMANN
23-9006 BSH-1
HOFMANN V. HOFMANN ET AL

MOTION FOR SUMMARY JUDGMENT
6-12-25 [52]

Item 1 thru 3

This Motion filed in the Adversary Proceeding (the removed partition State Court Action) is effectively a counter Motion filed by Plaintiffs in the Bankruptcy Case for the Bankruptcy for disbursement of the sales proceeds from the Residential Property.

The court has stated its tentative ruling on the two Motions in the Tentative Decision for the Motion filed by Plaintiff.

The court will incorporate that into the Civil Minutes for Debtor's Motion filed in the Adversary Proceeding.

2. **23-90111-E-11** **MICHAEL HOFMANN** **CONTINUED STATUS CONFERENCE RE:**
23-9006 **CAE-1** **NOTICE OF REMOVAL**
HOFMANN V. HOFMANN ET AL **5-14-23 [1]**

Plaintiff's Atty: Brian S. Haddix
Defendant's Atty: unknown

Adv. Filed: 5/14/23
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:
Continued from 6/12/25 to be conducted in conjunction with the cross motions for enforcement of the judgment in this Adversary Proceeding.

The Status Conference is xxxxxxx

3. 23-90111-E-11 DB-2 | **MICHAEL HOFMANN** **Brian Haddix** | **MOTION FOR ORDER DISTRIBUTING FUNDS FROM SALE OF RESIDENCE 6-11-25 [480]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on June 12, 2025. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion for Order Distributing Funds from Sale of Residence has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Order Distributing Funds from Sale of Residence is granted and the Subchapter V Trustee shall disburse: (1) to Debtor Michael Hofmann the sum of $20,686.08, (2) to Sharon Hofmann the sum of $192,777.47, and (3) to Gary Hofmann the sum of $192,777.46.

The parties in the Adversary Proceedings and this Bankruptcy Case have requested that this court determine the distribution of the net proceeds of $406,241.01 from the sale of the real property commonly known as 13330 Valley Home Road, Valley Home, California (the "Residence Property") in which Michael Hoffman, the Debtor, has an 8.333% interest, and Michael Hofmann and Sharon Hofmann (the Debtor's siblings),[1] each asserting a 45.8333% ownership interest.

Normally, the distribution of the net sales proceeds would be a simple mathematical calculation based on the respective ownership interests. However, as been demonstrated by the years of State Court litigation and the litigation in this Bankruptcy Case, the Debtor and his siblings have not been able to reasonably, financially advantageously, address their interests.

The Litigants have presented the court with the State Court Judgment determining their respective interests, as well surcharges and credits to be made with respect to their interests, and a further

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[1] The court collectively refers to Michael Hofmann, Sharon Hofmann, and Gary Hofmann as the "Litigants."

award of attorney's fees and costs for Sharon Hofmann and Gary Hofmann against the Debtor. State Court Judgment; Exhibit 2; Dckt. 485.

Following the State Court Judgment, the Debtor, who resided in and controlled the Residence Property, was "unable" to sell or divide the Residence Property as ordered by the State Court. Then, on the eve of the "judicial axe" falling in the State Court Action, Debtor filed this Bankruptcy Case.

With respect to the question presented to this court for the distribution of the monies from the sale of the Residence Property, the State Court Judgment consists of two parts. Exhibit 2; Dckt. 485. The first is the division and distribution of assets of the Litigants obtained through the Erich Hofmann Trust and the Lois Hofmann Trust (the parents of the litigants). The State Court made express findings and entered the Judgment determining that Michael Hofmann, the Debtor, has an 8.33% interest in the Property and that Sharon Hofmann and Gary Hofmann each have a 45.83% interest in the Property. *Id.*; p. 3:1-4 (page numbers are to the page of the Judgment).

The State Court Judgment further provides that Debtor's interest in the Residence Property is credited an additional $142,122.00 for the grain tanks added to the Residence Property. However, Debtor's interest is surcharged ($84,300.00) for Debtor residing in the Residence Property, plus ($6,276.81) in interest to the day of the Judgment, and additional interest of 10% per annum from the date of the Judgment.

In their Motion, Sharon Hofmann and Gary Hofmann assert that Debtor is not entitled to any credit for the grain tanks (also referred to as the "Rice Bins") because they were removed from the Residence Property and not sold as a part thereof. The State Court Judgment provides for the credit as follows:

> viii. The Parties are also entitled to credits or allowances as follows:
>
> 1. Michael shall receive a total credit of $142,122 if he leaves the grain tanks on the Real Property, and in the alternative, he shall receive a total credit of $62,269 if he removes the grain tanks.

Id.; p. 5:13-17.

