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CBAR

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About *Consumer Bankruptcy Abstracts & Research*

Consumer Bankruptcy Abstracts & Research (*CBAR*), which began publication in fall 2007, abstracts written opinions released in recent Chapter 7 and 13 consumer bankruptcy cases, collecting cases on a wide range of issues important to consumer bankruptcy practitioners. *CBAR* discusses both published and unpublished opinions, including those not available in commercial databases.

CBAR is published monthly in electronic form only. The publisher is Robin Miller LLC, P.O. Box 124, Lawnside, NJ 08045. Phone: (856) 278-7499. E-mail: robin@cbar.pro Website: http://www.cbar.pro/

The subscription rate for *CBAR* is $350 for one year, commencing with the next issue to be released. This rate is for a license permitting a law firm to provide copies of the newsletter to up to three members or employees. The subscription may be extended to additional persons at the rate of $100 per additional recipient per year. Paralegals and nonprofit organizations, such as legal aid societies, may be eligible for an annual subscription rate of $300. Subscriptions are free to bankruptcy court judges and their law clerks upon request. For pricing for other types of organizations, please contact the publisher.

Pay securely with a credit card at the newsletter's website. Or mail payment to Robin Miller LLC at the address given above and include your e-mail address. Complete subscription information is available on the website.

Subscribers to *CBAR* receive free access to back issues of the newsletter, as well as collections of previous abstracts organized by circuit and by topic, all of which may be accessed at any time on the newsletter's website.

Each issue of *CBAR* is e-mailed directly to subscribers in Adobe Acrobat (PDF) format. Subscribers may also elect to receive their newsletters in Microsoft Word 2003 format.

A subscription refund will be granted only in the publisher's discretion. Robin Miller LLC is owned and operated by Robin Miller, member number 87865 of The State Bar of California. She has been a legal writer, researcher and editor for over 25 years.

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How to Use This Newsletter

CBAR is an integrated product consisting of both a monthly newsletter of new cases and collections of older cases on the newsletter website. To access the resources located on the website, you will need to log in using the user name and password that were assigned to you in the e-mail confirming your subscription.

In both the newsletter and the website, cases are organized separately by topic (inclusive of all circuits) and circuit (inclusive of all topics). Additionally, CBAR follows pending bankruptcy appeals to the extent possible; these are collected in the "Pending Appeals" document found on the main subscribers' page on the website.

The first portion of this "how to" section describes the monthly newsletter. Following that there is a description of the resources available on the website.

The Monthly Newsletter

The Table of Contents

Most entries in the Table of Contents are hyperlinks that allow the user to jump directly to the corresponding section of the newsletter. Other entries have a "Go" option that accomplishes the same result. (Hyperlinks are indicated by blue text. Note that, in Microsoft Word, the default setting requires the user to hold down the "control" key while clicking a link in order to follow the link to its destination.) After you have jumped to the section, clicking the boxed "R" at the end of the section takes the user back to the table of contents:

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This "How to Use This Newsletter" section follows the Table of Contents. After this are found the substantive divisions of the newsletter:

- This Issue's New Cases: Summary (consisting of "This Issue's Highlights" and "Case Summaries Arranged by Circuit")
- This Issue's New Cases: Full Abstracts
- Permanent Resources

This Issue's New Cases: Summary

The "This Issue's New Cases: Summary" division of the newsletter has two sections:

- "This Issue's Highlights" describes cases abstracted in the issue that readers may find particularly significant or interesting. A link is also given to the full text of the opinion.

- The "Case Summaries Arranged by Circuit" section lists all the cases abstracted in the issue, gives the main holdings of each case, and provides a link to the full text of the opinion. Within each circuit, cases are grouped by level of court, and, within each of those groupings, alphabetically.

This Issue's New Cases: Full Abstracts

The "This Issue's New Cases: Full Abstracts" division of the newsletter contains the full abstracts of the cases discussed in the issue. The first three sections of this division of the newsletter have abstracts of new bankruptcy cases, while the fourth section, "Cases under Related Federal Statutes," has abstracts of occasional new cases that discuss issues arising under the Fair Credit Reporting Act (FCRA), Fair Debt Collection Practices Act (FDCPA), Real Estate Settlement Procedures Act (RESPA), or the Truth in Lending Act (TILA).

The abstracts of the new bankruptcy cases found in the first three sections are classified to the 60 topics in the newsletter's organizational scheme. At the top of the page for each topic there are links to various resources located on the newsletter website, including a collection of the case abstracts classified to that topic over the course of CBAR's publication. (For more information on the resources found on the newsletter website, see later in this "how to" section.)

Permanent Resources

The "Permanent Resources" division of the newsletter includes several sections whose content may change only slightly from issue to issue:

- "Bankruptcy Code, Rules and Forms" provides links to the current versions of the Bankruptcy Code, the Bankruptcy Rules, and the Official Forms, as well as information on proposed amendments to the Rules and Forms.

- "Internet Resources" provides access to various documents available on the Web.

- "Supreme Court Case Status" describes the consumer bankruptcy cases that the U.S. Supreme Court has accepted for review as well as those for which a petition for certiorari is pending.

Using the Website Resources

The website resources for subscribers are a significant part of the value provided by the Consumer Bankruptcy Abstracts & Research newsletter project. The vision for CBAR is for these resources to become, over time, an online consumer bankruptcy legal reference library.

The subscribers-only area of the newsletter's website may be accessed by clicking on "Subscribers' Entrance" in the upper left corner of the newsletter's home page. To access this area, you must log in using the case-sensitive user name and password that were contained in the e-mail confirming your subscription to the newsletter. The first page you reach is the main subscribers' page.

This area offers a number of types of resources, in both Word 2003 and PDF formats:

- All published issues of the newsletter.
- A list of pending appeals in consumer bankruptcy cases, updated periodically.
- Compilations, for each circuit, of all the cases abstracted in the newsletter since its inception. Note that this section is not presently current but is in the process of being updated.
- Compilations, for each of the topics in the newsletter's topical scheme, of all the cases abstracted in the newsletter since its inception, plus additional original research. This scheme creates a systematic organization of consumer bankruptcy cases. This section is also not presently current but is in the process of being updated.

The Circuit Compilations

Within each circuit compilation, the cases are grouped by level of court. Within each group, the cases are ordered from newest to oldest.

Each case entry includes a short case summary and a link to the full text of the opinion; the case entries are taken from the circuit-by-circuit listings at the front of the newsletter. Case citations are updated as time allows.

The Topical Compilations

Each topical compilation includes the case abstracts assigned to that topic in the newsletter since its inception. The topical compilations generally include the full case abstract, although in some areas the abstracts are condensed to make the collection more manageable. The main topical compilations page states the most recent newsletter issue whose cases have been added to the topical compilations. Many of the topical compilations have been updated recently, while others are awaiting updating.

The amount of material within each topic varies widely. The newsletter has aggressively followed BAPCPA issues from its first issue. Other areas were gradually added, and now the newsletter covers most consumer Chapter 7 and 13 issues under the Bankruptcy Code. The main topical compilation page lists the number of pages in each compilation.

Many of the topical compilations have introductory information. The "Scope note" clarifies the coverage of that compilation, while the "Organization" is a table of contents for the compilation.

Search Capabilities

The CBAR website does not have a search function; the topical compilations are intended as an alternative. Note, however, that both Adobe Acrobat and Microsoft Word have built-in search functions capable of searching multiple files in a single operation, although the searches must be quite simple. Instructions for multiple-file searches are available on the newsletter's website.

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This Issue's New Cases: Summary

This Issue's Highlights

Some of the most significant holdings from the cases discussed in this issue of *Consumer Bankruptcy Abstracts & Research* are the following:

Supreme Court: Dischargeability of debt—For actual fraud under Code § 523(a)(2)(A): The debtor has filed a petition for certiorari seeking review of *In re Lawson*, 791 F.3d 214 (1st Cir., July 1, 2015), which held, in agreement with *McClellan v. Cantrell*, 217 F.3d 890 (7th Cir. 2000) and in disagreement with *In re Ritz*, 787 F.3d 312 (5th Cir., May 22, 2015) (abstracted in this issue), that "actual fraud" under Code § 523(a)(2)(A) is not limited to fraud predicated on a misrepresentation or omission. *Lawson v. Sauer Inc.*, Case No. 15-113 (U.S. Sup. Ct., pet. for cert. filed, July 24, 2015) (Supreme Court docket).

Authority of the court—Imposition of sanctions—Under Rule 9011: The debtor's Chapter 13 petition was filed in bad faith and for an improper purpose, warranting the imposition of sanctions on the debtor and his counsel under Bankruptcy Rule 9011, although the debtor contended that he filed the petition in order to retain his home, where a foreclosure sale was scheduled for the day on which the debtor filed his petition, the home mortgage debt had been reduced to a prepetition judgment in the amount of $486,404, the debtor was unemployed and failed to show any financial ability to pay the mortgage, no plan was ever proposed that provided for retention of the home, and the debtor did not meaningfully participate in a mortgage modification process. *In re Fazzary*, 530 B.R. 903 (Bankr. M.D. Fla., May 21, 2015) (text of opinion).

Automatic stay—Exceptions to stay—Non-bankruptcy statutory exceptions: The Mandatory Victims Restitution Act, which provides in 18 U.S.C. § 3613(a) that, "[n]otwithstanding any other Federal law, the United States may enforce a judgment imposing criminal fines "against all property or rights to property of the person fined" creates an exception to the automatic stay. *In re Partida*, 531 B.R. 811 (9th Cir. B.A.P., May 27, 2015), appeal filed, Case No. 15-60045 (9th Cir., filed June 29, 2015) (text of opinion).

Dischargeability of debt—For actual fraud under Code § 523(a)(2)(A): Disagreeing with *McClellan v. Cantrell*, 217 F.3d 890 (7th Cir. 2000), and stating that no subsequent appellate court had adopted that court's interpretation of Code § 523(a)(2)(A), the Court of Appeals held that a misrepresentation is required to establish "actual fraud" under § 523(a)(2)(A). *In re Ritz*, 787 F.3d 312 (5th Cir., May 22, 2015) (text of opinion).

Dischargeability of debt—For governmental fine, penalty or forfeiture under Code § 523(a)(7): "Collection costs" imposed on the debtor by the court following his criminal conviction, which represented fees due to a private collection company to collect other court costs imposed on the debtor in the criminal proceeding, were dischargeable under Code § 523(a)(7), where the costs were not part of the court's original sentencing order, and the record established that the fees in question were either payable to and for the benefit of a private debt collector, or payable to and for the benefit of the court system, but only as compensation for losses the system incurred by securing private debt collection services. *In re Lopez*, 531 B.R. 554 (Bankr. E.D. Pa., May 18, 2015), appeal filed, *Lopez v. First Judicial*

District of Pennsylvania, Case No. 2:12-cv-5037 (E.D. Pa., reopened June 8, 2015), and appeal filed, Case No. 2:15-cv-03522 (E.D., filed June 22, 2015) (text of opinion).

Dischargeability of debt—Tax debt under Code § 523(a)(1)—Willful evasion: The Chapter 7 debtor's failure to pay the full amount of the $217,544.42 in delinquent income taxes assessed against him, following the IRS's disallowance of deductions claimed by the debtor, while continuing to live a relatively affluent lifestyle did not rise to the level of "evasion" of his tax debts, within the meaning of Code § 523(a)(1)(C), where the debtor did not under-withhold for taxes and actually continued to withhold at the same level after the IRS garnished his tax refunds for three consecutive years, the debtor did not resort to dealing in cash or close his bank account after the account was levied by the IRS, there was no conveyance of property to others or other attempts to conceal assets, and the debtor and his wife, prior to the debtor's bankruptcy filing, had repaid more than 40% of the amount assessed the IRS. Nor was the debtor's conduct willful. *In re Looft*, 533 B.R. 910 (Bankr. N.D. Ga., May 28, 2015) (text of opinion).

Examination of party: After the Chapter 13 debtors received four collection notices from the new servicer of their mortgage, the court granted the U.S. Trustee's motion under Bankruptcy Rule 2004 to be permitted to examine, subject to assurances of confidentiality, the new servicer's "documentation relating to policy, directives and/or procedures regarding auditing mortgage accounts" obtained from a prior servicer for customers who were in an active bankruptcy case. Without discovery of the collection information that accompanied the transfer of the debtors' loan, there was no means to determine why the debtors received the collection notices. *In re Stambaugh*, 531 B.R. 191 (Bankr. S.D. Ohio, May 21, 2015) (text of opinion).

Fair Credit Reporting Act: Two courts held that a home mortgage creditor's reporting of the Chapter 7 debtor's loan as having a zero balance and no payment activity, even though the debtor had continued making voluntary post-discharge mortgage payments to avoid foreclosure, was not false or inaccurate, and therefore did not violate the Fair Credit Reporting Act, since the debtor's personal obligation to pay the debt was discharged in bankruptcy. See *Groff v. Wells Fargo Home Mortgage, Inc.*, --- F.Supp.3d ----, 2015 WL 2169811 (E.D. Mich. May 8, 2015) (text of opinion) and *Dixon v. Green Tree Servicing, LLC*, 2015 WL 2227741 (N.D. Ind., May 11, 2015), appeal filed, Case No. 15-2269 (7th Cir., filed June 12, 2015) (text of opinion). These cases join recent decisions to the same effect in *Schueller v. Wells Fargo & Co.*, 559 Fed. Appx. 733 (10th Cir., May 22, 2014) and *Horsch v. Wells Fargo Home Mortgage*, ---F.Supp.3d ----, 2015 WL 1344836 (E.D. Pa., March 25, 2015).

Fair Debt Collection Practices Act: While filing a proof of claim in a bankruptcy case is an action to collect on a debt, filing a proof of claim for a time-barred debt is not deceptive, unfair or unconscionable and therefore does not violate the Fair Debt Collection Practices Act. *In re Dunaway*, 531 B.R. 267 (Bankr. W.D. Mo., May 19, 2015), appeal filed, *Dunaway v. LVNV Funding, LLC*, Case No. 4:15-cv-415 (W.D. Mo., filed June 2, 2015) (text of opinion).

Fair Debt Collection Practices Act—Timeliness of action: The district court adopted the recommendations stated in *In re Williams*, 2015 WL 3429365 (Bankr. M.D. Ala., April 2, 2015), in which the bankruptcy court concluded that the Chapter 13 debtor's "*Crawford* claim" (i.e., a claim that a creditor's filing a proof of claim for a time-barred debt violated the Fair Debt Collection Practices Act) was precluded by the one-year statute of limitations in the Act. In cases in which an alleged FDCPA violation is based upon the filing of a proof of claim in bankruptcy, courts have ruled, the bankruptcy court said, that the limitations period begins to run with the filing of the proof of claim. The bankruptcy court agreed with this view and declined to embrace the debtor's contention that the violation continued so long as the claim was allowed. Thus, here, where the creditor's proof of claim was filed in

2010, the debtor's claim was untimely. *Williams v. Resurgent Capital Servs., L.P.*, 2015 WL 3440321 (M.D. Ala., May 28, 2015) (text of opinion) (text of bankruptcy court opinion).

Joint bankruptcy petition: Kansas recognizes common law marriages: If each member of a couple has the capacity to marry, intends to be married, and holds him- or herself out as husband and wife, common law deems them wed. Here, however, the joint debtors did not establish the elements of a common-law marriage, even if they had the capacity to marry and held themselves out to others as husband and wife, since the evidence did not demonstrate that the debtors had, as of the petition date, a present intention to be married. *In re Gaines*, 2015 WL 2376323 (Bankr. D. Kan., May 14, 2015) (text of opinion).

Property of the estate—Exemptions—Amendment of exemptions—Denial of amendment: After the Supreme Court's decision in *Law v. Siegel*, courts are considering the viability of new theories to disallow a debtor's amended claim of exemptions. Compare *In re Jones*, Case No. 5:14-bk-40876 (Bankr. D. Kan., May 7, 2015) (Kansas law did not recognize the waiver of state-created personal property exemptions under the circumstances presented) (text of opinion); *In re Saldana*, 531 B.R. 141 (Bankr. N.D. Tex., May 22, 2015), appeal filed, *Saldana v. Saldana*, Case No. 3:15-cv-1918 (N.D. Tex., filed June 2, 2015) (Texas law did not recognize judicial estoppel to disallow a statutory homestead exemption; however, the existence of bad faith warranted the imposition of sanctions under Code § 105(a) on the Chapter 7 debtor and his counsel after the debtor amended his claimed homestead exemption more than 15 months after the debtor filed his bankruptcy case, more than two months after the court entered an order permitting the Chapter 7 trustee to sell a significant portion of the property now included in the debtor's amended homestead exemption, and more than an hour and six minutes after the court began hearing arguments and testimony about the merits of the debtor's claimed homestead exemption) (text of opinion); and *In re Lua*, 529 B.R. 766 (Bankr. C.D. Cal., May 1, 2015), appeal dismissed, Case No. 2:15-cv-4026 (C.D. Cal., August 13, 2015) (the Chapter 7 debtor was equitably estopped, under California law, from amending her claimed exemptions, where the debtor initially amended her exemption schedules to disclaim any interest in residential property at which she lived with her non-debtor husband and to eliminate the homestead exemption that she had previously claimed in this property, and three years later, after the Chapter 7 trustee had successfully pursued an investigation to establish the estate's interest in the property, negotiated a settlement with the debtor's husband, and employed a broker to sell property, the debtor again amended her exemption schedule in order to claim a homestead exemption in the sales proceeds) (text of opinion).

Means test—Special circumstances: The Chapter 7 debtor's additional expenses for the support of elderly or disabled family members qualified as a special circumstance and rebutted the presumption of abuse. The debtor was the primary source of support for at least five of her elderly or dependent relatives, and, while the debtor entered $908.70 in line 35 of her Form 22A as expenses that she paid for the care and support of elderly, chronically ill, or disabled members of her household or immediate family, it was reasonable to expect that the amount of support that the debtor provided might exceed the sum of $1,000 per month. Further, given the nature of the family members' disabilities, it appeared that the need for the debtor's support was permanent, and that the amount of the support was unlikely to decrease. The Chapter 7 debtor's additional expenses for the treatment of her medical conditions also qualified as a special circumstance and rebutted the presumption of abuse, where the debtor might require neck surgery, was a diabetic, and had had stomach bypass surgery. *In re Chabre*, 531 B.R. 875 (Bankr. M.D. Fla., May 27, 2015) (text of opinion).

Reopening of case: Cause did not exist to reopen a previously-closed Chapter 13 case in order to allow the debtors to schedule a cause of action that they sought to pursue following their discharge, and that they had not disclosed while their case was open, where it was not possible for the debtors to modify their plan in order to provide a distribution to creditors from proceeds of the cause of action, as the debtors had already completed the payments under their confirmed plan and received a discharge, and the maximum five-year period over which the debtors could extend their plan had long since passed. *In re Ingram*, 531 B.R. 121 (Bankr. D. S.C., May 13, 2015) (text of opinion).