By the plain language of the State Court Judgment, Debtor will be allowed a credit of $142,122, so long as "he," the Debtor, does not remove them. In this Bankruptcy Case the Debtor did not remove the grain tanks from the Residence Property. Rather, it was the Subchapter V Trustee who was granted possession and sole control over the Residence Property as part of the Bankruptcy Estate, removed the grain tanks. While the Litigants could spend tens of thousands of further dollars arguing whether the Subchapter V Trustee, whose duties run to the Bankruptcy Estate, is a "successor" who comes under the State Court Judgment paragraph above, as shown in the computation of the distribution amounts to the Litigants, after application of credits and surcharge, such is of insignificant economic consequence.

Again, reading the plain language of the State Court Judgment, it is the Debtor whose credit would be reduced if he, the Debtor, removes the grain tanks. No reference is made to a successor in interest or a Subchapter V Trustee under operation of Federal Law taking control of property of a bankruptcy estate.

There are no "setoffs" against the interests of Sharon Hofmann or Gary Hofmann provided in the State Court Judgment. However, Sharon Hofmann is provided a credit of $12,059.88. *Id.*; p. 5:18-19.

The State Court Judgment, in addition to determining the respective interests of the Litigants in the Residence Property, and any surcharges against or credits to such interest, also makes a separate award of attorneys' fees and costs of ($132,880.81) that is owed by Michael Hofmann to Sharon Hofmann and Gary Hofmann. *Id*.; p. 6:4-9-14.

Attached to and incorporated in the State Court Judgment are two Rulings issued by the State Court. Exhibits A and B attached to the State Court Judgment, Ex. 2; Dckt. 485. In the State Court's July 19, 2019 Ruling, the State Court cites to California Probate Code §§ 16007, 16420, 16440, 16441 with respect to the surcharge being imposed. Exhibit B, pp. 13:3-10, 15:7-13.

California Probate Code § 16420 provides that if a trustee of a trust commits a breach of trust, a beneficiary or co-trustee may commence a proceeding to obtain specified relief, which includes "To compel the trustee to redress a breach of trust by payment of money or otherwise." Cal. Probate § 16420(a)(3).

In the various pleadings filed by the Litigants, none address the issue of what is a "surcharge" and how it applies in a trust situation. The State Court Judgment and the two Rulings attached thereto expressly state that Debtor is surcharged the amount for his occupancy of the Residential Property. With respect to the award of attorney's fees and costs, it separately states that Sharon Hofmann and Gary Hofmann will "recover" from Debtor $132,880.81 in attorney's fees and costs, not that Debtor is surcharged that amount.

Interestingly, the court could not find within the Probate Code a statutory definition or procedure for a "surcharge" with respect to the misconduct of a trustee. Black's Law Dictionary provides the following definition:

> surcharge vb. (15c)
>
> 1. To impose an additional (usu. excessive) tax, charge, or cost.
>
> 2. To impose an additional load or burden.
>
> 3. (Of a court) to impose a fine on a fiduciary for breach of duty.
>
> 4. To overstock (an area) with animals.
>
> - second surcharge (18c) To overstock (a common) a second time for which a writ of second surcharge was issued.
>
> - surcharge and falsify (18c) To scrutinize particular items in an account to show items that were not credited as required (to surcharge) and to prove that certain items were wrongly inserted (to falsify). • The courts of chancery usu. granted plaintiffs the opportunity to surcharge and falsify accounts that the defendant alleged to be settled.

Black's Law Dictionary (12th ed. 2024).

Here, the State Court expressly "taxed" or "charged" Debtor's interest in the Residence Property for his use and control of it. This surcharge accounts for the value of the trust asset obtained by Debtor from

his use of it. This then is applied to adjust Debtor's interest in the trust asset, the Residence Property, that was liquidated through the State Court Action and the Debtor's Bankruptcy Case.

Recoupment or Setoff Asserted by
Sharon Hofmann and
Gary Hofmann

Sharon Hofmann and Gary Hofmann assert the right to all of the net proceeds from the sale, stating that there are mutual debts to be offset. What they assert is that the surcharges against Debtor's interests are personal obligations owed to each of them. This is inconsistent with the State Court expressly providing for a surcharge to be applied with respect to Michael Hofmann's interest in the Residence Property. The State Court also awarded Sharon Hofmann and Gary Hofmann attorney's fees and costs against Debtor, but did not award them as a surcharge.

Here, the court begins with determining the value of Debtor's interest in the proceeds of the sale of the Residence Property, which Michael Hofmann controlled as the trustee of the Eric Hofmann Trust. As Sharon Hofmann and Gary Hofmann assert, Debtor failed and refused to execute deeds or to distribute the trust assets to them.

Sharon Hofmann and Gary Hofmann assert that pursuant to 11 U.S.C. § 553 they can exercise the right of offset on the mutual debts between the Debtor and Sharon Hoffman and Gary Hofmann. They argue that since there are surcharges and credits that must be applied, there are mutual obligations owed between the Litigants. Additionally, they assert that these include the attorney's fees and costs awarded them against the Debtor.

Sharon Hofmann and Gary Hofmann cite to 11 U.S.C. § 553 in asserting the right that any interests of Debtor in the proceeds from the sale of the Residence Property may be offset against any obligations owed by the Debtor to Sharon and Gary Hofmann. 11 U.S.C. § 553 provides:

> § 553. Setoff
> (a) Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case, except to the extent that—
> [the exceptions do not apply to the obligations that are the subject of the setoff]
> . . . .

As noted in 5 Collier on Bankruptcy ¶ 553.04, 11 U.S.C. § 553 does not create a right of setoff, but preserves a right of setoff that may exist under state law.

Sharon Hoffman and Gary Hofmann cite to several Ninth Circuit Decisions that provide a good analysis of both the right of setoff and the right of recoupment. The court provides the following extensive quotations from and analysis of two of the Decision.

The first is *Newbery Corp v. Fireman's Fund Insx. Co*, 95 F.3d 1392 (9th Cir. 2000), which includes the following:

"The right of setoff (also called 'offset') **allows entities that owe each other money to apply their mutual debts against each other**, thereby avoiding 'the absurdity of making A pay B when B owes A.'" *Citizens Bank of Maryland v. Strumpf*, 133 L. Ed. 2d 258, 116 S. Ct. 286, 289 (1995) (citation omitted). The **defining characteristic of setoff is that "the mutual debt and claim . . . are generally those arising from different transactions**." 4 Collier on Bankruptcy Par. 553.03, at 553-14 (15th ed. 1995) ("Collier").

Setoff in bankruptcy cases is governed by 11 U.S.C. § 553.[8] It **has been used by creditors "as a defense in an action by the trustee for the recovery of money from the creditor**." Collier Par. 553.01[4], at 553-7. **Section 553 "is not an independent source of law governing setoff; it is generally understood as a legislative attempt to preserve the common-law right of setoff arising out of non-bankruptcy law.**" *United States v. Arkison (In re Cascade Roads, Inc.)*, 34 F.3d 756, 763 (9th Cir. 1994) (quoting United States v. Norton, 717 F.2d 767, 772 (3d Cir. 1983)). Under section 553(a), each debt or claim sought to be offset must have arisen prior to filing of the bankruptcy petition. In addition, "a claim may . . . be set off without regard to whether it is contingent or unliquidated, as long as the claim qualifies as 'mutual' under applicable nonbankruptcy law . . . ." Collier Par. 553.01[4], at 553-6 (citation omitted). [9] **In order for countervailing debts to be "mutual," they must be "in the same right and between the same parties, standing in the same capacity**." Collier Par. 553.04[2], at 553-22 (citing *England v. Industrial Comm. of Utah (In re Visiting Home Services, Inc.)*, 643 F.2d 1356, 1360 (9th Cir. 1981)). The **mutuality requirement stems from section 553(a)'s reference to "a mutual debt" owed by a creditor to the debtor against the creditor's claim against the debtor**,[10] and **it is strictly construed**. Collier Par. 553.04[1], at 553-20. The rationale for strict construction of the requirement has been explained as follows:

> The mutuality requirement in bankruptcy should be strictly construed because **setoffs run contrary to fundamental bankruptcy policies such as the equal treatment of creditors and the preservation of a reorganizing debtor's assets**: As Congress recognized, setoffs work against both the goal of orderly reorganization and the fairness principle because they preserve serendipitous advantages accruing to creditors who happen to hold mutual obligations, thus disfavoring other equally-deserving creditors and interrupting the debtor's cash flow.

Federal National Mortgage Assoc. v. County of Orange (In re County of Orange), 183 Bankr. 609, 615 (Bankr. C.D. Cal. 1995) (internal quotation marks and citation omitted).

The **right of setoff is permissive, not mandatory; its application "rests in the discretion of [the] court,** which exercises such discretion under the general principles of [equity]." *In re Cascade Roads*, 34 F.3d at 763 (internal quotation marks and citation omitted); Collier Par. 553.02, at 533-13 (citation omitted). "The

burden of proving an enforceable right of setoff rests with the party asserting the right." *In re County of Orange*, 183 Bankr. at 615. Finally, the right of setoff is subject to the automatic stay provisions of Chapter 11. See 11 U.S.C. § 362(a)(7) (staying "the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor").

In contrast to setoff, **recoupment "is the setting up of a demand arising from the same transaction as the plaintiff's claim or cause of action**, strictly for the **purpose of abatement or reduction of such claim**." Collier Par. 553.03, at 553-15 (emphasis in original). Under recoupment, a **defendant is able to meet a plaintiff's claim "with a countervailing claim that arose 'out of the same transaction**.'" *Ashland Petroleum Co. v. Appel (In re B & L Oil Co.)*, 782 F.2d 155, 157 (10th Cir. 1986) (citations omitted). For this reason, recoupment has been analogized to both compulsory counterclaims and affirmative defenses. *See, e.g., In re California Canners and Growers*, 62 Bankr. 18, 22 (9th Cir. BAP 1986) (Elliott, Bankruptcy J., concurring) (citation omitted).