Surrender of collateral for secured debt: In order for a Chapter 7 debtor to surrender collateral to the secured creditor under Code § 521, or for a Chapter 13 debtor to surrender collateral under Code § 1325(a)(5)(C), the debtor cannot take any overt act to prevent the creditor from foreclosing on its interest in the property. While the Bankruptcy Code does not define the term "surrender," in order to surrender collateral to the secured creditor, the debtor must relinquish the property and make it available to the creditor, although the debtor is not required to deliver the collateral to the creditor. *In re Metzler*, 530 B.R. 894 (Bankr. M.D. Fla., May 13, 2015) (text of opinion).

Violation of discharge injunction: A secured motor vehicle creditor violated the discharge injunction issued in the Chapter 13 debtors' prior Chapter 7 case where the creditor filed a proof of claim in the prior case, the debtors' personal liability on the claim was included in their discharge, and the creditor's proof of claim in the current case expressly purported to reserve an unsecured claim for a deficiency if the collateral was liquidated. *In re Maddox*, 530 B.R. 889 (Bankr. M.D. Ala., May 15, 2015) (text of opinion).

Chapter 7—Denial of discharge—For false oath: The Chapter 11 debtors did not act fraudulently, for the purpose of denying the debtors' discharge under Code § 727(a)(4)(A) for making a false oath, in listing the value of their military relic collection as "unknown." Listing the value as "unknown" was reasonable in light of the extensive nature of the collection, the fact that the artifacts were never appraised, the fact that the debtor husband acquired the items over several decades, and the fact that the husband was no longer collecting and therefore lacked knowledge as to current prices. *In re Parker*, 531 B.R. 103 (Bankr. E.D. N.C., May 22, 2015) (text of opinion).

Chapter 7—Determination of abuse—Under totality of the circumstances: Disagreeing with *In re Riggs*, 495 B.R. 704 (Bankr. W.D. Va., July 9, 2013), the court held that, in deciding whether to dismiss a Chapter 7 case under Code § 707(b)(3)(C) based on the totality of the circumstances of the debtor's financial situation, a court may not consider the debtor's Social Security income. *In re Moriarty*, 530 B.R. 637 (Bankr. W.D. Va., May 18, 2015) (text of opinion).

Chapter 13—Confirmation of plan—Calculation of projected disposable income: The bankruptcy court did not err in confirming the Chapter 13 debtor's plan despite the Chapter 13 trustee's objection that the debtor, who stated that her non-filing husband contributed $600 per month towards household expenses, and who provided copies of her husband's pay stubs, failed to provide more comprehensive income and expense information for her husband. "Current monthly income" as defined in Code § 101(10A) includes only "any amount paid by any entity other than the debtor ... on a regular basis for the household expenses of the debtor or the debtor's dependents," and the debtor provided the monthly sum contributed by her husband for household expenses. While the trustee contended that, without additional information about the husband's finances, the bankruptcy court had no way of knowing whether the husband was contributing to household expenses in an

appropriate amount, the district court declared that, although the bankruptcy court did not have a complete picture of the finances of the debtor's husband, it had enough information about his financial situation to calculate the debtor's disposable income and conclude that the debtor was devoting all of that income to plan payments, that the plan was proposed in good faith, and that the plan was feasible. *In re Blackshear*, 531 B.R. 711 (E.D. Mich., May 20, 2015), appeal filed, Case No. 15-1695 (6th Cir., filed June 17, 2015) (text of opinion).

Chapter 13—Confirmation of plan—Good faith—Effect of Social Security income: A Chapter 13 debtor's exclusion of Social Security income from the debtor's Chapter 13 plan does not, by itself, constitute a lack of good faith under Code § 1325(a)(3). *In re Mihal*, 2015 WL 2265790 (Bankr. E.D. Mich., May 6, 2015) (text of opinion).

Chapter 13—Creditors entitled to distribution under plan: Reversing *In re Pajian*, 508 B.R. 708 (Bankr. N.D. Ill., Apr 15, 2014), the Court of Appeals held that the "better interpretation" of Bankruptcy Rule 3002 is that all creditors—secured and unsecured—must file a proof of claim by the 90-day deadline specified by Rule 3002(c) in order to receive distributions under a Chapter 13 plan. *In re Pajian*, 785 F.3d 1161 (7th Cir., May 11, 2015) (text of opinion).

Chapter 13—Entitlement to discharge: The Chapter 13 debtor was not entitled to a discharge under Code § 1328(f), and this was true even though Bankruptcy Rule 4004(a) requires that a motion objecting to the debtor's discharge in a Chapter 13 case be filed no later than 60 days after the first date set for the meeting of creditors, and, here, no party filed a motion objecting to the debtor's discharge; rather, the court raised the issue sua sponte. *In re Davis*, 2015 WL 3484561 (Bankr. E.D. Mich., May 29, 2015) (text of opinion).

Chapter 13—Modification of confirmed plan: Modification of the debtor's confirmed Chapter 13 plan to pay off the amount due in a lump sum 15 months after confirmation, after the debtor had settled his workers' compensation claim, was appropriate, given the debtor's worsening health and his inability to find employment despite repeated attempts, the decrease in the debtor's monthly income from $2,919 to $1,395, and the absence of opposition to the modification motion. *In re Runnels*, 530 B.R. 626 (Bankr. W.D. N.C., May 11, 2015) (text of opinion).

Chapter 13—Trustee fees: Finding *In re Derickson*, 226 B.R. 879 (Bankr. S.D. Ill. 1998) more persuasive than *In re Nardello*, 514 B.R. 105 (Bankr. D. N.J. 2014), the court held that the Chapter 13 trustee was not entitled to collect a statutory fee from insurance proceeds remitted to the trustee by the Chapter 13 debtor's auto insurer after the debtor's vehicle was totaled in an accident, where the proceeds were to be distributed in full to the secured motor vehicle creditor. Insurance proceeds are not intended as a payment from the debtor's income or other property. Rather, such proceeds flow from destruction of the creditor's security, and serve as a replacement of that collateral, albeit in a different form. For this reason, payment of the insurance proceeds fails to qualify as a "payment" from the debtor's income or other property, but instead constitutes a surrender of collateral to the creditor. *In re James*, 2015 WL 3464129 (Bankr. W.D. La., May 29, 2015), appeal filed, *Sikes v. James*, Case No. 5:15-cv-1865 (W.D. La., filed June 11, 2015) (text of opinion).

Chapter 13—Voluntary dismissal of case: Discussing cases on both sides of the issue, the district court held that the language of Code § 1307(b) is unambiguous and grants the debtor an absolute right to dismiss a Chapter 13 case, so long as the case has not previously been converted under Code §§706, 1112, or 1208, even when another party's competing motion for conversion or dismissal under § 1307(c) is pending. *Ross v. AmeriChoice Federal Credit*

Union, 530 B.R. 277 (E.D. Pa., May 22, 2015), appeal filed on other grounds, *In re Ross*, Case No. 15-2222 (3rd Cir., filed May 22, 2015) (text of opinion).

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Case Summaries Arranged by Circuit

Supreme Court R

There are no cases in this issue.

First Circuit (3) R

Schold v. Stone, 2015 WL 3733649 (1st Cir. B.A.P., May 22, 2015)

(case no. 14-74) Text of opinion

- **Chapter 13—Allowance of attorney's fees:** Under Code § 330(a)(4)(B), a bankruptcy court may award reasonable fees to a lawyer for a Chapter 13 debtor in line with "the benefit and necessity" of the services rendered." Under § 330(a)(3), other considerations to be factored into the decisional calculus include the expertise of the attorney; the time expended by him; the reasonableness of the time given the nature, importance, and complexity of the case; and the reasonableness of the billing rates requested. These factors mirror those encapsulated in the traditional lodestar approach to calculating attorneys' fees. Under the lodestar method, a court determines a fee award by multiplying the number of hours productively spent by a reasonable hourly rate to calculate a base figure. After calculating the lodestar amount, the court may adjust it, up or down, in light of other considerations. See generally *In re Sullivan*, 674 F.3d 65 (1st Cir. 2012).

- **Chapter 13—Allowance of attorney's fees:** Here, the bankruptcy court erred in awarding the Chapter 13 debtors' attorney only $10,000 of the requested fees in the amount of $55,692.50, where the record did not demonstrate that the bankruptcy court applied the lodestar analysis or deviated from it for specific reasons. Instead, the transcript of the hearing on the attorney's fee application indicated that the reduced award was premised solely on the attorney's failure to ensure that the debtors were providing operating reports for the debtor husband's business to the Chapter 13 trustee, which led to the dismissal of the case.

In re Fonseca, --- B.R. ----, 2015 WL 2194474 (Bankr. D. Puerto Rico, May 7, 2015), appeal filed, Case No. 15-33 (1st Cir. B.A.P., filed May 21, 2015)

(case no. 3:12-bk-6148; adv. proc. no. 3:13-ap-184) (Bankruptcy Judge Mildred Caban Flores)

Text of opinion

- **Violation of discharge injunction:** Under Puerto Rico law, an employees' association of which the Chapter 7 debtor was a member held a valid statutory lien on the debtor's prepetition accumulated vacation and sick leave licenses (entitlement to payment for unused vacation and sick leave), so that the association's claiming a right to liquidate the licenses in order to collect a prepetition debt following the debtor's discharge did not violate the discharge injunction.

In re Medina-Espinosa, 2015 WL 2400092 (Bankr. D. Puerto Rico, May 18, 2015)

(case no. 3:13-bk-4255) (Chief Bankruptcy Judge Enrique S. Lamoutte) Text of opinion

- **Chapter 13—Allowance of attorney's fees; Chapter 13—Effect of plan confirmation:** Where the Chapter 13 debtors' confirmed plan provided that their attorneys would receive $3,000 in fees, that provision was binding on the attorneys, and they could

not be awarded additional fees, even though the attorneys' retainer agreement with the debtors permitted the attorneys to apply for fees in excess of $3,000, which was the district's no-look fee. The confirmation of the plan, which specified the amount of the disbursement to counsel as attorney's fees, acted as a final adjudication of the matter. See *In re Young*, 285 B.R. 168 (Bankr. D. Md. 2002); *In re Hallmark*, 225 B.R. 192 (Bankr. C.D. Cal. 1998); *In re Black*, 116 B.R. 818 (Bankr. W.D. Okla. 1990).

Second Circuit (2) R

In re Ferrandina, 533 B.R. 11 (Bankr. E.D. N.Y., May 1, 2015)

(case no. 8:13-bk-73713; adv. proc. no. 8:13-ap-8170) (Bankruptcy Judge Alan S. Trust) Text of opinion

- **Issue preclusion—Jurisdiction whose preclusion law applies:** When a court is asked to give preclusive effect to a federal judgment entered in a diversity case, the second court should apply the "law that would be applied by the state courts in the State in which the federal diversity court sits." *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508, 121 S.Ct. 1021, 149 L.Ed.2d 32 (2001) articulated this rule in a case in which the second court was a state court, but the rule applies as well when the second court is a federal court. *NAS Electronics, Inc. v. Transtech Electronics Pte Ltd.*, 262 F.Supp.2d 134 (S.D. N.Y. 2003).

- **Issue preclusion—Elements under state law:** Under New York law, issue preclusion is properly invoked when (1) the identical issue necessarily was decided in the prior action and is decisive of the present action, and (2) the party to be precluded from relitigating the issue had a full and fair opportunity to litigate the issue in the prior action. The two-step test is subject to different burdens of proof; that is, the "party seeking the benefit of collateral estoppel has the burden of demonstrating the identity of the issues ... whereas the party attempting to defeat its application has the burden of establishing the absence of a full and fair opportunity to litigate the issue." *Evans v. Ottimo*, 469 F.3d 278 (2d Cir. 2006).

- **Issue preclusion—Based on default judgment:** Collateral estoppel may be invoked under New York law to preclude a party from relitigating a default judgment. *Kelleran v. Andrijevic*, 825 F.2d 692 (2d Cir. 1987).

- **Issue preclusion—Exceptions:** Issue preclusion under New York law "is a flexible doctrine" whose application depends upon "general notions of fairness involving a practical inquiry into the realities of the litigation." *In re Hyman*, 502 F.3d 61 (2d Cir. 2007).

- **Issue preclusion—Application under circumstances; Dischargeability of debt—For willful and malicious injury under Code § 523(a)(6):** Under New York law of issue preclusion, a default judgment against the debtor for sexual harassment and retaliation established the elements of Code § 523(a)(6), so that the judgment was nondischargeable as one for a willful and malicious injury.

In re Kadoch, Case No. 5:14-bk-10552 (Bankr. D. Vt., May 8, 2015)

(Bankruptcy Judge Colleen A. Brown) Text of opinion

- **Jurisdiction—Effect of pending appeal:** The bankruptcy court retained jurisdiction to rule on a timely motion to reconsider even where a notice of appeal had been filed prior to the filing of the motion. *In re Adelphia Communications Corp.*, 327 B.R. 175, 178 (Bankr. S.D.N.Y. 2005).

Third Circuit (4) R

In re Skinner, 532 B.R. 599 (E.D. Pa. May 27, 2015), **appeal filed**, Case No. 15-2590 (3rd Cir., filed June 30, 2015)

(case no. 2:14-cv-6697) (Senior District Judge Michael M. Baylson) Text of opinion

- **Dischargeability of debt—Existence of debt:** Affirming *In re Skinner*, 519 B.R. 613 (Bankr. E.D. Pa., Oct. 8, 2014), the district court declared that only a party to whom a debt is owed under the Bankruptcy Code has standing to challenge the dischargeability of that debt. To enforce that limitation, every dischargeability proceeding must first consider whether the creditor holds an enforceable obligation under non-bankruptcy law because, in the absence of an enforceable obligation, there is no "debt" that can be non-dischargeable. Here, the debtor's brother did not establish that the debtor owed him a debt, where the brother alleged that the debtor had dissipated or diverted their mother's assets, with the result that the brother might be liable under Pennsylvania law for medical expenses incurred by the mother, which she had been unable to pay. Accordingly, the bankruptcy court properly dismissed the brother's adversary proceeding, which asserted that the debtor was liable for any financial responsibility the brother might have for their mother's medical expenses, and that the debtor's liability was nondischargeable under Code § 523(a)(4) and § 523(a)(6).

Ross v. AmeriChoice Federal Credit Union, 530 B.R. 277 (E.D. Pa., May 22, 2015), **appeal filed on other grounds**, In re Ross, Case No. 15-2222 (3rd Cir., filed May 22, 2015)

(case no. 2:15-cv-197) (District Judge Gerald J. Pappert) Text of opinion

- **Chapter 13—Voluntary dismissal of case:** Discussing cases on both sides of the issue, the district court held that the language of Code § 1307(b) is unambiguous and grants the debtor an absolute right to dismiss a Chapter 13 case, so long as the case has not previously been converted under Code §§706, 1112, or 1208, even when another party's competing motion for conversion or dismissal under § 1307(c) is pending. The statute states that, if the debtor requests dismissal, the court "shall dismiss" the case, and the term "shall" creates an obligation impervious to judicial discretion. The Supreme Court's decision in *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 127 S.Ct. 1105, 166 L.Ed.2d 956 (2007) does not necessitate a different result. Moreover, Code § 105(a) does not allow bankruptcy courts to effectively amend the Bankruptcy Code by ignoring the Code's clear statutory language. *In re Williams*, 435 B.R. 552 (Bankr. N.D. Ill. 2010).

- **Chapter 13—Voluntary dismissal of case:** Code § 1307(b) is not self-executing; the debtor must make a formal motion and serve it in accordance with Bankruptcy Rule 1017(a), and the court must enter a dismissal order. The dismissal order may impose sanctions and conditions if the circumstances indicate fraud, bad faith or abusive tactics. *In re Greenberg*, 200 B.R. 763 (Bankr. S.D. N.Y. 1996).

In re Lopez, 531 B.R. 554 (Bankr. E.D. Pa., May 18, 2015), appeal filed, Lopez v. First Judicial District of Pennsylvania, Case No. 2:12-cv-5037 (E.D. Pa., reopened June 8, 2015), and appeal filed, Case No. 2:15-cv-03522 (E.D., filed June 22, 2015)

(case no. 2:09-bk-13867; adv. proc. no. 2:12-ap-53) (Bankruptcy Judge Stephen Raslavich)

Text of opinion

- **Dischargeability of debt—For governmental fine, penalty or forfeiture under Code § 523(a)(7):** "Collection costs" imposed on the debtor by the court following his criminal conviction, which represented fees due to a private collection company to collect other court costs imposed on the debtor in the criminal proceeding, were dischargeable under Code § 523(a)(7), where the costs were not part of the court's original sentencing order, and the record established that the fees in question were either payable to and for the benefit of a private debt collector, or payable to and for the benefit of the court system, but only as compensation for losses the system incurred by securing private debt collection services.

- **Dischargeability of debt—For governmental fine, penalty or forfeiture under Code § 523(a)(7):** Similarly, a lien filing fee that was part of the process for collecting previously-imposed court costs in a criminal conviction of the debtor was dischargeable under Code § 523(a)(7), as the fee could not be said to be part of the courts' sentencing order.

- **Dischargeability of debt—For governmental fine, penalty or forfeiture under Code § 523(a)(7):** Probation supervision fees imposed on the debtor following his criminal conviction were dischargeable under Code § 523(a)(7) because the fees were compensation for the relevant governmental unit's actual pecuniary loss.

In re Thomas, 529 B.R. 628 (Bankr. W.D. Pa., May 1, 2015)

(case no. 7:14-bk-70184; adv. proc. no. 7:14-ap-7032) (Chief Bankruptcy Judge Jeffery A. Deller)

Text of opinion

- **Setoff—Need for relief from stay:** While Code § 553 preserves a creditor's right of setoff, the unilateral setoff of mutual debts without a prior order of the court can constitute a violation of the automatic stay as set forth in Code § 362(a)(7) and is counter to the notion that one creditor should not be afforded preferential treatment in a bankruptcy ahead of other creditors similarly situated. See *In re Corland Corp.*, 967 F.2d 1069 (5th Cir. 1992); *Small Business Administration v. Rinehart*, 887 F.2d 165 (8th Cir. 1989).

- **Setoff—Generally; Recoupment:** The crucial distinction between setoff and recoupment in bankruptcy is whether the obligation owed by the debtor to the creditor arose out of the same transaction as the obligation owed by the creditor to the debtor. Another significant difference is that setoff is only available when the opposing obligations both arose prepetition, whereas recoupment is not limited by this temporal requirement. See *In re University Medical Center*, 973 F.2d 1065 (3d Cir. 1992); *Lee v. Schweiker*, 739 F.2d 870 (3d Cir. 1984).