Recoupment, like setoff, has been applied in bankruptcy proceedings. *See, e.g., In re B & L Oil Co.*, 782 F.2d at 157. However, there are distinctions between the two that are particularly important in bankruptcy. *Id*. Collier explains that **the primary difference is that the limits placed on setoff under section 553 generally do not apply to recoupment claims**. Collier states, for example, that "the chief importance of the recoupment doctrine in bankruptcy is that, unlike setoff, recoupment is often thought not to be subject to the automatic stay." Collier Par. 553.03, at 553-15 - 553-16 n.5 (citations omitted). In addition, **"invocation of recoupment also relaxes the requirement of mutuality for setoff of debts as it relates to the pre or postpetition character of those debts**." *Id*. Collier offers the following rationale for this general rule:

> In any suit or action between the estate and another, the defendant should be entitled to show that because of matters arising out of the transaction sued on, he or she is not liable in full for the plaintiff's claim. There is no element of preference here or of an independent claim to be set off, but merely an arrival at a just and proper liability on the main issue, and this would seem permissible without any reference to . . . section 553(a).

Collier Par. 553.03, at 553-17 (citing *Quittne*r, 202 F.2d at 816 n.3). The Tenth Circuit has offered a similar rationale for treating setoff and recoupment differently in bankruptcy cases:

> In bankruptcy, both recoupment and setoff are sometimes invoked as exceptions to the rule that all unsecured creditors of a bankrupt stand on equal footing for satisfaction. Recoupment or setoff sometimes allows particular creditors preference over others. Setoff is allowed in only very narrow circumstances in bankruptcy. But a creditor properly invoking the recoupment

> doctrine can receive preferred treatment even though setoff would not be permitted. **A stated justification for this is that when the creditor's claim arises from the same transaction as the debtor's claim, it is essentially a defense to the debtor's claim against the creditor rather than a mutual obligation**, and application of the limitations on setoff in bankruptcy would be inequitable.

In re B & L Oil Co., 782 F.2d at 157 (internal quotation marks and citations omitted) (cited in Collier Par. 553.03, at 553-15 - 553-16 n.5); *see also Lee v. Schweiker*, 739 F.2d 870, 875 (3rd Cir. 1984); *In re Harmon*, 188 Bankr. 421, 425 (9th Cir. BAP 1995) ("The invocation of the recoupment doctrine promotes no preference problem. It is applied when there are countervailing claims arising from the same transaction 'strictly for the purpose of abatement or reduction . . . .'") (internal quotation marks and citation omitted); *Photo Mechanical Services, Inc. v. E.I. DuPont de Nemours & Co., Inc. (In re Photo Mechanical Services, Inc.)*, 179 Bankr. 604, 612 (Bankr. D. Minn. 1995).

FN. 8. " Except as otherwise provided . . . this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case . . . against a claim of such creditor against the debtor that arose before the commencement of the case . . . . " 11 U.S.C. § 553(a).

FN. 9. Because the contracts in this case were executed in Arizona, the "applicable nonbankruptcy law" in this case is Arizona law. Arizona's definition of recoupment and setoff appears to parallel Collier's:

> Although related concepts, set offs and counterclaims are distinguishable from recoupment. A set off or counterclaim is a demand which the defendant has against the plaintiff arising out of a transaction extrinsic to the plaintiff's cause of action, whereas a recoupment is a reduction by the defendant of part of the plaintiff's claim because of a right in the defendant arising out of the same transaction.

Morris v. Achen Constr. Co., Inc., 155 Ariz. 507, 747 P.2d 1206, 1209 (Ariz. App. 1986) (citation omitted), rev'd in part on other grounds, 155 Ariz. 512, 747 P.2d 1211 (1987).

FN. 10. A "claim" includes a "right to payment," and a "debt" is a "liability on a claim." 11 U.S.C. § 101. "In the setoff context . . . 'claim' and 'debt' are . . . correlative terms." Collier Par. 553.04[1], at 553-19 n.1 (citation omitted).

Newbery Corp. v. Fireman's Fund Ins. Co., 95 F.3d at 1398-1400 (emphasis added).

In reviewing the above, for both setoff and recoupment, there must be mutual debts owed between the parties. For setoff, these are generally obligations arising from different transactions, in which the debts are "netted out," with there remaining only a balance owing from the larger debt of debtor 1 after the smaller debt owed by debtor 2 reduces the larger debt of debtor 1.