- Recoupment: What constitutes the "same transaction" has been interpreted differently by the various courts that have examined this issue. A number of courts determining whether a "single transaction" has occurred have framed the issue as to whether a "logical relationship" exists between the competing demands. See e.g., *In re Holyoke Nursing Home, Inc.*, 372 F.3d 1 (1st Cir. 2004); *In re TLC Hospitals, Inc.*, 224 F.3d 1008 (9th Cir. 2000); *U.S. v. Consumer Health Servs. of America, Inc.*, 108 F.3d 390 (D.C. Cir. 1997). In the "logical relationship" test, the view of a "single or same transaction" is flexible and allows for a series of occurrences to be considered part of the "same transaction." Other courts, including the Third Circuit, take a more strict view of the "single transaction" requirement for recoupment. In this more narrow view, known as the "integrated transaction" test, a mere logical relationship is not enough; rather, the reciprocal obligations at issue must "arise out of a single integrated transaction so that it would be inequitable for the debtor to enjoy the benefits of that transaction without also meeting its obligations." *Lee v. Schweiker*, 739 F.2d 870 (3d Cir. 1984). See also *In re University Medical Center*, 973 F.2d 1065 (3d Cir. 1992) (declining to apply the doctrine of recoupment to enable the government to recapture Medicare overpayments because the reimbursement rights of the debtor arose in different years in which the overpayments were made by the government).

- Recoupment: The debtor's debt to the Pennsylvania State Employees' Retirement System for overpaid early retirement benefits and the System's obligation to pay the debtor disability pension benefits arose from the same transaction under the "integrated transaction" test applicable in the Third Circuit, so that the System could recoup the overpayment from the debtor's disability pension benefits; both obligations emanated from the state's termination of the debtor's employment and the parties' subsequent settlement of the debtor's grievance.

- Violation of stay; Violation of discharge injunction: Because the debtor's debt to the Pennsylvania State Employees' Retirement System for overpaid early retirement benefits and the System's obligation to pay the debtor disability pension benefits arose from the same transaction, so that the System could recoup the overpayment from the debtor's disability pension benefits, the System's exercising its right to recoupment did not violate either the automatic stay or the discharge injunction.

Fourth Circuit (8) R

In re Ingram, 531 B.R. 121 (Bankr. D. S.C., May 13, 2015)

(case no. 3:08-bk-581) (Chief Bankruptcy Judge David R. Duncan) Text of opinion

- **Reopening of case:** When considering whether to reopen a closed bankruptcy case to administer a cause of action, a court should consider three interests: (1) the benefit to the debtor; (2) the prejudice or detriment to the party in the pending litigation; and (3) the benefit to the debtor's creditors. *In re Tarrer*, 273 B.R. 724 (Bankr. N.D. Ga. 2010). Here, where a favorable ruling for either party would necessarily impose on its opponent a corresponding detriment, the proper inquiry focused on the effect of reopening the case on the creditors. If the reopening will have no effect on the estate or creditors, and no further administration would be necessary, then the motion to reopen should be denied.

- **Reopening of case:** Cause did not exist to reopen a previously-closed Chapter 13 case in order to allow the debtors to schedule a cause of action that they sought to pursue following their discharge, and that they had not disclosed while their case was open, where it was not possible for the debtors to modify their plan in order to provide a distribution to creditors from proceeds of the cause of action, as the debtors had already completed the payments under their confirmed plan and received a discharge, and the maximum five-year period over which the debtors could extend their plan had long since passed.

In re Moriarty, 530 B.R. 637 (Bankr. W.D. Va., May 18, 2015)

(case no. 5:13-bk-51437) (Chief Bankruptcy Judge Rebecca B. Connelly) Text of opinion

- **Chapter 7—Determination of abuse—Under totality of the circumstances:** Disagreeing with *In re Riggs*, 495 B.R. 704 (Bankr. W.D. Va., July 9, 2013), the court held that, in deciding whether to dismiss a Chapter 7 case under Code § 707(b)(3)(C) based on the totality of the circumstances of the debtor's financial situation, a court may not consider the debtor's Social Security income. Accord, *In re Johnson*, 2014 WL 814740 (Bankr. W.D. Mo., Feb. 28, 2014); *In re Suttice*, 487 B.R. 245 (Bankr. C.D. Cal., July 9, 2013).

In re Nolte, 2015 WL 2128670 (Bankr. E.D. Va., May 5, 2015)

(case no. 3:14-bk-36676) (Bankruptcy Judge Kevin R. Huennekens) Text of opinion

- **Property of the estate—Exemptions—Of retirement account under Code § 522(b)(3)(C):** The purchase by the debtor's IRA of a 5% membership interest in an LLC was not a prohibited transaction under 26 U.S.C. § 4975, so that the IRA did not lose its tax-exempt status under 26 U.S.C. § 408(e), and the IRA was exempt under Code § 522(b)(3)(C).

In re Parker, 531 B.R. 103 (Bankr. E.D. N.C., May 22, 2015)

(case no. 8:12-bk-3128; adv. proc. no. 8:12-ap-238) (Chief Bankruptcy Judge Stephani W. Humrickhouse) Text of opinion

- **Chapter 7—Denial of discharge—For transfer or concealment of assets:** The Chapter 11 debtor, in moving certain personal property from his business premises to his home prior to a site visit by the bankruptcy administrator in a bankruptcy case filed by the debtor's corporation, did not fraudulently conceal these assets, so there was no basis for denial of the debtor's discharge under Code § 727(a)(2). Since the visit related solely to the corporate case, it was completely natural for the debtor to remove his personal property from the business premises to avoid having it confused with assets of the business.

- **Chapter 7—Denial of discharge—For false oath:** The Chapter 11 debtors did not act fraudulently in omitting certain personal property from their bankruptcy schedules, given the sheer volume of personal property that the debtors had collected over the years, the debtors' prompt amendment of their schedules to add the omitted assets, and the fact that the debtors had proposed a plan that would result in a 100% distribution to unsecured creditors. Accordingly, there was no basis for denial of the debtors' discharge under Code § 727(a)(4)(A) for making a false oath.

- **Chapter 7—Denial of discharge—For false oath:** The Chapter 11 debtors did not act fraudulently, for the purpose of denying the debtors' discharge under Code § 727(a)(4)(A) for making a false oath, in listing the value of their military relic collection as "unknown." Listing the value as "unknown" was reasonable in light of the extensive nature of the collection, the fact that the artifacts were never appraised, the fact that the debtor husband acquired the items over several decades, and the fact that the husband was no longer collecting and therefore lacked knowledge as to current prices.

- **Chapter 7—Denial of discharge—For false oath:** The Chapter 11 debtors did not act fraudulently, for the purpose of denying the debtors' discharge under Code § 727(a)(4)(A) for making a false oath, in utilizing values placed on certain antique firearms in an inventory prepared by the debtor husband's father roughly two decades earlier that had not been updated. The debtors clearly did not know whether and to what extent the values of the firearms had changed, so that it was reasonable for the debtors to rely on the inventory as the most accurate valuation that they had.

In re Pearson, 2015 WL 3455305 (Bankr. N.D. W.Va., May 26, 2015)

(case no. 5:08-bk-1970) (Bankruptcy Judge Patrick M. Flatley) Text of opinion

- **Chapter 13—Eligibility:** A debtor must owe debts in order to qualify as a Chapter 13 debtor. And a secured creditor whose claim is discharged by virtue of a debtor's Chapter 7 bankruptcy case no longer qualifies as a creditor for purposes of a subsequent Chapter 13 case; the Bankruptcy Code mandates such a result based upon its definition of "claim."

- **Chapter 7—Conversion by debtor—To Chapter 13:** The debtors could not convert their case to Chapter 13 after receiving a Chapter 7 discharge, as they had no remaining prepetition creditors, and a debtor must owe debts in order to be eligible for Chapter 13.

- **Property of the estate—Exemptions—Amendment of exemptions:** A court may permit the debtor to amend his or her claim of exemptions in a reopened case if the court finds that the debtor's failure to claim the amended exemption prior to the closing of the case was the result of excusable neglect. See e.g., *In re Smith*, 2014 WL 7358808 (Bankr. D. N.M., Dec. 24, 2014).

In re Rodriguez, 2015 WL 2194584 (Bankr. D. Md., May 6, 2015)

(case no. 1:13-bk-31164) (Bankruptcy Judge E. Stephen Derby) Text of opinion

- **Chapter 13—Stripping unsecured lien—Tax lien:** In a Chapter 11 case, the court said that an IRS tax lien may be stripped off if there is no value in the collateral to support the lien. *In re Johnson*, 386 B.R. 171 (Bankr. W.D. Pa. 2008), aff'd, *I.R.S. v. Johnson*, 415 B.R. 159 (W.D. Pa. 2009). See also *In re Dever*, 164 B.R. 132 (Bankr. C.D. Cal. 1994) (allowing bifurcation of tax lien).

In re Runnels, 530 B.R. 626 (Bankr. W.D. N.C., May 11, 2015)

(case no. 3:13-bk-30084) (Chief Bankruptcy Judge Laura T. Beyer) Text of opinion

- **Chapter 13—Modification of confirmed plan:** Modification of the debtor's confirmed Chapter 13 plan to pay off the amount due in a lump sum 15 months after confirmation, after the debtor had settled his workers' compensation claim, was appropriate, given the debtor's worsening health and his inability to find employment despite repeated attempts, the decrease in the debtor's monthly income from $2,919 to $1,395, and the absence of opposition to the modification motion. The debtor's proposal was consistent with Code § 1329(a)(2), which allows debtors to modify their plans to "reduce the time for [plan] payments." The change in the debtor's circumstances was unanticipated because the debtor could not "reasonably anticipate" that his disability would worsen, his income would decrease substantially, and he would not be able to find employment. A debtor's post-confirmation modification pursuant to § 1329(a) need not comply with Code § 1325(b)(1)(B) and, therefore, is not required to maintain the applicable commitment period. *In re White*, 411 B.R. 268 (Bankr. W.D. N.C. 2008). And *Pliler v. Stearns*, 747 F.3d 260 (4th Cir. 2014), holding that the applicable commitment period is binding in the context of plan confirmation, does not apply to plan modification.

In re Varner, 530 B.R. 621 (Bankr. M.D. N.C., May 1, 2015)

(case no. 6:14-bk-51410) (Chief Bankruptcy Judge Catharine R. Aron) Text of opinion

- **Chapter 13—Confirmation of plan—Treatment of secured claims—Modification of claim—Under Code § 1322(c)(2):** Disagreeing with *In re Hubbell*, 496 B.R. 784 (Bankr. E.D. N.C., August 23, 2013), the bankruptcy court held that *In re Witt*, 113 F.3d 508 (4th Cir. 1997), which held that Code § 1322(c)(2) does not permit the bifurcation of an undersecured claim encompassed by the provision (i.e., a secured debt on which the last payment is due prior to the end of the Chapter 13 plan), also

prohibits the modification of a secured claim subject to § 1322(c)(2), including modification of a secured creditor's contractual interest rate, even though § 1322(c)(2) provides that "the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5)." To comply with § 1322(c)(2), a Chapter 13 plan may modify the payments to a mortgage creditor, such as by stretching payments out over the life of the plan, but the plan cannot modify the contractual interest rate, absent some other statutory basis. While other cases had allowed modification of a secured claim treated under § 1322(c)(2), these cases contained no significant analysis of *In re Witt*. See *In re Griffin*, 489 B.R. 638 (Bankr. D. Md., March 18, 2013); *In re Farooq*, 2010 WL 348039 (Bankr. E.D. Va. 2010); *In re Joyner*, 2008 WL 4346467 (Bankr. E.D. N.C. 2008).

Fifth Circuit (9) R

In re Cantu, --- Fed. Appx. ----, 2015 WL 2386011 (5th Cir., May 20, 2015)

(case no. 14-40762) Text of opinion

- **Property of the estate—Effect of conversion of case:** Affirming *Cantu v. Stone*, 2014 WL 2949456 (S.D. Tex., July 1, 2014), which had affirmed *In re Cantu*, 2013 WL 2286082 (Bankr. S.D. Tex., May 22, 2013), the Court of Appeals held that the debtors' malpractice claims against an accountant appointed by the bankruptcy court while their case was proceeding under Chapter 11 accrued before the case was converted to Chapter 7 and were therefore property of the debtors' Chapter 7 bankruptcy estate. See *In re Cantu*, 784 F.3d 253 (5th Cir., April 16, 2015) (similar case involving the debtors' malpractice claims against their original bankruptcy attorney).

In re Ritz, 787 F.3d 312 (5th Cir., May 22, 2015)

(case no. 14-20526) Text of opinion

- **Dischargeability of debt—For actual fraud under Code § 523(a)(2)(A):** Disagreeing with *McClellan v. Cantrell*, 217 F.3d 890 (7th Cir. 2000), and stating that no subsequent appellate court had adopted that court's interpretation of Code § 523(a)(2)(A), the Court of Appeals held that a misrepresentation is required to establish "actual fraud" under § 523(a)(2)(A). *McClellan* appeared to be in tension with the Supreme Court's opinion in *Field v. Mans*, 516 U.S. 59, 116 S.Ct. 437, 133 L.Ed.2d 351 (1995), which, although not directly addressing the issue, appeared to assume that a false representation was necessary to establish "actual fraud." Moreover, the reasoning in *McClellan* was at best inconsistent with, if not foreclosed by, Fifth Circuit precedent. Finally, although "actual fraud" was added to the statute in 1978, it had been suggested that Congress did not intend to create a separate basis for dischargeability—but rather intended only to codify the limited scope of the fraud exception as expressed in case law interpreting "fraud" to mean actual or positive fraud rather than fraud implied by law. Accordingly, the court affirmed *In re Ritz*, 513 B.R. 510 (S.D. Tex., July 14, 2014), which had affirmed *In re Ritz*, 459 B.R. 623 (Bankr. S.D. Tex. 2011).

  Comment: The First Circuit subsequently agreed with *McClellan* in *In re Lawson*, 791 F.3d 214 (1st Cir., July 1, 2015), pet. for cert. filed, *Lawson v. Sauer Inc.*, Case No. 15-113 (U.S. Sup. Ct., July 24, 2015).

- **Dischargeability of debt—For willful and malicious injury under Code § 523(a)(6):** Following *Kawaauhau v. Geiger*, 523 U.S. 57, 61, 118 S.Ct. 974, 140 L.Ed.2d 90 (1998), this court has held that an injury is "willful and malicious" for the purpose of Code § 523(a)(6) where "there is either an objective substantial certainty of harm or a subjective motive to cause harm." *In re Miller*, 156 F.3d 598 (5th Cir. 1998). See also *In re McClendon*, 765 F.3d 501 (5th Cir. 2014) ("[A]n individual who acts under an honest, but mistaken belief ... cannot be said to have intentionally caused injury, because absent the fact about which there has been a mistake, legally cognizable injury would not meet the test of substantial certainty."

- **Authority of the court—Under Code § 105(a):** A bankruptcy court's equitable powers "must be exercised in a manner that is consistent with the Bankruptcy Code," and a bankruptcy court is not permitted "to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity." *In re Sadkin*, 36 F.3d 473 (5th Cir. 1994) (per curiam). Accordingly, a creditor could not rely upon general principles of equity to expand the exceptions to the discharge of debts found in Code § 523(a).

Corletta v. Texas Higher Educ. Coordinating Bd., 531 B.R. 647 (W.D. Tex. May 19, 2015)

(case no. 5:14-cv-982) (District Judge Robert L. Pitman) Text of opinion

- **Dischargeability of debt—Student loan debt under Code § 523(a)(8):** Affirming *In re Pappas*, 517 B.R. 708 (Bankr. W.D. Tex., Sept. 8, 2014), the district court held that the discharge exception in Code § 523(a)(8) applies to co-signors who are not related to the borrower. Section 523(a)(8) applies to "individual debtor[s]"—making no distinction between student debtors and non-student co-signors, whether related or not.

In re Adkins, 2015 WL 2398412 (Bankr. W.D. La., May 14, 2015)

(case no. 5:14-bk-12611) (Bankruptcy Judge Jeffrey P. Norman) Text of opinion

- **Chapter 13—Confirmation of plan—Treatment of secured claims—910-day car claims:** The court joined the majority of other courts in holding that a *Till* rate of interest is appropriate for a 910-day car claim. Additionally, the court held that, when a debtor's Chapter 13 plan proposes long-term treatment of a 910-day car claim under Code § 1322(b)(5) at an interest rate resulting in the creditor's receiving more interest than the creditor would receive using a *Till* rate, then a *Till* interest rate is mandatory. Accordingly, the court denied confirmation of a below-median debtor's Chapter 13 plan that proposed to maintain contractual payments on a 910-day car claim that included 20.5% interest.

- **Chapter 13—Confirmation of plan—Treatment of unsecured claims—Unfair discrimination:** Separate classification of a long-term claim under Code § 1322(b)(5) may still constitute unfair discrimination under § 1322(b)(1).

In re Hooey, 2015 WL 2130514 (Bankr. S.D. Tex., May 5, 2015)

(case no. 4:15-bk-31914) (Bankruptcy Judge Letitia Z. Paul) Text of opinion

- **Automatic stay—Extension under Code § 362(c)(3):** Granting the Chapter 13 debtors' motion to continue the automatic stay under Code § 362(c)(3), the court held that there was insufficient evidence to conclude that the debtor husband's failure to file a mailing matrix in his previous case, leading to the dismissal of the case, was "without substantial excuse" under Code § 362(c)(3)(i)(II)(aa), so that no presumption of bad faith arose under that provision. The creditor has the burden of proof on the issue. *In re Charles*, 334 B.R. 207 (Bankr. S.D. Tex. 2005). The debtors had filed credit counseling certificates, schedules, a statement of financial affairs, a statement of current monthly income and calculation of disposable income, payment

advices, and a Chapter 13 plan, which proposed 100% payment to unsecured creditors, and an order had been entered providing for payment of the debtors' plan payments by electronic funds transfer. Accordingly, the court concluded that the present case was filed in good faith.

In re James, 2015 WL 3464129 (Bankr. W.D. La., May 29, 2015), appeal filed, Sikes v. James, Case No. 5:15-cv-1865 (W.D. La., filed June 11, 2015)

(case no. 5:13-bk-12826) (Bankruptcy Judge Jeffrey P. Norman) Text of opinion

- **Chapter 13—Trustee fees:** The general rule, established in 28 U.S.C. § 586(e)(1)(B)(i), is that the Chapter 13 trustee is permitted to deduct a maximum of 10% from all payments received by the trustee under Chapter 13 plans. The actual percentage is often less, and the trustee percentage fee in the Shreveport Division of the Western District of Louisiana is currently seven percent. The actual percentage is set after the Chapter 13 trustee projects a yearly budget and consults with and is granted budget approval by the U.S. Trustee for the region. The percentage fee is subject to periodic adjustment upon approval by the U.S. Trustee if trustee receipts and expenses vary.

- **Chapter 13—Trustee fees:** Finding *In re Derickson*, 226 B.R. 879 (Bankr. S.D. Ill. 1998) more persuasive than *In re Nardello*, 514 B.R. 105 (Bankr. D. N.J. 2014), the court held that the Chapter 13 trustee was not entitled to collect a statutory fee from insurance proceeds remitted to the trustee by the Chapter 13 debtor's auto insurer after the debtor's vehicle was totaled in an accident, where the proceeds were to be distributed in full to the secured motor vehicle creditor. Insurance proceeds are not intended as a payment from the debtor's income or other property. Rather, such proceeds flow from destruction of the creditor's security, and serve as a replacement of that collateral, albeit in a different form. For this reason, payment of the insurance proceeds fails to qualify as a "payment" from the debtor's income or other property, but instead constitutes a surrender of collateral to the creditor. Because there was no "payment" within the meaning of 28 U.S.C. § 586(e)(2), which provides that a Chapter 13 trustee "shall collect such percentage fee from all payments received by such individual under plans in the cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee," the trustee was not entitled to collect a fee on the insurance proceeds. The court noted that, while insurance proceeds in this case would be paid in full to the secured creditor, there might be other instances in which this would not be the case. If insurance proceeds exceeded both the total of a secured creditor's claim as well as the exemption allowed the debtor, there might be insurance proceeds that could be disbursed to unsecured creditors by the trustee. In these instances, the trustee would be entitled to collect her statutory fee based on the insurance proceeds that would be disbursed to unsecured creditors.

In re Means, 2015 WL 2130408 (Bankr. S.D. Tex., May 5, 2015)

(case no. 3:15-bk-80170) (Bankruptcy Judge Letitia Z. Paul) Text of opinion

- **Automatic stay—Good faith under Code § 362(c)(4):** Granting the Chapter 13 debtors' motion to impose the automatic stay as to all creditors under Code § 362(c)(4), the court concluded that the debtors had rebutted the presumption that the present case was not filed in good faith. The debtors explained that, while their two prior Chapter 13 cases had been dismissed within the prior year for failure to make plan payments, this was because the debtor husband was laid off during the first case, and in the

second case the husband did not monitor plan payments, and thus was unaware that payments were not being made, because he believed payments were made pursuant to a wage order. In this case, the court had entered a wage order, and the husband testified that he had made the first payment under the debtors' plan and that he would monitor payments in order to ensure that payments were being made.

In re Saldana, 531 B.R. 141 (Bankr. N.D. Tex., May 22, 2015), appeal filed, Saldana v. Saldana, Case No. 3:15-cv-1918 (N.D. Tex., filed June 2, 2015)

(case no. 3:13-bk-34861) (Bankruptcy Judge Stacey G.C. Jernigan) Text of opinion

- **Property of the estate—Exemptions—Under state law—Of homestead:** While, under Texas law, a debtor may claim a rural homestead exemption in a parcel that is not contiguous to the debtor's residential parcel if the debtor shows that he is using the noncontiguous parcel for the comfort, convenience, or support of his family, here the debtor did not make the required showing, where he testified only that he used the parcel to "grow some trees" and also had some cows on the property at some point. Any trees that the debtor was ever growing on the noncontiguous parcel were for a business that was no longer operating, while the debtor's statement of financial affairs stated that all his livestock had been sold, other than four horses that he kept on the residential parcel rather than on the noncontiguous parcel.

- **Property of the estate—Exemptions—Amendment of exemptions—Denial of amendment:** While the issue in *Law v. Siegel* was whether a trustee could surcharge a debtor's exempt property based upon a debtor's egregious acts during a bankruptcy case, the court concluded that *Law v. Seigel* nonetheless implicitly overruled prior case law, including the Fifth Circuit's holding in *In re Williamson*, 804 F.2d 1355 (5th Cir. 1986) that relied on the Eleventh Circuit's holding in *In re Doan*, 672 F.2d 831 (11th Cir. 1982), that enabled a bankruptcy court to deny an amendment to the debtor's claimed exemptions based on bad faith or prejudice to creditors.

- **Property of the estate—Exemptions—Amendment of exemptions—Denial of amendment:** While it was true that the doctrine of judicial estoppel had been developed by state courts in Texas, the Chapter 7 trustee had cited to no case (and the court was unable to find one) in which a Texas court had applied judicial estoppel to disallow a statutory homestead exemption. As a result, the court declined the trustee's invitation to create a "judge-made" exception to Texas homestead law and disallow, on the ground of judicial estoppel, the debtor's amendment to his claimed homestead exemption.

- **Authority of the court—Imposition of sanctions—On debtor:** *Law v. Siegel* recognized a bankruptcy court's continuing authority to impose sanctions for improper conduct with regard to a debtor's claimed exemptions, and here, the existence of bad faith warranted the imposition of sanctions under Code § 105(a) on the Chapter 7 debtor and his counsel after the debtor amended his claimed homestead exemption more than 15 months after the debtor filed his bankruptcy case, more than two months after the court entered an order permitting the Chapter 7 trustee to sell a significant portion of the property now included in the debtor's amended homestead exemption, and more than an hour and six minutes after the court began hearing arguments and testimony about the merits of the debtor's claimed homestead exemption. Accordingly, the court held the debtor and his counsel jointly and severally liable to reimburse the $5,110 in fees incurred by the objecting creditor's counsel and

$25,245 in fees incurred by the trustee's counsel. The court concluded that these amounts represented reasonable and necessary attorney's fees spent as a result of the debtor's and his counsel's "arbitrary, capricious, and recalcitrant bad faith behavior concerning the flip-flop on exemptions."

In re Smith, 530 B.R. 327 (Bankr. S.D. Miss., May 21, 2015), **appeal filed**, Smith v. Henley, Case No. 3:15-cv-408 (S.D. Miss., filed June 5, 2015)

(case no. 3:13-bk-1920) (Bankruptcy Judge Edward Ellington) Text of opinion

- **Chapter 13—Conversion of case under Code § 1307(c); Chapter 13—Voluntary dismissal of case:** The debtor filed her Chapter 13 case in bad faith, warranting conversion to Chapter 7 under Code § 1307(c) and denial of the debtor's motion to dismiss under § 1307(b), where the debtor attempted to surrender five parcels of real property to her husband so that she would be below the Chapter 13 secured debt limit, the debtor attempted to use the filing of her bankruptcy petition to halt the foreclosure sale of property owned by the debtor's wholly-owned corporation, the debtor filed misleading or inaccurate schedules, and the debtor had been in bankruptcy for almost two years without proposing a viable plan. The court noted that, under *In re Jacobsen*, 609 F.3d 647 (5th Cir. 2010), a Chapter 13 debtor proceeding in bad faith does not have an absolute right to dismiss the case under § 1307(b).

Sixth Circuit (8) R

Groff v. Wells Fargo Home Mortgage, Inc., --- F.Supp.3d ----, 2015 WL 2169811 (E.D. Mich. May 8, 2015)

(case no. 2:14-cv-12250) (District Judge David M. Lawson)

Text of opinion Text of opinion in Horsch Text of opinion in Schueller

- **Fair Credit Reporting Act:** A home mortgage creditor's reporting of the Chapter 7 debtor's loan as having a zero balance and no payment activity, even though the debtor had continued making mortgage payments to avoid foreclosure, was not false or inaccurate, and therefore did not violate the Fair Credit Reporting Act, since the debtor's personal obligation to pay the debt was discharged in bankruptcy, and the fact that the creditor accepted the debtor's voluntary payments and refrained from foreclosing on his home did not suggest that any new debtor-creditor or similar relationship arose between the two parties. See *Schueller v. Wells Fargo & Co.*, 559 Fed. Appx. 733 (10th Cir., May 22, 2014) (case no. 13-2057); *Horsch v. Wells Fargo Home Mortgage*, ---F.Supp.3d ----, 2015 WL 1344836 (E.D. Pa., March 25, 2015) (case no. 2:14-cv-2638) (District Judge William H. Yohn, Jr.).

In re Blackshear, 531 B.R. 711 (E.D. Mich., May 20, 2015), **appeal filed**, Case No. 15-1695 (6th Cir., filed June 17, 2015)

(case no. 2:14-cv-14399) (District Judge Patrick J. Duggan) Text of opinion

- **Chapter 13—Confirmation of plan—Calculation of projected disposable income:** The bankruptcy court did not err in confirming the Chapter 13 debtor's plan despite the Chapter 13 trustee's objection that the debtor, who stated that her non-filing husband contributed $600 per month towards household expenses, and who provided copies of her husband's pay stubs, failed to provide more comprehensive income and expense information for her husband. "Current monthly income" as defined in Code § 101(10A) includes only "any amount paid by any entity other than the debtor ... on a regular basis for the household expenses of the debtor or the debtor's dependents," and the debtor provided the monthly sum contributed by her husband for household expenses. While the trustee contended that, without additional information about the husband's finances, the bankruptcy court had no way of knowing whether the husband was contributing to household expenses in an appropriate amount, the district court declared that, although the bankruptcy court did not have a complete picture of the finances of the debtor's husband, it had enough information about his financial situation to calculate the debtor's disposable income and conclude that the debtor was devoting all of that income to plan payments, that the plan was proposed in good faith, and that the plan was feasible. The district court distinguished *In re Rodgers*, 2014 WL 4988388 (Bankr. W.D. Mo., Oct. 7, 2014); *In re Kuhns*, 2011 WL 4713225 (Bankr. N.D. Ohio, Oct. 7, 2011); and *In re Cardillo*, 170 B.R. 490 (Bankr. D. N.H. 1994) on the ground that, in those cases, the debtor did not provide any information regarding the non-filing spouse's contribution to household expenses.

In re Davis, 2015 WL 3484561 (Bankr. E.D. Mich., May 29, 2015)

(case no. 4:15-bk-30158) (Bankruptcy Judge Daniel S. Opperman) Text of opinion

- **Chapter 13—Entitlement to discharge:** The Chapter 13 debtor was not entitled to a discharge under Code § 1328(f), and this was true even though Bankruptcy Rule 4004(a) requires that a motion objecting to the debtor's discharge in a Chapter 13 case be filed no later than 60 days after the first date set for the meeting of creditors, and, here, no party filed a motion objecting to the debtor's discharge; rather, the court raised the issue sua sponte.

In re Gilica, 530 B.R. 429 (Bankr. N.D., Ohio, May 11, 2015)

(case no. 3:14-bk-34590) (Bankruptcy Judge John P. Gustafson) Text of opinion

- **Property of the estate—Exemptions—Under state law:** On an issue as to which there did not appear to be any prior decisions, either state or federal, that specifically addressed the matter, the court held that a boat with an outboard motor is not exempt under Ohio Rev. Code § 2329.66(A)(2) as a "motor vehicle." The court noted that, while the issue had not been litigated in Ohio, decisions in other states appeared to uniformly reject the contention that a boat may be a "motor vehicle" for exemption purposes.

In re Mihal, 2015 WL 2265790 (Bankr. E.D. Mich., May 6, 2015)

(case no. 2:13-bk-54435) (Bankruptcy Judge Walter Shapero) Text of opinion

- **Chapter 13—Confirmation of plan—Good faith—Effect of Social Security income:** A Chapter 13 debtor's exclusion of Social Security income from the debtor's Chapter 13 plan does not, by itself, constitute a lack of good faith under Code § 1325(a)(3).

In re Smith, 2015 WL 3455356 (Bankr. N.D. Ohio, May 28, 2015)

(case no. 3:14-bk-32433) (Bankruptcy Judge Mary Ann Whipple) Text of opinion

- **Chapter 7—Vacating of discharge:** There is no statutory or other basis to vacate a discharge at the request of a debtor in order to enter into a reaffirmation agreement.

In re Stambaugh, 531 B.R. 191 (Bankr. S.D. Ohio, May 21, 2015)

(case no. 2:09-bk-55198) (Bankruptcy Judge Charles M. Caldwell) Text of opinion

- **Examination of party:** After the Chapter 13 debtors received four collection notices from the new servicer of their mortgage, the court granted the U.S. Trustee's motion under Bankruptcy Rule 2004 to be permitted to examine, subject to assurances of confidentiality, the new servicer's "documentation relating to policy, directives and/or procedures regarding auditing mortgage accounts" obtained from a prior servicer for customers who were in an active bankruptcy case. Without discovery of the collection information that accompanied the transfer of the debtors' loan, there was no means to determine why the debtors received the collection notices.

In re Wise, 2015 WL 3424733 (Bankr. N.D. Ohio, May 27, 2015)

(case no. 6:15-bk-60934) (Bankruptcy Judge Russ Kendig) Text of opinion

- **Prepetition credit counseling—Temporary waiver for exigent circumstances:** A foreclosure sale scheduled for the day following a debtor's bankruptcy filing did not give rise to an exigency within the meaning of Code § 109(h)(3). Much like the police cannot create the exigency for a warrantless search and seizure, neither can a debtor create, and then benefit from, an urgent situation necessitating filing without the prepetition credit counseling course. Allowing a debtor to rely on an imminent foreclosure sale ignores the months prior to the sale when the foreclosure case was pending and the debtor took no action. The debtor's degree of control is the antithesis of "urgent need." This understanding of exigency is supported by the Bankruptcy Code, which requires a debtor to make attempts to obtain the prepetition course. Under § 109(h)(3)(A)(ii), part of the exigency must exist because the debtor attempted, but could not obtain, the counseling. This requirement prevents a debtor from creating the exigent circumstances supporting a waiver.

Seventh Circuit (8) R

In re Pajian, 785 F.3d 1161 (7th Cir., May 11, 2015)

(case no. 14-2052) Text of opinion

- **Chapter 13—Creditors entitled to distribution under plan:** Reversing *In re Pajian*, 508 B.R. 708 (Bankr. N.D. Ill., Apr 15, 2014), the Court of Appeals held that the "better interpretation" of Bankruptcy Rule 3002 is that all creditors—secured and unsecured—must file a proof of claim by the 90-day deadline specified by Rule 3002(c) in order to receive distributions under a Chapter 13 plan.

Dixon v. Green Tree Servicing, LLC, 2015 WL 2227741 (N.D. Ind., May 11, 2015), **appeal filed**, Case No. 15-2269 (7th Cir., filed June 12, 2015)

(case no. 2:13-cv-227) (Chief District Judge Philip P. Simon) Text of opinion

- **Fair Credit Reporting Act:** A mortgage creditor's failure to report a Chapter 7 debtor's post-discharge voluntary payments on the mortgage, in the absence of a reaffirmation of the mortgage, was not a violation of the Fair Credit Reporting Act; the creditor reported the debt as discharged in bankruptcy with a zero balance.

Jahrling v. Estate of Cora, 530 B.R. 679 (N.D. Ill., May 13, 2015), **appeal filed**, In re Jahrling, Case No. 15-2252 (7th Cir., filed June 10, 2015)

(case no. 1:14-cv-8056) (District Judge James B. Zagel) Text of opinion

- **Dischargeability of debt—For defalcation by fiduciary under Code § 523(a)(4):** The conduct of the debtor, an attorney, in representing a client in the sale of the client's home while neither speaking the client's language, Polish, nor employing a disinterested interpreter constituted incompetence paired with grossly reckless conduct, so that the debtor's debt to the client's estate for legal malpractice was nondischargeable under Code § 523(a)(4) as defalcation by a fiduciary.

Thompson v. Ocwen Loan Servicing LLC, 2015 WL 3454726 (E.D. Wis., May 29, 2015)

(case nos. 2:14-cv-1502, 2:14-cv-1522) (District Judge J.P. Stadtmueller) Text of opinion

- **Proof of claim—Effect of disallowance:** Affirming in part and vacating in part *In re Thompson*, 520 B.R. 731 (Bankr. E.D. Wis., Nov. 21, 2014), which denied reconsideration of *In re Thompson*, 520 B.R. 713 (Bankr. E.D. Wis., Oct. 21, 2014), the district court said that it could not find any authority for the bankruptcy court's order requiring the Chapter 13 debtors' purported mortgage creditor to return to the debtors $73,041.49 in monthly payments that the creditor had received directly from the debtors during the case. The bankruptcy court issued the order, some six and a half years after allowing the creditor's claim, when the court concluded that the creditor failed to establish its standing to enforce the debtors' mortgage note and disallowed the claim. The district court said that it could understand why the bankruptcy court took the path that it did, as it seemed to be the most logical and expedient way of accomplishing

the task at hand. Unfortunately, the district court could not find any authority giving the bankruptcy court the power to take the step that it did.

Comment: On remand, the bankruptcy court issued a new opinion ordering the creditor to return the funds to the Chapter 13 trustee. See *In re Thompson*, 2015 WL 4484238 (Bankr. E.D. Wis., July 22, 2015), appeal filed, *Wells Fargo Bank NA v. Thompson*, Case No. 2:15-cv-941 (E.D. Wis., filed August 5, 2015).

Trustees of the Will Cnty. Carpenters, Local 174, Health & Welfare Fund v. Cooney, 532 B.R. 296 (N.D. Ill., May 29, 2015)

(case no. 1:14-cv-9222) (District Judge Harry D. Leinenweber) Text of opinion

- **Dischargeability of debt—Award of attorney's fees—To debtor:** Under Code § 523(d), which permits a bankruptcy court to award costs and attorney fees to a debtor where a creditor's proceeding to hold a consumer debt nondischargeable under Code § 523(a)(2) was not substantially justified, a court may award attorney's fees to a pro se debtor who is an attorney.

In re Schmeglar, 531 B.R. 735 (Bankr. N.D. Ill., May 22, 2015), **appeal filed**, Schmeglar v. Mortgage Electronic Registration Systems, Inc., Case No. 1:15-cv-5094 (N.D. Ill., filed June 10, 2015)

(case no. 1:12-bk-42283; adv. proc. no. 1:14-ap-121) (Bankruptcy Judge Jack B. Schmetterer) Text of opinion

- **Proof of claim—Secured claim—Right to enforce note:** Under the Illinois Uniform Commercial Code, a person in possession of a promissory note payable to bearer is deemed the "holder" of the note and is entitled to enforce it.

- **Proof of claim—Secured claim—Filing by servicer:** A mortgage servicer is entitled to collect payments under a promissory note from the debtor on behalf of the holder of the note.