Recoupment is slightly different, where the obligations arise out of the same transaction and, as stated in *Newbery*, Recoupment:

> "is the setting up of a demand arising from the same transaction as the plaintiff's claim or cause of action, strictly for the purpose of abatement or reduction of such claim." Collier Par. 553.03, at 553-15 (emphasis in original). Under recoupment, a defendant is able to meet a plaintiff's claim "with a countervailing claim that arose 'out of the same transaction.'

The concept of recoupment was more recently addressed by the Ninth Circuit Court of Appeals in *Gardens Reg'l Hosp. & Med. Ctr. Liquidating Trust v. California (In re Gardens Reg'l Hosp. & Med. Ctr., Inc.)*, 975 F.3d 926 (9th Cir. 2020). In addressing the application of recoupment, as compared to setoff, the Ninth Circuit states:

> By contrast, the conceptual foundation of **equitable recoupment is not the adjustment of separate mutual debts but the process of defining the amount owed under a single claim**. *See Reiter*, 507 U.S. at 265 n.2 ("Recoupment permits a determination of the 'just and proper liability on the main issue[.]'") (citation omitted); *Chicago Title Ins. Co. v. Seko Inv., Inc. (In re Seko Inv., Inc.)*, 156 F.3d 1005, 1008-09 (9th Cir. 1988) ("**If recoupment applies, the creditor's claim arises from the same transaction as the debtor's claim, and it is essentially a defense to the debtor's claim against the creditor rather than a mutual obligation.**" (simplified)). Because "recoupment is in the nature of a right to reduce the amount of a claim, and does not involve establishing the existence of independent obligations," 5 Collier on Bankruptcy ¶ 553.10 (Richard Levin & Henry J. Sommer, eds., 16th ed. 2019) (emphasis added), the caselaw has recognized that recoupment is not subject to all of the same strictures in bankruptcy as setoff. For example, because "**the limits placed on setoff under section 553 generally do not apply to recoupment claims**," *Newbery*, 95 F.3d at 1399, "[u]nlike setoff, recoupment is not limited to pre-petition claims and thus may be employed to recover across the petition date," Sims, 224 F.3d at 1011. And as noted earlier, "'unlike setoff, recoupment is often thought not to be subject to the automatic stay.'" *Newbery*, 95 F.3d at 1399 (citation omitted).
>
> We have emphasized that the "limitation of recoupment that balances [these] advantage[s]" under bankruptcy law "is that the **claims or rights giving rise to recoupment must arise from the same transaction or occurrence that gave rise to the liability sought to be enforced by the bankruptcy estate**." *Sims*, 224 F.3d at 1011. Accordingly, we have defined recoupment in the bankruptcy context as "'**the setting up of a demand arising from the same transaction as the plaintiff's claim or cause of action, strictly for the purpose of abatement or reduction of such claim**.'" *Newbery*, 95 F.3d at 1399 (second

emphasis added) (citation omitted). In addressing whether the countervailing claims or rights asserted by the creditor arise from the same transaction or occurrence—and therefore qualify as a permissible recoupment for federal bankruptcy purposes—we "have held that the crucial factor . . . is **the 'logical relationship' between the two.**" *Sims*, 224 F.3d at 1012 (quoting *Newbery*, 95 F.3d at 1403).

In *Newbery*, we derived this "logical relationship" test from the Supreme Court's analysis of pleading standards governing compulsory counterclaims in the era prior to the Federal Rules of Civil Procedure. 95 F.3d at 1402 (citing *Moore v. N.Y. Cotton Exch*., 270 U.S. 593, 610, 46 S. Ct. 367, 70 L. Ed. 750 (1926)). That makes sense, given the common-law-pleading origins of the doctrine, *Lee*, 739 F.2d at 875, and indeed, **recoupment has been described as "the ancestor of the compulsory counterclaim and setoff of the permissive counterclaim,***" Coplay Cement Co. v. Willis & Paul Grp*., 983 F.2d 1435, 1440 (7th Cir. 1993) (citations omitted); see generally 6 Charles Alan Wright, Arthur R. Miller, & Mary K. Kane, Federal Practice & Procedure § 1401 (3d ed. 2010). In both *Newbery and Sims*, we noted that the Supreme Court in *Moore* had held that whether claims or rights arise from the same transaction "'depend[s] not so much upon the immediateness of their connection as **upon their logical relationship**.'" *Sims*, 224 F.3d at 1012 (quoting Moore, 270 U.S. at 610); *see also Newbery*, 95 F.3d at 1402 (same). In *Sims*, we therefore expressly rejected "the Third Circuit's narrow definition of 'transaction,'" which in our view improperly gave dispositive weight to the temporal immediacy of the countervailing claims rather than to their logical relationship. 224 F.3d at 1014 (citing *University Med. Ctr. v. Sullivan (In re Univ. Med. Ctr.)*, 973 F.2d 1065, 1081 (3d Cir. 1992)).