In re Spencer, 532 B.R. 303 (Bankr. W.D. Wis., May 15, 2015), **appeal filed**, Spencer v. Federal Home Loan Mortgage Corporation, Case No. 3:15-cv-332 (W.D. Wis., filed June 1, 2015)

(case no. 1:15-bk-11204; adv. proc. no. 1:15-ap-60) (Chief Bankruptcy Judge Catherine Furay)

Text of opinion

- **Jurisdiction—Effect of *Rooker-Feldman* doctrine; Proof of claim—Secured claim—Right to enforce note:** The *Rooker-Feldman* doctrine precluded the bankruptcy court's jurisdiction over the Chapter 13 debtor's adversary proceeding, which asserted that the creditor moving for relief from stay participated in a fraud that resulted in the foreclosure of the debtor's mortgage, and that the creditor was not entitled to enforce the note and mortgage.

In re Wagner, 530 B.R. 695 (Bankr. E.D. Wis., May 5, 2015)

(case no. 2:09-bk-33103) (Bankruptcy Judge Margaret Dee McGarity) Text of opinion

- **Property of the estate:** In the case of injuries that are potential but not certain, the "discovery rule" adopted by the state of Wisconsin is the fairer and more predictable rule in determining whether a claim is property of the estate. A bankruptcy debtor cannot be expected to predict and disclose possible future injury by each and every product he or she has previously used. Under the rule that a cause of action is property of the estate if it is rooted in the debtor's pre-bankruptcy past, there is no way of knowing how far back the root would go. Under the discovery rule, tort claims accrue on the date the injury is discovered or with reasonable diligence should have been discovered, whichever occurs first. Thus, here, whether the Chapter 7 debtor's claim for damages arising from a defective prepetition hip replacement was property of the estate could not be decided on motions for summary judgment and required further discovery.

Eighth Circuit (5) R

Boellner v. Dowden, --- Fed. Appx. ----, 2015 WL 2193045 (8th Cir., May 12, 2015)

(case no. 14-2816) Text of opinion

- **Substantive consolidation:** Substantive consolidation of two bankruptcy estates means the assets and liabilities of both debtors are pooled. In assessing the propriety of substantive consolidation, a court must determine (1) whether there is a substantial identity between the assets, liabilities, and handling of financial affairs between the debtor spouses; and (2) whether harm will result from permitting or denying consolidation. *In re Reider*, 31 F.3d 1102 (11th Cir. 1994). Ultimately, the court must be persuaded that the creditors will suffer greater prejudice in the absence of consolidation than the debtors (and any objecting creditors) will suffer from its imposition.

- **Substantive consolidation:** The bankruptcy court did not err in granting the Chapter 7 trustee's motion to jointly administer and substantively consolidate the married Chapter 7 debtors' individual bankruptcy cases, where the trustee wanted to prevent the debtor wife from claiming state exemptions while the debtor husband claimed federal exemptions. The evidence was sufficient to show that a substantial identity existed between the assets, liabilities, and handling of the debtors' financial affairs. The evidence was also sufficient to establish the harm to creditors if the two cases proceeded separately, as the debtors' separate bankruptcy estates would have significantly less value than if their cases were substantively consolidated and the debtors were forced to choose either federal or state exemptions.

In re Diamond, 530 B.R. 451 (8th Cir. B.A.P., May 11, 2015), reh'g denied (May 21, 2015), appeal filed, Case No. 15-2408 (8th Cir., filed June 30, 2015)

(case no. 15-6002) Text of opinion

- **Dischargeability of debt—Unlisted debt under Code § 523(a)(3)(B):** A creditor who did not receive notice from the court of the debtor's bankruptcy petition, but who had actual notice of the bankruptcy case 22 days before the deadline for filing a nondischargeability complaint under Code § 523(a)(4), was bound by the bar date for filing nondischargeability complaints and could not assert that the debt was nondischargeable under § 523(a)(3)(B).

In re Dunaway, 531 B.R. 267 (Bankr. W.D. Mo., May 19, 2015), appeal filed, Dunaway v. LVNV Funding, LLC, Case No. 4:15-cv-415 (W.D. Mo., filed June 2, 2015)

(case no. 4:14-bk-41073; adv. proc. no. 4:14-ap-4132) (Bankruptcy Judge Dennis R. Dow)

Text of opinion

- **Fair Debt Collection Practices Act:** While filing a proof of claim in a bankruptcy case is an action to collect on a debt, filing a proof of claim for a time-barred debt is not

deceptive, unfair or unconscionable and therefore does not violate the Fair Debt Collection Practices Act. Because of this conclusion, the court did not have to decide whether the Bankruptcy Code precluded an action under the FDCPA for filing a proof of claim for a time-barred debt.

In re Kellerman, 531 B.R. 219 (Bankr. E.D. Ark., May 26, 2015), **appeal filed**, Kellerman v. Rice, Case No. 4:15-cv-347 (E.D. Ark., filed June 11, 2015)

(case no. 4:09-bk-13935) (Chief Bankruptcy Judge Richard D. Taylor) Text of opinion

- **Property of the estate—Exemptions—Under federal law:** The Chapter 7 debtor husband caused his self-directed IRA to engage in prohibited transactions as defined in 26 U.S.C. § 4975(c)(1), so that under 26 U.S.C. § 408(e) the IRA lost its tax-exempt status as of January 1, 2007, and the debtors could not exempt the IRA under Code § 522(d)(12).

In re Miltenberger, 531 B.R. 228 (Bankr. W.D. Mo., May 8, 2015)

(case no. 2:14-bk-20743; adv. proc. no. 2:14-ap-2024) (Bankruptcy Judge Dennis R. Dow)

Text of opinion

- **Dischargeability of debt—Elements under Code § 523(a)(2)(A):** To obtain a determination that a debt is nondischargeable under Code § 523(a)(2)(A), a creditor must prove five discrete elements: (1) that the debtor made a representation; (2) that the debtor knew the representation was false at the time it was made; (3) that the debtor made the representation deliberately and with the intention and purpose of deceiving the creditor; (4) that the creditor relied on the representation; and (5) that the creditor sustained the alleged loss as the proximate result of the representation having been made. *In re Guske*, 243 B.R. 359 (8th Cir. B.A.P. 2000).

- **Dischargeability of debt—For misrepresentation under Code § 523(a)(2)(A):** Even assuming that the Chapter 7 debtor presented the creditor with a guaranty that contained his wife's forged signature, the creditor failed to establish that the debtor was aware of this forgery and had knowingly made a false representation to the creditor; accordingly, the debt was dischargeable under Code § 523(a)(2)(A).

Ninth Circuit (12) R

In re Eberts, 607 Fed. Appx. 683 (9th Cir., May 26, 2015)

(case no. 13-55691) Text of opinion

- **Dischargeability of debt—Interest as included in nondischargeable debt:** The federal prejudgment interest rate applies to nondischargeability proceedings unless the equities of the case require a different rate. *Banks v. Gill Distrib. Ctrs., Inc.*, 263 F.3d 862 (9th Cir. 2001).

In re Bea, 533 B.R. 283 (9th Cir. B.A.P., May 29, 2015)

(case no. 14-1376) Text of opinion

- **Chapter 13—Confirmation of plan—Treatment of secured claims—Acceptance of plan by creditor:** The bankruptcy court did not err in confirming a Chapter 13 plan under which monthly payments to secured creditors did not begin until month seven, in order to pay the debtor's attorney's fees first, where the creditors did not object to the plan, and the creditors' silence constituted acceptance of the plan under Code § 1325(a)(5)(A). While the plan did not pay the creditors adequate protection payments over its first six months, the provision for "adequate protection" in § 1325(a)(5)(B)(iii)(II) is not the type of clear, "self-executing" provision of the Bankruptcy Code that, under *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S.Ct. 1367, 176 L.Ed.2d 158 (2010), would preclude the bankruptcy court from treating the secured creditors' failure to object to confirmation as acceptance for purposes of § 1325(a)(5)(A).

In re Escoto, 2015 WL 2343461 (9th Cir. B.A.P., May 15, 2015)

(case no. 14-1358) Text of opinion

- **Dischargeability of debt—Elements under Code § 523(a)(2)(A):** In order to prevent the discharge of a debt under Code § 523(a)(2)(A), a creditor must prove: (1) misrepresentation, fraudulent omission2 or deceptive conduct by the debtor; (2) knowledge of the falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct. *In re Hashemi*, 104 F.3d 1122 (9th Cir. 1996).

- **Dischargeability of debt—For misrepresentation under Code § 523(a)(2)(A):** When the alleged fraud under Code § 523(a)(2)(A) consists of a fraudulent omission or concealment, the creditor must show that the omission was material. If materiality is established, then the court typically may presume that the creditor justifiably relied on the omission. Materiality also frees the creditor from proving some aspects of causation--that he or she would have acted differently but for the fraudulent omission. See *In re Apte*, 96 F.3d 1319 (9th Cir. 1996); *In re Tallant*, 218 B.R. 58 (9th Cir. B.A.P. 1998). But nothing in these cases suggests that proof of materiality renders it unnecessary for the creditor to prove whether and to what extent he or

she incurred damages as a result of the fraud. Nor should these decisions be interpreted in such a broad fashion as to entirely displace the causation and damages elements ordinarily required for a judgment of non-dischargeability.

- **Dischargeability of debt—For misrepresentation under Code § 523(a)(2)(A):** To prove causation on a § 523(a)(2)(A) claim based on an extension, a renewal, or a refinance, a creditor must show "that it had valuable collection remedies at the time it agreed to renew, and that such remedies lost value during the renewal period." *In re Siriani*, 967 F.2d 302 (9th Cir. 1992).

- **Dischargeability of debt—For misrepresentation under Code § 523(a)(2)(A):** A creditor's forbearance from the exercise of a right to accelerate the maturity date of an existing debt constitutes an extension of credit for the purpose of Code § 523(a)(2). *Field v. Mans*, 157 F.3d 35 (1st Cir. 1998).

In re Partida, 531 B.R. 811 (9th Cir. B.A.P., May 27, 2015), **appeal filed**, Case No. 15-60045 (9th Cir., filed June 29, 2015)

(case no. 14-1482) Text of opinion

- **Automatic stay—Exceptions to stay—Non-bankruptcy statutory exceptions:** The Mandatory Victims Restitution Act, which provides in 18 U.S.C. § 3613(a) that, "[n]otwithstanding any other Federal law, the United States may enforce a judgment imposing criminal fines "against all property or rights to property of the person fined" creates an exception to the automatic stay.

In re Plyam, 530 B.R. 456 (9th Cir. B.A.P., May 5, 2015)

(case no. 14-1362) Text of opinion

- **Appellate procedure—Waiver of issue:** An appellate court may exercise discretion, based on exceptional circumstances, to consider issues waived by the appellant. *In re Mortgage Store, Inc.*, 773 F.3d 990 (9th Cir. 2014).

- **Dischargeability of debt—For willful and malicious injury under Code § 523(a)(6):** Because punitive damages may be awarded under California law based on malice, oppression or fraud, an award of punitive damages does not satisfy the standard of willfulness under § 523(a)(6) unless the award identifies the predicate for the award. Findings that are clearly and solely based on a finding of intentional malice, fraud, or both would be sufficient to meet the willfulness requirement of § 523(a)(6).

- **Dischargeability of debt—For willful and malicious injury under Code § 523(a)(6):** In California, the elements for a breach of fiduciary duty are the existence of a fiduciary relationship, breach of that fiduciary duty, and damages. There is no particular scienter requirement, let alone a requirement of a subjective intent to injure. As a result, without more, a judgment for breach of fiduciary duty under California law cannot support a willfulness determination under Code § 523(a)(6).

- **Dischargeability of debt—For defalcation by fiduciary under Code § 523(a)(4):** Whether a debtor is a fiduciary for the purposes of Code § 523(a)(4) is a question of federal law. *In re Lewis*, 97 F.3d 1182 (9th Cir. 1996). The definition is construed narrowly, requiring that the fiduciary relationship arise from an express or technical

trust that was imposed prior to the wrongdoing that caused the debt. *Ragsdale v. Haller*, 780 F.2d 794, 796 (9th Cir. 1986).

- **Dischargeability of debt—For defalcation by fiduciary under Code § 523(a)(4):** Whether an express or technical trust existed for the purpose of Code § 523(a)(4) was determined under Nevada law with respect to the debtor's conduct as the manager of a limited liability company organized under Nevada law, as a California statute that was in effect at the time of the underlying events provided that "[t]he laws of the state ... under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability and authority of its managers and members."

In re Savage, 2015 WL 2452626 (9th Cir. B.A.P., May 20, 2015)

(case no. 14-1074) Text of opinion

- **Chapter 7—Denial of discharge—Award of attorney's fees:** Because a creditor's adversary proceeding to deny the Chapter 7 debtor's discharge under Code § 727 was not an action on the parties' contract, the debtor, who prevailed, was not entitled to recover attorney's fees from the creditor under Cal. Civ. Code § 1717, which provides for mutuality of contractual attorney fee provisions.

In re Lua, 529 B.R. 766 (Bankr. C.D. Cal., May 1, 2015), **appeal dismissed**, Case No. 2:15-cv-4026 (C.D. Cal., August 13, 2015)

(case no. 2:11-bk-41173) (Bankruptcy Judge Deborah J. Saltzman) Text of opinion

- **Property of the estate—Exemptions—Amendment of exemptions—Denial of amendment:** The Chapter 7 debtor was equitably estopped, under California law, from amending her claimed exemptions, where the debtor initially amended her exemption schedules to disclaim any interest in residential property at which she lived with her non-debtor husband and to eliminate the homestead exemption that she had previously claimed in this property, and three years later, after the Chapter 7 trustee had successfully pursued an investigation to establish the estate's interest in the property, negotiated a settlement with the debtor's husband, and employed a broker to sell property, the debtor again amended her exemption schedule in order to claim a homestead exemption in the sales proceeds.

In re Moser, 530 B.R. 872 (Bankr. D. Or., May 13, 2015)

(case no. 3:14-bk-35900) (Bankruptcy Judge Peter C. McKittrick) Text of opinion

- **Dischargeability of debt—Status as domestic support obligation:** A debt arising from a state-court judgment awarding the Chapter 13 debtor's former husband attorney's fees in a proceeding to modify child custody was in the nature of support, and therefore was a domestic support obligation, as the basis of the attorney's fee award was litigation over the best interests of the parties' child, and this benefited the child.

In re Porras, 2015 WL 2357723 (Bankr. N.D. Cal., May 14, 2015)

(case no. 5:12-bk-58699) (Bankruptcy Judge M. Elaine Hammond) Text of opinion

- **Chapter 13—Modification of confirmed plan:** When a motion to modify a Chapter 13 plan is disapproved, the terms of the proposed modification apply from the time that the motion is filed until the modification is disapproved. When the modification is disapproved, the plan terms revert to those provided in the confirmed plan in effect immediately prior to the filing of the modification, as if the modification had never been filed. The court declined to follow the approach taken in *In re Taylor*, 215 B.R. 882 (Bankr. S.D. Cal. 1997), under which the terms of the proposed modified plan controlled during the interim period prior to disapproval of the modification, at which point the terms of the original plan resumed effect.

- **Property of the estate—In Chapter 13 case—Effect of plan confirmation:** Under Code § 1327(b), upon confirmation of a Chapter 13 plan, all property of the estate not only remains in the debtor's possession but also vests in the debtor, unless the plan provides otherwise. Here, where the Chapter 13 debtor's plan provided that all property would vest in him upon confirmation, $10,000 in unauthorized fees disgorged by the Chapter 13 debtor's prior attorney was estate property that vested in the debtor upon the confirmation of his plan, so that the Chapter 13 trustee was to return the funds to the debtor rather than distributing them to creditors.

In re Thiel, 2015 WL 2398555 (Bankr. D. Idaho, May 18, 2015)

(case no. 1:11-bk-2703; adv. proc. no. 1:14-ap-6028) (Bankruptcy Judge Jim D. Pappas)

Text of opinion

- **Property of the estate—In Chapter 13 case—Effect of plan confirmation:** Applying the estate termination approach adopted in *In re Jones*, 420 B.R. 506 (9th Cir. B.A.P. 2009), aff'd on other grounds, 657 F.3d 921 (9th Cir. 2011), the court held that $8,100 that the Chapter 13 debtor was to receive under her divorce decree when the martial residence was sold, and that the plan confirmation order required the debtor to turn over upon the sale of the residence, was not property of the estate. The debtor's confirmed plan dictated that property of the estate would vest in the debtor upon plan confirmation, and the confirmation order did not clearly provide that the $8,100 would remain property of the estate.

In re Weilert, 530 B.R. 830 (Bankr. E.D. Cal., May 26, 2015)

(case no. 1:13-bk-16155) (Bankruptcy Judge W. Richard Lee) Text of opinion

- **Property of the estate—Exemptions—Under state law:** The debtors could exempt their private IRAs under Cal. Civ. Proc. Code § 704.140(a)(3), which permits the exemption of qualified IRAs "to the extent the amounts held in the ... accounts do not exceed the maximum amounts exempt from federal income taxation," where the debtors did not fund their IRAs beyond permitted levels, so that the IRAs were tax-exempt, even though the debtors' contributions to the IRAs were not deductible from the debtors' income in calculating their federal income tax. The court said it was not persuaded that the phrase "exempt from federal income taxation" in the statute meant "actually deducted from the Debtors' income."

In re Woods, 2015 WL 2375392 (Bankr. D. Haw., May 15, 2015), appeal filed, Sebetich v. Woods, Case No. 1:15-cv-233 (D. Hawaii, filed June 18, 2015)

(case no. 1:14-bk-39; adv. proc. no. 1:14-ap-90019) (Bankruptcy Judge Robert J. Faris)

Text of opinion

- **Issue preclusion—Elements under state law:** Under Hawaii law, issue preclusion prevents parties from relitigating issues already decided in prior proceedings. The party asserting issue preclusion must prove five elements. First, the issues to be precluded must be identical to the ones decided in the prior proceeding. Second, the issues must have been actually litigated in the prior proceeding. Third, the issues must have been necessarily decided. Fourth, the decision must have been final and on the merits. Finally, the party to be precluded must be identical to or in privity with a party to the prior proceeding.

- **Chapter 13—Revocation of plan confirmation:** Under Code § 1330(a), the court may revoke an order confirming a Chapter 13 plan upon a timely request "if such order was procured by fraud." Fraud is the only basis for revocation of a confirmation order; equitable grounds will not suffice.

- **Chapter 13—Revocation of plan confirmation:** The creditor did not establish the Chapter 13 debtor's fraud, so there was no basis for revocation of the confirmation of the debtor's Chapter 13 plan under Code § 1330(a), where the Chapter 13 debtor did not intend to deceive the court, the trustee, or the creditors in any manner in connection with the confirmation of his plan, and, to the extent certain of the debtor's representations were untrue, they were not material.

Tenth Circuit (7) R

Rindlesbach v. Jones, 532 B.R. 850 (D. Utah, May 28, 2015), appeal filed, Case No. 15-4088 (10th Cir., filed June 29, 2015)

(case no. 2:14-cv-577) (District Judge Clark Waddoups) Text of opinion

- **Appellate procedure—Standing to appeal:** For a debtor to have appellate standing, he must qualify as a person aggrieved, with his rights or interests being directly and adversely affected pecuniarily by the order of the bankruptcy court. Accordingly, unless the estate is solvent and the excess will eventually go to the debtor, or the matter involves rights unique to the debtor, the debtor is not a party aggrieved by orders affecting the administration of the bankruptcy estate. *In re C.W. Mining Co.*, 636 F.3d 1257 (10th Cir. 2011).

- **Appellate procedure—Standing to appeal:** The Chapter 7 debtor was not a "person aggrieved" with standing to appeal a provision of a court-approved settlement, between the Chapter 7 trustee and certain creditors, that provided for the entry of a $2.6 million judgment against the debtor in the creditors' pending state-court litigation against the debtor and others, where the judgment was intended only to permit the creditors to pursue fraudulent transfer claims against third parties. The debtor asserted that, if this judgment were entered, he would be burdened with post-discharge liability that would be reflected on his credit report and would adversely affect his access to credit. The court replied, however, that the debtor failed to present any evidence that a post-discharge judgment would affect his credit prospects beyond the impact that his Chapter 7 bankruptcy—which would remain on his credit report for ten years—had already had, that he would not be able to persuade creditors that the claims had been discharged, or that he would receive credit on less favorable terms. Because the debtor bore the burden of establishing he had standing, he could not rely on mere speculative harm. Moreover, because a judgment for a discharged debt was void under Code § 524, it was improbable that the debtor would be harmed by the entry of a judgment against him. If the creditors attempted to collect on the judgment, the debtor would have recourse to seek sanctions for violation of the discharge order.

In re Brines, 2015 WL 3476695 (Bankr. D. Kan., May 28, 2015)

(case no. 5:14-bk-40442) (Bankruptcy Judge Janice Miller Karlin) Text of opinion

- **Chapter 13—Co-debtor stay:** A business entity, even one wholly owned by Chapter 13 debtors, is not an "individual" protected by the codebtor stay under Code § 1301. *In re McCormick*, 381 B.R. 594 (Bankr. S.D. N.Y. 2008).

In re Gaines, 2015 WL 2376323 (Bankr. D. Kan., May 14, 2015)

(case no. 6:14-bk-11766) (Chief Bankruptcy Judge Robert E. Nugent) Text of opinion

- **Joint bankruptcy petition:** Kansas recognizes common law marriages: If each member of a couple has the capacity to marry, intends to be married, and holds him- or herself

out as husband and wife, common law deems them wed. Here, however, the joint debtors did not establish the elements of a common-law marriage, even if they had the capacity to marry and held themselves out to others as husband and wife, since the evidence did not demonstrate that the debtors had, as of the petition date, a present intention to be married. While it was a close question, two pieces of documentary evidence were particularly damning to the debtors' claim of a present marriage agreement. First, the debtors did not file tax returns as married people until they filed their 2014 returns, doing so long after their case was filed and long after the trustee had filed her motion to dismiss, making it clear to the debtors that she was challenging their eligibility to be joint debtors. Second, when the debtors signed a "Document of Domestic Partnership" to obtain health care coverage for the female debtor as a dependent under the male debtor's employer's plan, they certified that they were "not married to each other."

In re Gallegos, 2015 WL 2097834 (Bankr. D. N.M., May 4, 2015)

(case no. 1:13-bk-13689; adv. proc. no. 1:14-ap-1017) (Chief Bankruptcy Judge Robert H. Jacobvitz) Text of opinion

- **Dischargeability of debt—Elements under Code § 523(a)(2)(A):** A creditor seeking to except its debt from discharge under Code § 523(a)(2)(A) based on a false representation must prove that (1) the debtor made a false representation; (2) the debtor made the representation with the intent to deceive the creditor; (3) the creditor relied on the representation; (4) the creditor's reliance was justifiable; and (5) the debtor's representation caused the creditor to sustain a loss. *In re Riebesell*, 586 F.3d 782 (10th Cir. 2009).

- **Dischargeability of debt—For misrepresentation under Code § 523(a)(2)(A):** The debtor's debt to the state for $3,375 in unemployment benefits that the debtor received while she was working 14 to 15 hours per week was nondischargeable under Code § 523(a)(2)(A). See *In re Bell*, 2014 WL 6819714 (Bankr. D. N.M. 2014); *In re Searle*, 2014 WL 1407308 (Bankr. D. N.H. 2014); *In re Sanderson*, 509 B.R. 206 (Bankr. W.D. Wis. 2014); *In re Platt*, 2014 WL 457739 (Bankr. D. Neb. 2014). The debtor knew she was required to report her wages to the state but intentionally misrepresented her employment status in order to collect more unemployment benefits. She did so because she believed her unemployment benefits were insufficient to cover her living expenses.

In re Jackson, 2015 WL 3465762 (Bankr. D. Kan., May 29, 2015)

(case no. 2:14-bk-20808) (Bankruptcy Judge Dale L. Somers) Text of opinion

- **Chapter 13—Confirmation of plan—Good faith under Code § 1325(a)(3):** Ordinarily, a Chapter 13 debtor cannot use money that would otherwise go to his or her unsecured creditors in order to accelerate the payments on a secured debt and pay it off faster than the prepetition security agreement requires. See *In re Pearson*, 398 B.R. 97 (Bankr. M.D. Ga. 2008) (plan proposing to accelerate payments on secured debts and pay them in full before paying anything to unsecured creditors was not proposed in good faith); *In re Liles*, 292 B.R. 138 (Bankr. E.D. Tex. 2002) (plan proposing to pay almost $980 per month, instead of $408 required, on secured debt not proposed in good faith because it would take money from unsecured creditors to accelerate secured debt for debtors' benefit); *In re Crussen*, 264 B.R. 723 (Bankr. W.D. Okla. 2001) (plan proposing to pay extra $650 per month on second mortgage

to pay it off in 36 months while paying unsecured creditors only 44% was example of attempt to manipulate and abuse bankruptcy system in manner court would not permit). But see *In re Elrod*, 270 B.R. 258 (Bankr. E.D. Tenn. 2001) (Chapter 13 plan was proposed in good faith even though the debtors, by increasing their monthly mortgage payments by $25 per month beyond that required by the mortgage, were building up equity in their home at the expense of unsecured creditors). Thus, here, the above-median Chapter 13 debtor's plan was not proposed in good faith for the purpose of Code § 1325(a)(3) where the plan provided that a secured motor vehicle debt, which was required to be paid in full because the vehicle was purchased within 910 days of the debtor's bankruptcy filing, would be paid in full over the 60-month plan term, rather than over the remaining 65 months of the parties' 72-month financing contract; the filed, nonpriority unsecured claims in the case totaled $18,805; and maintaining payments under the parties' contract, rather than accelerating payments, would make an additional $3,152 available to unsecured creditors over the term of the debtor's plan.

In re Jones, Case No. 5:14-bk-40876 (Bankr. D. Kan., May 7, 2015)

(Bankruptcy Judge Janice Miller Karlin) Text of opinion

- **Property of the estate—Exemptions—Amendment of exemptions—Denial of amendment:** As a result of the Supreme Court's decision in *Law v. Siegel*, it is clear that there is no federal authority to deny the debtor's amended exemptions due to her alleged bad faith delay in claiming the exemption.

- **Property of the estate—Exemptions—Amendment of exemptions—Denial of amendment:** Denying the objection of the Chapter 7 trustee, who asserted that the debtor delayed in claiming an exemption and allegedly engaged in a pattern of inexcusable conduct, to the debtor's amended claim of exemptions, the court said that Kansas did not recognize the waiver of state-created personal property exemptions under the circumstances presented here. The debtor, who amended her exemptions to claim a portion of her income tax refund as an earned income credit, made no "express declaration or unequivocal act" waiving the exemption, and she was actually rather prompt in claiming the exemption upon learning that she was eligible for it.

In re Smith, 2015 WL 2452946 (Bankr. D. Kan., May 19, 2015)

(case no. 2:14-bk-21191) (Bankruptcy Judge Dale L. Somers) Text of opinion

- **Chapter 13—Allowance of attorney's fees:** Because the Chapter 13 debtor's discussion with her attorney regarding changes in her mortgage payment involved an "aspect" of the debtor's bankruptcy case, the attorney would not be allowed additional fees for this time, as the Disclosure of Compensation of Attorney for Debtor form filed by the attorney stated that he would provide "legal service for all aspects of the bankruptcy case" in return for the fee specified in the disclosure. And this was true even if the debtor's retention agreement with the attorney allowed him to apply for additional fees. See *In re Eland*, 2014 WL 718264 (Bankr. D. Kan., Feb. 24, 2014). On the other hand, the time spent by the attorney with the debtor in discussing strategies to rebuild the debtor's credit standing did not involve an "aspect" of her bankruptcy case, so the Disclosure did not prevent the attorney from recovering an additional fee for that time. However, because the discussion was not sufficiently connected with the debtor's bankruptcy case to be allowable under Code § 330(a)(4)(B) as an administrative expense, the attorney could not collect it through the debtor's plan. The

fee for that time was simply a postpetition obligation the debtor incurred, which the attorney could collect from the debtor herself.

Eleventh Circuit (8) R

Williams v. Resurgent Capital Servs., L.P., 2015 WL 3440321 (M.D. Ala., May 28, 2015)

(case no. 2:15-cv-254) (Chief District Judge W. Keith Watkins)

Text of opinion Text of bankruptcy court opinion

- **Fair Debt Collection Practices Act—Timeliness of action:** The district court adopted the recommendations stated in *In re Williams*, 2015 WL 3429365 (Bankr. M.D. Ala., April 2, 2015) (case no. 2:10-bk-31037; adv. proc. no. 2:14-ap-3118), in which the bankruptcy court concluded that the Chapter 13 debtor's "*Crawford* claim" (i.e., a claim that a creditor's filing a proof of claim for a time-barred debt violated the Fair Debt Collection Practices Act) was precluded by the one-year statute of limitations in the Act. In cases in which an alleged FDCPA violation is based upon the filing of a proof of claim in bankruptcy, courts have ruled, the bankruptcy court said, that the limitations period begins to run with the filing of the proof of claim. See *In re Simmerman*, 463 B.R. 47 (Bankr. S.D. Ohio 2011); *Kline v. Mortgage Electronic Sec. Systems*, 659 F.Supp.2d 940 (S.D. Ohio 2009); *In re Rice–Etherly*, 336 B.R. 308 (Bankr. E.D. Mich. 2006). The bankruptcy court agreed with this view and declined to embrace the debtor's contention that the violation continued so long as the claim was allowed. Thus, here, where the creditor's proof of claim was filed in 2010, the debtor's claim was untimely.

In re Brown, 533 B.R. 344 (Bankr. M.D. Fla., May 20, 2015)

(case no. 8:09-bk-27844) (Bankruptcy Judge Michael G. Williamson) Text of opinion

- **Dischargeability of debt—For governmental fine, penalty or forfeiture under Code § 523(a)(7):** Code § 523(a)(7) excepts from discharge the penalties related to the taxes exempted from discharge under § 523(a)(1). The Eleventh Circuit in *Burns v. U.S.*, 887 F.2d 1541 (11th Cir. 1989) confirmed this interpretation, stating that "[a] tax penalty is discharged if the tax to which it relates is discharged ... or if the transaction or event giving rise to the penalty occurred more than three years prior to the filing of the bankruptcy petition."

- **Chapter 13—Confirmation of plan—Effect on nondischargeable claim:** The confirmation of the debtors' Chapter 13 plan, which treated the penalties portion of the IRS's tax claim as nonpriority unsecured debt, did not have the effect of rendering the tax penalties dischargeable, where they clearly were nondischargeable under Code § 523(a)(7). See *In re Newman*, 402 B.R. 908 (Bankr. M.D. Fla. 2009).

In re Chabre, 531 B.R. 875 (Bankr. M.D. Fla., May 27, 2015)

(case no. 3:14-bk-4981) (Bankruptcy Judge Paul M. Glenn) Text of opinion

- **Means test—Special circumstances:** The Chapter 7 debtor's additional expenses for the support of elderly or disabled family members qualified as a special circumstance and rebutted the presumption of abuse. The debtor was the primary source of support for

at least five of her elderly or dependent relatives, and, while the debtor entered $908.70 in line 35 of her Form 22A as expenses that she paid for the care and support of elderly, chronically ill, or disabled members of her household or immediate family, it was reasonable to expect that the amount of support that the debtor provided might exceed the sum of $1,000 per month. Further, given the nature of the family members' disabilities, it appeared that the need for the debtor's support was permanent, and that the amount of the support was unlikely to decrease.

- **Means test—Special circumstances:** The Chapter 7 debtor's additional expenses for the treatment of her medical conditions qualified as a special circumstance and rebutted the presumption of abuse, where the debtor might require neck surgery, was a diabetic, and had had stomach bypass surgery, all of which required the debtor to take a number of prescription medications. While the debtor completed line 31 of Form 22A by stating that she paid $545 per month for health care expenses not covered by insurance, the debtor testified that her employment required extensive travel, and that her conditions might adversely affect her ability to continue working. At the hearing on the matter, the U.S. Trustee recognized that the debtor's health issues were real. Although the debtor had insurance coverage through her employer, her medical conditions created expenses and difficulties that were in addition to the expenses disclosed on Form 22A.

In re Fazzary, 530 B.R. 903 (Bankr. M.D. Fla., May 21, 2015)

(case no. 3:14-bk-5515) (Bankruptcy Judge Paul M. Glenn) Text of opinion

- **Authority of the court—Imposition of sanctions—Under Rule 9011:** Sanctions under Bankruptcy Rule 9011 are warranted when (1) the papers are frivolous, legally unreasonable or without factual foundation, or (2) the pleading is filed in bad faith or for an improper purpose. *In re Mroz*, 65 F.3d 1567 (11th Cir. 1995). Filing a bankruptcy petition in bad faith may constitute conduct that is sanctionable under Rule 9011. See *In re Ktona*, 329 B.R. 105 (Bankr. M.D. Fla. 2005); *In re Addon Corporation*, 231 B.R. 385 (Bankr. N.D. Ga. 1999). In determining whether a bankruptcy petition was filed in bad faith, courts generally consider the totality of the circumstances surrounding the filing. *In re Russell*, 2012 WL 5934648 (Bankr. M.D. Ala. 2012) (citing *In re Kitchens*, 702 F.2d 885 (11th Cir. 1983).

- **Authority of the court—Imposition of sanctions—Under Rule 9011:** The debtor's Chapter 13 petition was filed in bad faith and for an improper purpose, warranting the imposition of sanctions on the debtor and his counsel under Bankruptcy Rule 9011, although the debtor contended that he filed the petition in order to retain his home, where a foreclosure sale was scheduled for the day on which the debtor filed his petition, the home mortgage debt had been reduced to a prepetition judgment in the amount of $486,404, the debtor was unemployed and failed to show any financial ability to pay the mortgage, no plan was ever proposed that provided for retention of the home, and the debtor did not meaningfully participate in a mortgage modification process.

- **Authority of the court—Imposition of sanctions—Under Rule 9011:** Under Bankruptcy Rule 9011(c)(2), sanctions for a bad faith filing should be "limited to what is sufficient to deter repetition" of the conduct that violated Rule 9011. Under the circumstances of this case, the court found that the written finding of bad faith contained in the court's opinion was sufficient to deter the debtor and the debtor's attorney from filing any future bankruptcy cases for an improper purpose.

In re Green, 2015 WL 2374749 (Bankr. M.D. Fla., May 8, 2015)

(case no. 8:12-bk-9222) (Bankruptcy Judge Michael G. Williamson) Text of opinion

- **Proof of claim—Amendment; Chapter 13—Effect of plan confirmation:** The mortgage creditor's amended proof of claim, filed after the claims bar date and after the debtor's Chapter 13 plan had been confirmed, would not be allowed, both because equitable factors did not weigh in favor of allowing the amendment and because the res judicata effect of a confirmed plan permits amendment of a proof of claim only in the most compelling of circumstances, which the creditor did not establish.

In re Looft, 533 B.R. 910 (Bankr. N.D. Ga., May 28, 2015)

(case no. 1:13-bk-60115; adv. proc. no. 1:13-ap-5249) (Bankruptcy Judge Barbara Ellis Monro)

Text of opinion

- **Dischargeability of debt—Tax debt under Code § 523(a)(1)—Willful evasion:** The Chapter 7 debtor's failure to pay the full amount of the $217,544.42 in delinquent income taxes assessed against him, following the IRS's disallowance of deductions claimed by the debtor, while continuing to live a relatively affluent lifestyle did not rise to the level of "evasion" of his tax debts, within the meaning of Code § 523(a)(1)(C), where the debtor did not under-withhold for taxes and actually continued to withhold at the same level after the IRS garnished his tax refunds for three consecutive years, the debtor did not resort to dealing in cash or close his bank account after the account was levied by the IRS, there was no conveyance of property to others or other attempts to conceal assets, and the debtor and his wife, prior to the debtor's bankruptcy filing, had repaid more than 40% of the amount assessed the IRS. Nor was the debtor's conduct willful.

In re Maddox, 530 B.R. 889 (Bankr. M.D. Ala., May 15, 2015)

(case no. 3:14-bk-81159; adv. proc. no. 3:15-ap-8011) (Chief Bankruptcy Judge William R. Sawyer) Text of opinion

- **Violation of discharge injunction:** A secured motor vehicle creditor violated the discharge injunction issued in the Chapter 13 debtors' prior Chapter 7 case where the creditor filed a proof of claim in the prior case, the debtors' personal liability on the claim was included in their discharge, and the creditor's proof of claim in the current case expressly purported to reserve an unsecured claim for a deficiency if the collateral was liquidated. See *In re McLean*, 2013 WL 5963358 (Bankr. M.D. Ala., Nov. 8, 2013), aff'd, *McLean v. Greenpoint Credit LLC*, 515 B.R. 841 (M.D. Ala., August 25, 2014), aff'd, *In re McLean*, --- F.3d ----, 2015 WL 4480920 (11th Cir., July 23, 2015). See also *In re Moore*, 521 B.R. 280 (Bankr. E.D. Tenn. 2014) (holding that the act of filing a proof of claim on a discharged debt may be a violation of the discharge injunction).