While **we have thus noted the "flexible meaning" of the same-transaction requirement,** *see Newbery*, 95 F.3d at 1402, we have also **cautioned that "the 'logical relationship' concept is not to be applied so loosely that multiple occurrences in any continuous commercial relationship would constitute one transaction**," *Sims*, 224 F.3d at 1012. The test remains whether the relevant rights being asserted against the debtor are sufficiently logically **connected to the debtor's countervailing obligations such that they may be fairly said to constitute part of the same transaction**. *Sims*, 224 F.3d at 1012; Newbery, 95 F.3d at 1401-02. Moreover, while we have rejected the Third Circuit's narrow focus on temporal proximity, we have stated our express agreement with that court's separate "observation that **courts should apply the recoupment doctrine in bankruptcy cases only when 'it would . . . be inequitable for the debtor to enjoy the benefits of that transaction without meeting its obligations**.'" *Newbery,* 95 F.3d at 1403 (alteration in original) (quoting University Med. Ctr., 973 F.2d at 1081); *see also Sims*, 224 F.3d at 1014. Furthermore, as Collier explains, "**care should be taken" in applying the doctrine of recoupment in the bankruptcy context, given that "improper application of the doctrine, coupled with its ostensibly exempt status under sections 553(a) and 362, could undermine the fundamental purposes of these statutory provisions**." 5 Collier on Bankruptcy, supra, ¶ 553.10[3]. "[A]pplication of the doctrine in any particular case" is therefore "sometimes scrutinized from the perspective of its effect on the fundamental policies of these provisions." *Id.*; *see also Malinowski v. N.Y. State Dep't of Labor (In re Malinowski)*,

156 F.3d 131, 134 (2d Cir. 1998) **(recoupment should not be broadened "in contravention of the federal bankruptcy policies of debtor protection and equal distribution to creditors").**

Gardens Reg'l Hosp. & Med. Ctr. Liquidating Trust v. California (In re Gardens Reg'l Hosp. & Med. Ctr., Inc.), 975 F.3d at 933-935.

Whether it be setoff or recoupment, there must be obligations owed by each of the parties to the other. As the court reads the plain language of the State Court Judgement, there are no obligations owed by Sharon Hofmann or Gary Hofmann to the Debtor. Rather, the only obligations owed are those of the Debtor. First for the surcharge for his use and occupancy of the Residence Property. However, that surcharge is subject to creditors ordered to be given to Debtor for improvements to the Residence Property.

In addition to the surcharge and creditors given to the Litigants, the court awarded Sharon Hofmann and Gary Hofmann attorneys' fees and expenses for the litigation. This was not stated to be a credit given them or a surcharge imposed on the Debtor.

Here, it appears that the wise State Court Judge imposed the surcharge on the Debtor and granted credits to the Debtor and Sharon Hofmann in determining the respective interests of the Litigants in the Sales Proceeds to functionally serve as the recoupment for that transaction. The State Court Judge did not order that any attorney's fees and expenses obligation of the Debtor was to be surcharged against his interest in the Residential Property.

As shown below, Sharon Hofmann and Gary Hofmann will receive 100% of their interest in the Residence Property Sales Proceeds, plus their credits, and the surcharge reduces the amount for the Debtor's interest in the Sales Proceeds in an amount equal to the "advance" he received from his occupancy of the Residential Property.

The State Court Judgment having provided for the recoupment and setoff of all credits and surcharges, no further adjustment is proper.

Computation of the Interests of the Litigants in the Proceeds From the Sale of the Residence Property

In correctly computing the respective distribution amounts from the proceeds from the sale of the Residence Property the court applies the credits and surcharges to the respective interests of the Litigants. For ease of computation, the court has combined the interests of Sharon Hofmann and Gary Hofmann, given that each are asserting their respective 45.8333% interests against the Debtor's interest. The only possible "tweaking" of the amount is that in the State Court Judgment Sharon Hofmann is awarded a credit of $12,059.90. State Court Judgment, p. 5:18-19; Exhibit 2, Dckt. 485. However, in their Motion for distribution of the proceeds from the sale of the Residence Property, they assert that both Sharon Hofmann and Gary Hofmann have the $12,059.88 credit. Motion, p. 8:10-11; Dckt. 480.

Based on the Motion filed by Sharon Hofmann and Gary Hofmann, the court divides the combined 91.666% interests of Sharon Hofmann and Gary Hofmann equally between the two of them.

The following table provides the financial information relating to the division of the proceeds of the sale of the Residence Property, excluding awards of attorney's fees and costs included in the

Judgment, but not designated as a surcharge or credit, and the courts computation of the value of the Litigants' respective interests.