In re Metzler, 530 B.R. 894 (Bankr. M.D. Fla., May 13, 2015)

(case nos. 8:12-bk-16792, 8:13bk9736) (Bankruptcy Judge Michael G. Williamson)

Text of opinion

- **Chapter 7—Surrender of collateral for secured debt; Chapter 13—Confirmation of plan—Treatment of secured claims—Surrender of collateral:** In order for a Chapter 7 debtor to surrender collateral to the secured creditor under Code § 521, or for a Chapter 13 debtor to surrender collateral under Code § 1325(a)(5)(C), the debtor cannot take any overt act to prevent the creditor from foreclosing on its interest in the property. While the Bankruptcy Code does not define the term "surrender," in order to surrender collateral to the secured creditor, the debtor must relinquish the property and make it available to the creditor, although the debtor is not required to deliver the collateral to the creditor.

District of Columbia Circuit (1) R

In re Weldon-Bey, 2015 WL 2128868 (Bankr. D. D.C., May 4, 2015)

(case no. 1:15-bk-93) (Bankruptcy Judge S. Martin Teel, Jr.) Text of opinion

- **Automatic stay—Exception under Code § 362(b)(22):** Because the certification filed by the debtor did not meet the requirements of Code § 362(l)(1), there was no need for the debtor's landlord to file an objection to the debtor's certification: the automatic stay as to the continuation of an eviction proceeding by a landlord with a prepetition judgment for possession of the debtor's residential real property was automatically terminated under Code § 362(b)(22) by the debtor's failure to file a proper certification with his bankruptcy petition. However, the landlord's objection also sought permission to apply the security deposit it held to the outstanding debt under the lease, and such a request required a motion for relief from the automatic stay, including notice of the opportunity to oppose the motion. Section 362(b)(22) applies to eviction when a landlord has a prepetition eviction judgment but not to collection of unpaid rent. The landlord's objection further sought a declaration that it was entitled to commence and continue eviction proceedings. If no judgment had actually been entered prepetition, then § 362(b)(22) did not apply, and a lifting of the automatic stay to pursue eviction proceedings would also require a motion for relief from the automatic stay.

This Issue's New Cases: Full Abstracts

Section One:
Nonchapter-Specific Materials

Part A

Automatic Stay

Existence of Stay

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

Stay exception under Code § 362(b)(22) did not permit landlord to apply debtor's security deposit to rent due, or to commence or continue eviction proceedings in the absence of a prepetition judgment for possession of the leased premises:

Because the certification filed by the debtor did not meet the requirements of Code § 362(l)(1), there was no need for the debtor's landlord to file an objection to the debtor's certification: the automatic stay as to the continuation of an eviction proceeding by a landlord with a prepetition judgment for possession of the debtor's residential real property was automatically terminated under Code § 362(b)(22) by the debtor's failure to file a proper certification with his bankruptcy petition. However, the landlord's objection also sought permission to apply the security deposit it held to the outstanding debt under the lease, and such a request required a motion for relief from the automatic stay, including notice of the opportunity to oppose the motion. Section 362(b)(22) applies to eviction when a landlord has a prepetition eviction judgment but not to collection of unpaid rent. The landlord's objection further sought a declaration that it was entitled to commence and continue eviction proceedings. If no judgment had actually been entered prepetition, then § 362(b)(22) did not apply, and a lifting of the automatic stay to pursue eviction proceedings would also require a motion for relief from the automatic stay.

In re Weldon-Bey, 2015 WL 2128868 (Bankr. D. D.C., May 4, 2015)

(case no. 1:15-bk-93) (Bankruptcy Judge S. Martin Teel, Jr.)

Text of opinion

Mandatory Victims Restitution Act creates exception to automatic stay:

The Mandatory Victims Restitution Act, which provides in 18 U.S.C. § 3613(a) that, "[n]otwithstanding any other Federal law, the United States may enforce a judgment imposing criminal fines "against all property or rights to property of the person fined" creates an exception to the automatic stay.

In re Partida, 531 B.R. 811 (9th Cir. B.A.P., May 27, 2015), **appeal filed**, Case No. 15-60045 (9th Cir., filed June 29, 2015)

(case no. 14-1482)

Text of opinion

Debtors rebutted presumption of bad faith under Code § 362(c)(4), permitting imposition of stay:

Granting the Chapter 13 debtors' motion to impose the automatic stay as to all creditors under Code § 362(c)(4), the court concluded that the debtors had rebutted the presumption that the present case was not filed in good faith. The debtors explained that, while their two prior Chapter 13 cases had been dismissed within the prior year for failure to make plan payments, this was because the debtor husband was laid off during the first case, and in the second case the husband did not monitor plan payments, and thus was unaware that payments were not being made, because he believed payments were made pursuant to a wage order. In this case, the court had entered a wage order, and the husband testified that he had made the first payment under the debtors' plan and that he would monitor payments in order to ensure that payments were being made.

In re Means, 2015 WL 2130408 (Bankr. S.D. Tex., May 5, 2015)

(case no. 3:15-bk-80170) (Bankruptcy Judge Letitia Z. Paul)

Text of opinion

Debtors established good faith under Code § 362(c)(3), permitting extension of stay:

Granting the Chapter 13 debtors' motion to continue the automatic stay under Code § 362(c)(3), the court held that there was insufficient evidence to conclude that the debtor husband's failure to file a mailing matrix in his previous case, leading to the dismissal of the case, was "without substantial excuse" under Code § 362(c)(3)(i)(II)(aa), so that no presumption of bad faith arose under that provision. The creditor has the burden of proof on the issue. *In re Charles*, 334 B.R. 207 (Bankr. S.D. Tex. 2005). The debtors had filed credit counseling certificates, schedules, a statement of financial affairs, a statement of current monthly income and calculation of disposable income, payment advices, and a Chapter 13 plan, which proposed 100% payment to unsecured creditors, and an order had been entered providing for payment of the debtors' plan payments by electronic funds transfer. Accordingly, the court concluded that the present case was filed in good faith.

In re Hooey, 2015 WL 2130514 (Bankr. S.D. Tex., May 5, 2015)

(case no. 4:15-bk-31914) (Bankruptcy Judge Letitia Z. Paul)

Text of opinion

R

Relief from Stay

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

There are no cases in this issue.

R

Violation of Stay

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

Recoupment does not violate automatic stay:

Because the debtor's debt to the Pennsylvania State Employees' Retirement System for overpaid early retirement benefits and the System's obligation to pay the debtor disability pension benefits arose from the same transaction, so that the System could recoup the overpayment from the debtor's disability pension benefits, the System's exercising its right to recoupment did not violate either the automatic stay or the discharge injunction.

In re Thomas, 529 B.R. 628 (Bankr. W.D. Pa., May 1, 2015)

(case no. 7:14-bk-70184; adv. proc. no. 7:14-ap-7032) (Chief Bankruptcy Judge Jeffery A. Deller)

Text of opinion

R

Part B

Dischargeability

Domestic Support Obligations; Other Marital Debts

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

Attorney's fee award in child custody proceeding was domestic support obligation:

A debt arising from a state-court judgment awarding the Chapter 13 debtor's former husband attorney's fees in a proceeding to modify child custody was in the nature of support, and therefore was a domestic support obligation, as the basis of the attorney's fee award was litigation over the best interests of the parties' child, and this benefited the child.

In re Moser, 530 B.R. 872 (Bankr. D. Or., May 13, 2015)

(case no. 3:14-bk-35900) (Bankruptcy Judge Peter C. McKittrick)

Text of opinion

R

Student Loan Debts

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

Code § 523(a)(8) applies to student loan co-signer who is unrelated to borrower:

Affirming *In re Pappas*, 517 B.R. 708 (Bankr. W.D. Tex., Sept. 8, 2014), the district court held that the discharge exception in Code § 523(a)(8) applies to co-signors who are not related to the borrower. Section 523(a)(8) applies to "individual debtor[s]"—making no distinction between student debtors and non-student co-signors, whether related or not.

Corletta v. Texas Higher Educ. Coordinating Bd., 531 B.R. 647 (W.D. Tex. May 19, 2015)

(case no. 5:14-cv-982) (District Judge Robert L. Pitman)

Text of opinion

R

Other Debts

Scope note: Coverage is quite selective.

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

Judgment for sexual harassment was nondischargeable under Code § 523(a)(6):

Under New York law of issue preclusion, a default judgment against the debtor for sexual harassment and retaliation established the elements of Code § 523(a)(6), so that the judgment was nondischargeable as one for a willful and malicious injury.

In re Ferrandina, 533 B.R. 11 (Bankr. E.D. N.Y., May 1, 2015)

(case no. 8:13-bk-73713; adv. proc. no. 8:13-ap-8170) (Bankruptcy Judge Alan S. Trust)

Text of opinion

Debtor owed brother no debt, so there was no debt to be declared nondischargeable:

Affirming *In re Skinner*, 519 B.R. 613 (Bankr. E.D. Pa., Oct. 8, 2014), the district court declared that only a party to whom a debt is owed under the Bankruptcy Code has standing to challenge the dischargeability of that debt. To enforce that limitation, every dischargeability proceeding must first consider whether the creditor holds an enforceable obligation under non-bankruptcy law because, in the absence of an enforceable obligation, there is no "debt" that can be non-dischargeable. Here, the debtor's brother did not establish that the debtor owed him a debt, where the brother alleged that the debtor had dissipated or diverted their mother's assets, with the result that the brother might be liable under Pennsylvania law for medical expenses incurred by the mother, which she had been unable to pay. Accordingly, the bankruptcy court properly dismissed the brother's adversary proceeding, which asserted that the debtor was liable for any financial responsibility the brother might have for their mother's medical expenses, and that the debtor's liability was nondischargeable under Code § 523(a)(4) and § 523(a)(6).

In re Skinner, 532 B.R. 599 (E.D. Pa. May 27, 2015), **appeal filed**, Case No. 15-2590 (3rd Cir., filed June 30, 2015)

(case no. 2:14-cv-6697) (Senior District Judge Michael M. Baylson)

Text of opinion

Collection costs imposed on debtor following criminal conviction were dischargeable under Code § 523(a)(7):

"Collection costs" imposed on the debtor by the court following his criminal conviction, which represented fees due to a private collection company to collect other court costs imposed on the debtor in the criminal proceeding, were dischargeable under Code § 523(a)(7), where the costs were not part of the court's original sentencing order, and the record established that the fees in question were either payable to and for the benefit of a private debt collector, or payable to and for the benefit of the court system, but only as compensation for losses the system incurred by securing private debt collection services.

Similarly, a lien filing fee that was part of the process for collecting previously-imposed court costs in a criminal conviction of the debtor was dischargeable under Code § 523(a)(7), as the fee could not be said to be part of the courts' sentencing order.

Probation supervision fees imposed on the debtor following criminal conviction were compensation for actual pecuniary loss and therefore dischargeable under Code § 523(a)(7):

Probation supervision fees imposed on the debtor following his criminal conviction were dischargeable under Code § 523(a)(7) because the fees were compensation for the relevant governmental unit's actual pecuniary loss.

In re Lopez, 531 B.R. 554 (Bankr. E.D. Pa., May 18, 2015), appeal filed, Lopez v. First Judicial District of Pennsylvania, Case No. 2:12-cv-5037 (E.D. Pa., reopened June 8, 2015), and appeal filed, Case No. 2:15-cv-03522 (E.D., filed June 22, 2015)

(case no. 2:09-bk-13867; adv. proc. no. 2:12-ap-53) (Bankruptcy Judge Stephen Raslavich)

Text of opinion

22 days' notice was sufficient to render Code § 523(a)(3)(B) inapplicable:

A creditor who did not receive notice from the court of the debtor's bankruptcy petition, but who had actual notice of the bankruptcy case 22 days before the deadline for filing a nondischargeability complaint under Code § 523(a)(4), was bound by the bar date for filing nondischargeability complaints and could not assert that the debt was nondischargeable under § 523(a)(3)(B).

In re Diamond, 530 B.R. 451 (8th Cir. B.A.P., May 11, 2015), reh'g denied (May 21, 2015), appeal filed, Case No. 15-2408 (8th Cir., filed June 30, 2015)

(case no. 15-6002)

Text of opinion

Elements of nondischargeability under Code § 523(a)(2)(A):

To obtain a determination that a debt is nondischargeable under Code § 523(a)(2)(A), a creditor must prove five discrete elements: (1) that the debtor made a representation; (2) that the debtor knew the representation was false at the time it was made; (3) that the debtor made the representation deliberately and with the intention and purpose of deceiving the creditor; (4) that the creditor relied on the representation; and (5) that the creditor sustained the alleged loss as the proximate result of the representation having been made. *In re Guske*, 243 B.R. 359 (8th Cir. B.A.P. 2000).

Creditor did not show that debtor knew of fraud for purpose of Code § 523(a)(2)(A):

Even assuming that the Chapter 7 debtor presented the creditor with a guaranty that contained his wife's forged signature, the creditor failed to establish that the debtor was aware of this forgery and had knowingly made a false representation to the creditor; accordingly, the debt was dischargeable under Code § 523(a)(2)(A).

In re Miltenberger, 531 B.R. 228 (Bankr. W.D. Mo., May 8, 2015)

(case no. 2:14-bk-20743; adv. proc. no. 2:14-ap-2024) (Bankruptcy Judge Dennis R. Dow)

Text of opinion

Elements of nondischargeability under Code § 523(a)(2)(A):

A creditor seeking to except its debt from discharge under Code § 523(a)(2)(A) based on a false representation must prove that (1) the debtor made a false representation; (2) the debtor made the representation with the intent to deceive the creditor; (3) the creditor relied on the representation; (4) the creditor's reliance was justifiable; and (5) the debtor's representation caused the creditor to sustain a loss. *In re Riebesell*, 586 F.3d 782 (10th Cir. 2009).

Debt for unemployment benefits obtained through misrepresentation was nondischargeable:

The debtor's debt to the state for $3,375 in unemployment benefits that the debtor received while she was working 14 to 15 hours per week was nondischargeable under Code § 523(a)(2)(A). See *In re Bell*, 2014 WL 6819714 (Bankr. D. N.M. 2014); *In re Searle*, 2014 WL 1407308 (Bankr. D. N.H. 2014); *In re Sanderson*, 509 B.R. 206 (Bankr. W.D. Wis. 2014); *In re Platt*, 2014 WL 457739 (Bankr. D. Neb. 2014). The debtor knew she was required to report her wages to the state but intentionally misrepresented her employment status in order to collect more unemployment benefits. She did so because she believed her unemployment benefits were insufficient to cover her living expenses.

In re Gallegos, 2015 WL 2097834 (Bankr. D. N.M., May 4, 2015)

(case no. 1:13-bk-13689; adv. proc. no. 1:14-ap-1017) (Chief Bankruptcy Judge Robert H. Jacobvitz)

Text of opinion

Nondischargeability under Code § 523(a)(2)(A) requires misrepresentation:

Disagreeing with *McClellan v. Cantrell*, 217 F.3d 890 (7th Cir. 2000), and stating that no subsequent appellate court had adopted that court's interpretation of Code § 523(a)(2)(A), the Court of Appeals held that a misrepresentation is required to establish "actual fraud" under § 523(a)(2)(A). *McClellan* appeared to be in tension with the Supreme Court's opinion in *Field v. Mans*, 516 U.S. 59, 116 S.Ct. 437, 133 L.Ed.2d 351 (1995), which, although not directly addressing the issue, appeared to assume that a false representation was necessary to establish "actual fraud." Moreover, the reasoning in *McClellan* was at best inconsistent with, if not foreclosed by, Fifth Circuit precedent. Finally, although "actual fraud" was added to the statute in 1978, it had been suggested that Congress did not intend to create a separate basis for dischargeability—but rather intended only to codify the limited scope of the fraud exception as expressed in case law interpreting "fraud" to mean actual or positive fraud rather than fraud implied by law. Accordingly, the court affirmed *In re Ritz*, 513 B.R. 510 (S.D. Tex., July 14, 2014), which had affirmed *In re Ritz*, 459 B.R. 623 (Bankr. S.D. Tex. 2011).

Test for "willful and malicious" injury in Fifth Circuit:

Following *Kawaauhau v. Geiger*, 523 U.S. 57, 61, 118 S.Ct. 974, 140 L.Ed.2d 90 (1998), this court has held that an injury is "willful and malicious" for the purpose of Code § 523(a)(6) where "there is either an objective substantial certainty of harm or a subjective motive to cause harm." *In re Miller*, 156 F.3d 598 (5th Cir. 1998). See also *In re McClendon*, 765 F.3d 501 (5th Cir. 2014) ("[A]n individual who acts under an honest, but mistaken belief ... cannot be said to have intentionally caused injury, because absent the fact about which there has been a mistake, legally cognizable injury would not meet the test of substantial certainty."

Bankruptcy court may not use equitable powers to expand scope of nondischargeable debts:

A bankruptcy court's equitable powers "must be exercised in a manner that is consistent with the Bankruptcy Code," and a bankruptcy court is not permitted "to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity." *In re Sadkin*, 36 F.3d 473 (5th Cir. 1994) (per curiam). Accordingly, a creditor could not rely upon general principles of equity to expand the exceptions to the discharge of debts found in Code § 523(a).

In re Ritz, 787 F.3d 312 (5th Cir., May 22, 2015)

(case no. 14-20526)

Text of opinion

Comment: The First Circuit subsequently agreed with *McClellan* in *In re Lawson*, --- F.3d ----, 2015 WL 3982395 (1st Cir., July 1, 2015), pet. for cert. filed, *Lawson v. Sauer Inc.*, Case No. 15-113 (U.S. Sup. Ct., July 24, 2015).

Debt for legal malpractice was nondischargeable under Code § 523(a)(4):

The conduct of the debtor, an attorney, in representing a client in the sale of the client's home while neither speaking the client's language, Polish, nor employing a disinterested interpreter constituted incompetence paired with grossly reckless conduct, so that the debtor's debt to the client's estate for legal malpractice was nondischargeable under Code § 523(a)(4) as defalcation by a fiduciary.

Jahrling v. Estate of Cora, 530 B.R. 679 (N.D. Ill., May 13, 2015), appeal filed, In re Jahrling, Case No. 15-2252 (7th Cir., filed June 10, 2015)

(case no. 1:14-cv-8056) (District Judge James B. Zagel)

Text of opinion

Debtor did not willfully evade payment of taxes for purpose of Code § 523(a)(1)(C):

The Chapter 7 debtor's failure to pay the full amount of the $217,544.42 in delinquent income taxes assessed against him, following the IRS's disallowance of deductions claimed by the debtor, while continuing to live a relatively affluent lifestyle did not rise to the level of "evasion" of his tax debts, within the meaning of Code § 523(a)(1)(C), where the debtor did not under-withhold for taxes and actually continued to withhold at the same level after the IRS garnished his tax refunds for three consecutive years, the debtor did not resort to dealing in cash or close his bank account after the account was levied by the IRS, there was no conveyance of property to others or other attempts to conceal assets, and the debtor and his wife, prior to the debtor's bankruptcy filing, had repaid more than 40% of the amount assessed the IRS. Nor was the debtor's conduct willful.