	Debtor Michael Hoffman	**Net Sales Proceeds**	**Sharon Hoffman Gary Hoffman**	
		$406,241.01		
8.333% Interest	$33,852.06		$372,384.88	Combined 91.666% Interest
Credit for Grain Tanks	$142,122.00		$12,059.90	Sharon, Trustee
Surcharge for Rent For Occupancy of Residence	($84,200.00)			
Interest on Rent Surcharge to January 2022 Judgment	($66,276.81)			
Surcharge 10% Interest February 2022 - July 2025 ($8, 420) per year [3 years and 7 months]	($4,911.66)			
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Distribution After Credit and Surcharge	$20,585.59		$384,444.78	
Net Remaining Surplus Proceeds after Credit and Surcharge Adjustments		$1,210.63		
8.33% and 96.666% Allocation of Surplus Net Proceeds	$100.48		$1,110.15	
	==========		==========	
Total Disbursement to Michael Hofmann	**$20,686.08**		**$385,554.93**	**Disbursement to Sharon Hofmann and Gary Hofmann (to be divided 50% to each)**
Percentage of Net Proceeds, after Credits and Surcharge, Disbursed	5.09%			94.91%

Total Monies Disbursed	$406,241.01		

Thus, based on the percentage interests of the Litigants (which is not disputed) and after application of the credits to and surcharges against those interests, the Debtor's interest has a value of $20,686.08 and the combined Sharon Hofmann and Gary Hofmann interests are $385,554.93.

Request for Additional Credits by Sharon Hofmann and Gary Hofmann

In their Motion for the Distribution of the Sales Proceeds, Sharon Hofmann and Gary Hofmann request that this court allow them additional credits as part of the distribution computation. The additional amounts that seek to "recover" are $59,000 for rent, post-judgment, and $27,684.36 for insurance paid post-judgment. On the face of the State Court Judgment, it does not provide for further such credits and surcharges to be applied against the Debtor's interest in the Residence Property Sales Proceeds.

Property Taxes

With respect to the Property Taxes, 93.66% of the value/expense relates to their interest in the Residence Property and their "share of the expense." The Debtor's 6.33% portion of that expense would be $1,755.18.

Post-Judgment Rent

Sharon Hofmann and Gary Hofmann also assert that the Debtor owes at least $59,000 for rent during the period from May 2019 through April 2024. The court first notes that Debtor commenced his Bankruptcy Case on March 20, 2023. Thus, as of March 2023, the Residence Property was property of the Bankruptcy Estate, which was then under the control of the Debtor, serving in his fiduciary capacity as the Debtor in Possession.

The State Court Judgment addresses the rights of co-owners of real property to occupy it without owing "rent," and situations where one tenant in common who occupies the property to the exclusion of other tenants in common may be liable for "rent." The exceptions to the rule that one tenant in common may occupy the property without paying rent to the other co- tenants in common is stated in the Judgment as:

> However, there are several exceptions to this rule. A cotenant out of possession may recover rent when there has been an ouster excluding that cotenant from possession. (*Estate of Hughes* (1992) 5 Ca1.App.4th 1607.) Also, a trustee in exclusive possession of property who wrongfully withholds from his or her cotenants their equitable interests is liable to the latter for rent. (*See Teixeira v. Verissimo* (1966) 239 Cal.App.2d 147.) Moreover, in a partition action, a cotenant out of possession may recover rent when recovery of the imputed rental value would be "just and consonant with equitable principles." (*Hunter v. Schultz* (1966) 240 Cal.App.2d 24, 32.)

Statement of Decision, p. 13:15-22; Exhibit B to State Court Judgment Exhibit 2; Dckt. 485.

With the Residence Property becoming property of the Bankruptcy Estate March 20, 2023, the court concludes that the exceptions to the normal cotenant rule are not applicable. Once property of the bankruptcy estate the fiduciary thereof had to take control of and protect such property. True, the Debtor was residing there, but he was also providing on the ground protection. On June 15, 2023, "just" three months after this case was filed, the Subchapter V Trustee filed a Motion to Remove the Debtor in Possession from control of both the Residence Property and the Farm Property. At that point, the Debtor clearly was not controlling the Residence Property.[2] This facilitated the goal of Sharon Hofmann and Gary Hofmann to get the property sold and have it done by a third-party.

For the period May 2019 through February 2023, the court concludes that while it may have been unsettling to Sharon Hofmann and Gary Hofmann that Debtor, as the Trustee of the Eric Hofmann Trust was continuing to reside in and occupy the Residence Property, the court does not award a further surcharge for such amount. Though the Debtor continued to use the State Court to litigate his dispute and delay the ultimate sale of the Residence Property and the Farm Property, it was as part of that post-State Court Judgment Litigation.

As a financially practical matter, given the huge legal expenses incurred though the State Court Litigation and Sharon Hofmann and Gary Hofmann recovering 94.91% of the Sales Proceeds after application of the credits and surcharges in the State Court Judgment, any further surcharge is of little economic significant compared to further litigation.

More significant, the court also considers the condition of the Residence Property, which Sharon Hofmann and Gary Hofmann describe in their Motion as (emphasis added):

> Michael allowed the Residence to significantly deteriorate, a fact confirmed by an appraisal obtained in October 2022. (Exhibit 4.) The report noted the Residence suffers from:
>
> > **extensive deferred maintenance**. The bathroom **floor has dry rot and evidence of mold**. The **roof** of the house **needs to be replaced**. The **interior needs paint and flooring**, the **exterior has extensive dry rot on the wood siding, deck and roof eaves.** The exterior needs repairs & paint. The kitchen and bathrooms need updating of full remodels. The shop and barn are in average condition, there is mold present in the barn ceiling. NOTE: The appraiser is not a licensed contractor and recommends a full pest & home inspection to determine the extent of the repairs needed and the **presence of any mold contamination**.
>
> (*Id*. at 144.) Photographs taken by the appraiser confirm these facts (examples below):
>
> [Photographs Omitted]

[2] This removal of control and transfer to the Subchapter V Trustee was agreed to by the Litigants and other parties in interest to allow for the effective marketing and commercially reasonable sale of the Residence Property and the Farm Property.

> The condition was such that Sharon could no longer obtain insurance for the Residence, which was last insured in 2021. (Sharon Hofmann Decl. at 2, ¶ 4; Exhibit 13.)

Motion, p. 4:10-5:2; Dckt. 480. Though the Appraisal Report was filed as Exhibit 4, Dckt. 485, the text of the Report is illegible.

There has been no sufficient showing by Sharon Hofmann and Gary Hofmann that the Debtor was maintaining possession of the Residence Property to the exclusion of Sharon Hofmann or Gary Hofmann which resulted from any loss of use value for either of them. Rather, they show that the Debtor was choosing to live in a health-risky residence among the mold and dryrot in the Residence, and that there was no rental value for such Residence Property.[3]

Taking the statement made above in the Motion, which is subject to the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011, it is asserted by Sharon Hofmann and Gary Hofmann that the Residence Property was uninhabitable by any tenant. There was no lost rental value. While as a co-owner the Debtor chose to live in mold and dry rot, that does not create a rental value.

Attorney's Fees and Costs

Sharon Hofmann and Gary Hofmann have also asserted that $122,395.81 award of attorney's fees and costs be surcharged the Debtor. As the court addresses above, the State Court Judgment does not provide for the attorney's fees and expenses to be a credit for or a surcharge against any interests in the Residence Property or Sales Proceeds thereof.

Computation of Litigants' Interests in the Sales Proceeds

The court having considered the evidence presented, applying the credits and surcharges ordered in the State Court Judgment to the interests of the Debtor, and enforcing the plain language of the State Court Judgment, the respective distribution amounts from the $406,241.01 in net sales proceeds from the sale of the Residence Property are:

a. Debtor Michael Hofmann.....$20,686.08,
b. Sharon Hofmann.....$192,777.47, and
c. Gary Hofmann.....$192,777.46.

The Subchapter V Trustee shall make the disbursements directly to each of the above named persons without further order of the court.

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[3] Given that it is commonly known of the health risk of mold in homes and that rental of such homes is not property and can subject the lessor to significant liability, the court has not provided citations to such authorities. If Sharon Hofmann or Gary Hofmann believe that their assertion of mold and dryrot in the Residence Property is improper or that the rental of such property is legally proper and financially sound, their counsel may address that with the court.

4. **21-90378-E-11 CAE-1** **MOBREWZ, LLC**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 8-18-21 [1]

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:
Continued from 2/20/25. The Debtor Plan Administrator reported that the business is still operating at a loss, with the shortfall being funded by the principals of the Debtor.

[BSH-1] Motion to Withdraw as Counsel of Record filed 4/18/25 [Dckt 127]; Order granting filed 5/29/25 [Dckt 132]

The Status Conference is xxxxxxx

JULY 31, 2025 STATUS CONFERENCE

On July 27, 2025, David Johnston, Esq., attorney for the Debtor in Possession filed a fee application allowing for compensation of $9,576.00. Dckt. 134. The hearing on that Motion is set for 10:30 a.m. on August 21, 2025.

No updated Status Report has been filed.

At the Status Conference, xxxxxxx

FEBRUARY 20, 2025 POST-CONFIRMATION STATUS CONFERENCE

On February 23, 2024, the court entered its Order continuing the Post-Confirmation Status Conference and ordering the Debtor/Debtor in Possession to file the 2024 Annual Profit and Loss Statement on or before February 13, 2025. Order; Dckt. 122.

The Docket shows that the 2024 Annual Profit and Loss Statement has not been filed as of the court's 11:40 a.m. review of the Docket on February 18, 2025.

At the Post-Confirmation Status Conference, the Debtor Plan Administrator reported that the business is still operating at a loss, with the shortfall being funded by the principals of the Debtor.

The Status Conference is continued to 11:00 a.m. on July 31, 2025, set to be heard in the Sacramento Division Courthouse.