In re Looft, 533 B.R. 910 (Bankr. N.D. Ga., May 28, 2015)

(case no. 1:13-bk-60115; adv. proc. no. 1:13-ap-5249) (Bankruptcy Judge Barbara Ellis Monro)

Text of opinion

Elements of nondischargeability under Code § 523(a)(2)(A):

In order to prevent the discharge of a debt under Code § 523(a)(2)(A), a creditor must prove: (1) misrepresentation, fraudulent omission2 or deceptive conduct by the debtor; (2) knowledge of the falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct. *In re Hashemi*, 104 F.3d 1122 (9th Cir. 1996).

Dischargeability under Code § 523(a)(2)(A) based on fraudulent omission:

When the alleged fraud under Code § 523(a)(2)(A) consists of a fraudulent omission or concealment, the creditor must show that the omission was material. If materiality is established, then the court typically may presume that the creditor justifiably relied on the omission. Materiality also frees the creditor from proving some aspects of causation--that he or she would have acted differently but for the fraudulent omission. See *In re Apte*, 96 F.3d 1319 (9th Cir. 1996); *In re Tallant*, 218 B.R. 58 (9th Cir. B.A.P. 1998). But nothing in these cases suggests that proof of materiality renders it unnecessary for the creditor to prove whether and to what extent he or she incurred damages as a result of the fraud. Nor should these decisions be interpreted in such a broad fashion as to entirely displace the causation and damages elements ordinarily required for a judgment of non-dischargeability.

Causation under § 523(a)(2)(A) based on extension of term of credit:

To prove causation on a § 523(a)(2)(A) claim based on an extension, a renewal, or a refinance, a creditor must show "that it had valuable collection remedies at the time it agreed to renew, and that such remedies lost value during the renewal period." *In re Siriani*, 967 F.2d 302 (9th Cir. 1992).

Creditor's forbearance constitutes extension of term of credit under Code § 523(a)(2):

A creditor's forbearance from the exercise of a right to accelerate the maturity date of an existing debt constitutes an extension of credit for the purpose of Code § 523(a)(2). *Field v. Mans*, 157 F.3d 35 (1st Cir. 1998).

In re Escoto, 2015 WL 2343461 (9th Cir. B.A.P., May 15, 2015)

(case no. 14-1358)

Text of opinion

Punitive damage award under California law does not necessarily establish willfulness for Code § 523(a)(6):

Because punitive damages may be awarded under California law based on malice, oppression or fraud, an award of punitive damages does not satisfy the standard of willfulness under § 523(a)(6) unless the award identifies the predicate for the award. Findings that are clearly and solely based on a finding of intentional malice, fraud, or both would be sufficient to meet the willfulness requirement of § 523(a)(6).

Judgment for breach of fiduciary duty under California law does not support willfulness determination under Code § 523(a)(6):

In California, the elements for a breach of fiduciary duty are the existence of a fiduciary relationship, breach of that fiduciary duty, and damages. There is no particular scienter requirement, let alone a requirement of a subjective intent to injure. As a result, without more, a judgment for breach of fiduciary duty under California law cannot support a willfulness determination under Code § 523(a)(6).

Fiduciary status for Code § 523(a)(4) requires pre-existing express or technical trust:

Whether a debtor is a fiduciary for the purposes of Code § 523(a)(4) is a question of federal law. *In re Lewis*, 97 F.3d 1182 (9th Cir. 1996). The definition is construed narrowly, requiring that the fiduciary relationship arise from an express or technical trust that was imposed prior to the wrongdoing that caused the debt. *Ragsdale v. Haller*, 780 F.2d 794, 796 (9th Cir. 1986).

Nevada law determined whether trust existed for purpose of Code § 523(a)(4):

Whether an express or technical trust existed for the purpose of Code § 523(a)(4) was determined under Nevada law with respect to the debtor's conduct as the manager of a limited liability company organized under Nevada law, as a California statute that was in effect at the time of the underlying events provided that "[t]he laws of the state ... under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability and authority of its managers and members."

In re Plyam, 530 B.R. 456 (9th Cir. B.A.P., May 5, 2015)

(case no. 14-1362)

Text of opinion

Discharge exception for tax penalties under Code § 523(a)(7), generally:

Code § 523(a)(7) excepts from discharge the penalties related to the taxes exempted from discharge under § 523(a)(1). The Eleventh Circuit in *Burns v. U.S.*, 887 F.2d 1541 (11th Cir. 1989) confirmed this interpretation, stating that "[a] tax penalty is discharged if the tax to which it relates is discharged ... or if the transaction or event giving rise to the penalty occurred more than three years prior to the filing of the bankruptcy petition."

In re Brown, 533 B.R. 344 (Bankr. M.D. Fla., May 20, 2015)

(case no. 8:09-bk-27844) (Bankruptcy Judge Michael G. Williamson)

Text of opinion

R

Other Issues

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

Court may award attorney's fees under Code § 523(d) to pro se debtor who is attorney:

Under Code § 523(d), which permits a bankruptcy court to award costs and attorney fees to a debtor where a creditor's proceeding to hold a consumer debt nondischargeable under Code § 523(a)(2) was not substantially justified, a court may award attorney's fees to a pro se debtor who is an attorney.

Trustees of the Will Cnty. Carpenters, Local 174, Health & Welfare Fund v. Cooney, 532 B.R. 296 (N.D. Ill., May 29, 2015)

(case no. 1:14-cv-9222) (District Judge Harry D. Leinenweber)

Text of opinion

Federal prejudgment interest rate applies to nondischargeability proceedings:

The federal prejudgment interest rate applies to nondischargeability proceedings unless the equities of the case require a different rate. *Banks v. Gill Distrib. Ctrs., Inc.*, 263 F.3d 862 (9th Cir. 2001).

In re Eberts, 607 Fed. Appx. 683 (9th Cir., May 26, 2015)

(case no. 13-55691)

Text of opinion

R

Part C

Jurisdiction and Procedure

Adversary Procedure

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

There are no cases in this issue.

R

Appellate Procedure

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

Appellate standing, generally:

For a debtor to have appellate standing, he must qualify as a person aggrieved, with his rights or interests being directly and adversely affected pecuniarily by the order of the bankruptcy court. Accordingly, unless the estate is solvent and the excess will eventually go to the debtor, or the matter involves rights unique to the debtor, the debtor is not a party aggrieved by orders affecting the administration of the bankruptcy estate. *In re C.W. Mining Co.*, 636 F.3d 1257 (10th Cir. 2011).

Settlement of creditors' claims permitting entry of $2.6 million judgment against Chapter 7 debtor did not render debtor "person aggrieved" with standing to appeal where judgment was only predicate for action against third parties:

The Chapter 7 debtor was not a "person aggrieved" with standing to appeal a provision of a court-approved settlement, between the Chapter 7 trustee and certain creditors, that provided for the entry of a $2.6 million judgment against the debtor in the creditors' pending state-court litigation against the debtor and others, where the judgment was intended only to permit the creditors to pursue fraudulent transfer claims against third parties. The debtor asserted that, if this judgment were entered, he would be burdened with post-discharge liability that would be reflected on his credit report and would adversely affect his access to credit. The court replied, however, that the debtor failed to present any evidence that a post-discharge judgment would affect his credit prospects beyond the impact that his Chapter 7 bankruptcy—which would remain on his credit report for ten years—had already had, that he would not be able to persuade creditors that the claims had been discharged, or that he would receive credit on less favorable terms. Because the debtor bore the burden of establishing he had standing, he could not rely on mere speculative harm. Moreover, because a judgment for a discharged debt was void under Code § 524, it was improbable that the debtor would be harmed by the entry of a judgment against him. If the creditors attempted to collect on the judgment, the debtor would have recourse to seek sanctions for violation of the discharge order.

Rindlesbach v. Jones, 532 B.R. 850 (D. Utah, May 28, 2015), **appeal filed**, Case No. 15-4088 (10th Cir., filed June 29, 2015)

(case no. 2:14-cv-577) (District Judge Clark Waddoups)

Text of opinion

Appellate court has discretion to consider issues waived by appellant:

An appellate court may exercise discretion, based on exceptional circumstances, to consider issues waived by the appellant. *In re Mortgage Store, Inc.*, 773 F.3d 990 (9th Cir. 2014).

In re Plyam, 530 B.R. 456 (9th Cir. B.A.P., May 5, 2015)

(case no. 14-1362)

Text of opinion

R

Other Procedural Issues

Topical compilation: All topical compilations

PDF Word All circuit compilations

Preclusive effect of judgment in federal diversity case is determined by state law:

When a court is asked to give preclusive effect to a federal judgment entered in a diversity case, the second court should apply the "law that would be applied by the state courts in the State in which the federal diversity court sits." *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508, 121 S.Ct. 1021, 149 L.Ed.2d 32 (2001) articulated this rule in a case in which the second court was a state court, but the rule applies as well when the second court is a federal court. *NAS Electronics, Inc. v. Transtech Electronics Pte Ltd.*, 262 F.Supp.2d 134 (S.D. N.Y. 2003).

Elements of issue preclusion under New York law:

Under New York law, issue preclusion is properly invoked when (1) the identical issue necessarily was decided in the prior action and is decisive of the present action, and (2) the party to be precluded from relitigating the issue had a full and fair opportunity to litigate the issue in the prior action. The two-step test is subject to different burdens of proof; that is, the "party seeking the benefit of collateral estoppel has the burden of demonstrating the identity of the issues ... whereas the party attempting to defeat its application has the burden of establishing the absence of a full and fair opportunity to litigate the issue." *Evans v. Ottimo*, 469 F.3d 278 (2d Cir. 2006).

Default judgment may be entitled to issue-preclusive effect under New York law:

Collateral estoppel may be invoked under New York law to preclude a party from relitigating a default judgment. *Kelleran v. Andrijevic*, 825 F.2d 692 (2d Cir. 1987).

Application of issue preclusion under New York law is subject to general notions of fairness:

Issue preclusion under New York law "is a flexible doctrine" whose application depends upon "general notions of fairness involving a practical inquiry into the realities of the litigation." *In re Hyman*, 502 F.3d 61 (2d Cir. 2007).

In re Ferrandina, 533 B.R. 11 (Bankr. E.D. N.Y., May 1, 2015)

(case no. 8:13-bk-73713; adv. proc. no. 8:13-ap-8170) (Bankruptcy Judge Alan S. Trust)

Text of opinion

Propriety of substantive consolidation, generally:

Substantive consolidation of two bankruptcy estates means the assets and liabilities of both debtors are pooled. In assessing the propriety of substantive consolidation, a court must determine (1) whether there is a substantial identity between the assets, liabilities, and handling of financial affairs between the debtor spouses; and (2) whether harm will result from permitting or denying consolidation. *In re Reider*, 31 F.3d 1102 (11th Cir. 1994). Ultimately, the court must be persuaded that the creditors will suffer greater prejudice in the absence of consolidation than the debtors (and any objecting creditors) will suffer from its imposition.

Substantive consolidation of married debtors' individual bankruptcy cases was permissible:

The bankruptcy court did not err in granting the Chapter 7 trustee's motion to jointly administer and substantively consolidate the married Chapter 7 debtors' individual bankruptcy cases, where the trustee wanted to prevent the debtor wife from claiming state exemptions while the debtor husband claimed federal exemptions. The evidence was sufficient to show that a substantial identity existed between the assets, liabilities, and handling of the debtors' financial affairs. The evidence was also sufficient to establish the harm to creditors if the two cases proceeded separately, as the debtors' separate bankruptcy estates would have significantly less value than if their cases were substantively consolidated and the debtors were forced to choose either federal or state exemptions.

Boellner v. Dowden, --- Fed. Appx. ----, 2015 WL 2193045 (8th Cir., May 12, 2015)

(case no. 14-2816)

Text of opinion

Elements of issue preclusion under Hawaii law:

Under Hawaii law, issue preclusion prevents parties from relitigating issues already decided in prior proceedings. The party asserting issue preclusion must prove five elements. First, the issues to be precluded must be identical to the ones decided in the prior proceeding. Second, the issues must have been actually litigated in the prior proceeding. Third, the issues must have been necessarily decided. Fourth, the decision must have been final and on the merits. Finally, the party to be precluded must be identical to or in privity with a party to the prior proceeding.

In re Woods, 2015 WL 2375392 (Bankr. D. Haw., May 15, 2015), appeal filed, Sebetich v. Woods, Case No. 1:15-cv-233 (D. Hawaii, filed June 18, 2015)

(case no. 1:14-bk-39; adv. proc. no. 1:14-ap-90019) (Bankruptcy Judge Robert J. Faris)

Text of opinion

Joint debtors did not establish common-law marriage:

Kansas recognizes common law marriages: If each member of a couple has the capacity to marry, intends to be married, and holds him- or herself out as husband and wife, common law deems them wed. Here, however, the joint debtors did not establish the elements of a common-law marriage, even if they had the capacity to marry and held themselves out to others as husband and wife, since the evidence did not demonstrate that the debtors had, as of the petition date, a present intention to be married. While it was a close question, two pieces of documentary evidence were particularly damning to the debtors' claim of a present marriage agreement. First, the debtors did not file tax returns as married people until they filed their 2014 returns, doing so long after their case was filed and long after the trustee had filed her motion to dismiss, making it clear to the debtors that she was challenging their eligibility to be joint debtors. Second, when the debtors signed a "Document of Domestic Partnership" to obtain health care coverage for the female debtor as a dependent under the male debtor's employer's plan, they certified that they were "not married to each other."

In re Gaines, 2015 WL 2376323 (Bankr. D. Kan., May 14, 2015)

(case no. 6:14-bk-11766) (Chief Bankruptcy Judge Robert E. Nugent)

Text of opinion

Factors relevant to decision to reopen case to administer cause of action:

When considering whether to reopen a closed bankruptcy case to administer a cause of action, a court should consider three interests: (1) the benefit to the debtor; (2) the prejudice or detriment to the party in the pending litigation; and (3) the benefit to the debtor's creditors. *In re Tarrer*, 273 B.R. 724 (Bankr. N.D. Ga. 2010). Here, where a favorable ruling for either party would necessarily impose on its opponent a corresponding detriment, the proper inquiry focused on the effect of reopening the case on the creditors. If the reopening will have no effect on the estate or creditors, and no further administration would be necessary, then the motion to reopen should be denied.

Cause did not exist to reopen Chapter 13 case since plan could not be modified to provide for distribution to creditors from previously-undisclosed cause of action:

Cause did not exist to reopen a previously-closed Chapter 13 case in order to allow the debtors to schedule a cause of action that they sought to pursue following their discharge, and that they had not disclosed while their case was open, where it was not possible for the debtors to modify their plan in order to provide a distribution to creditors from proceeds of the cause of action, as the debtors had already completed the payments under their confirmed plan and received a discharge, and the maximum five-year period over which the debtors could extend their plan had long since passed.

In re Ingram, 531 B.R. 121 (Bankr. D. S.C., May 13, 2015)

(case no. 3:08-bk-581) (Chief Bankruptcy Judge David R. Duncan)

Text of opinion


R

Jurisdiction

Court has jurisdiction to rule on timely motion to reconsider even where notice of appeal has been filed:

The bankruptcy court retained jurisdiction to rule on a timely motion to reconsider even where a notice of appeal had been filed prior to the filing of the motion. *In re Adelphia Communications Corp.*, 327 B.R. 175, 178 (Bankr. S.D.N.Y. 2005).

In re Kadoch, Case No. 5:14-bk-10552 (Bankr. D. Vt., May 8, 2015)

(Bankruptcy Judge Colleen A. Brown)

Text of opinion

Rooker-Feldman doctrine precluded jurisdiction over debtor's claim that mortgage creditor was not entitled to enforce note and mortgage:

The *Rooker-Feldman* doctrine precluded the bankruptcy court's jurisdiction over the Chapter 13 debtor's adversary proceeding, which asserted that the creditor moving for relief from stay participated in a fraud that resulted in the foreclosure of the debtor's mortgage, and that the creditor was not entitled to enforce the note and mortgage.

In re Spencer, 532 B.R. 303 (Bankr. W.D. Wis., May 15, 2015), appeal filed, Spencer v. Federal Home Loan Mortgage Corporation, Case No. 3:15-cv-332 (W.D. Wis., filed June 1, 2015)

(case no. 1:15-bk-11204; adv. proc. no. 1:15-ap-60) (Chief Bankruptcy Judge Catherine Furay)

Text of opinion

R

Part D

Means Test

In General

Topical compilations:

PDF Word (household size)

PDF Word (income)

PDF Word (expenses)

PDF Word (special circumstances)

All topical compilations

All circuit compilations

Debtor's support for elderly and disabled family members was special circumstance rebutting presumption of abuse:

The Chapter 7 debtor's additional expenses for the support of elderly or disabled family members qualified as a special circumstance and rebutted the presumption of abuse. The debtor was the primary source of support for at least five of her elderly or dependent relatives, and, while the debtor entered $908.70 in line 35 of her Form 22A as expenses that she paid for the care and support of elderly, chronically ill, or disabled members of her household or immediate family, it was reasonable to expect that the amount of support that the debtor provided might exceed the sum of $1,000 per month. Further, given the nature of the family members' disabilities, it appeared that the need for the debtor's support was permanent, and that the amount of the support was unlikely to decrease.

Debtor's additional expenses for treatment of her medical conditions were special circumstance rebutting presumption of abuse:

The Chapter 7 debtor's additional expenses for the treatment of her medical conditions qualified as a special circumstance and rebutted the presumption of abuse, where the debtor might require neck surgery, was a diabetic, and had had stomach bypass surgery, all of which required the debtor to take a number of prescription medications. While the debtor completed line 31 of Form 22A by stating that she paid $545 per month for health care expenses not covered by insurance, the debtor testified that her employment required extensive travel, and that her conditions might adversely affect her ability to continue working. At the hearing on the matter, the U.S. Trustee recognized that the debtor's health issues were real. Although the debtor had insurance coverage through her employer, her medical conditions created expenses and difficulties that were in addition to the expenses disclosed on Form 22A.

In re Chabre, 531 B.R. 875 (Bankr. M.D. Fla., May 27, 2015)

(case no. 3:14-bk-4981) (Bankruptcy Judge Paul M. Glenn)

Text of opinion


R

Part E

Proof of Claim

Nature of Obligation as "Claim"; Setoff; Recoupment; Subrogation

Exercise of right of setoff requires relief from stay:

While Code § 553 preserves a creditor's right of setoff, the unilateral setoff of mutual debts without a prior order of the court can constitute a violation of the automatic stay as set forth in Code § 362(a)(7) and is counter to the notion that one creditor should not be afforded preferential treatment in a bankruptcy ahead of other creditors similarly situated. See *In re Corland Corp.*, 967 F.2d 1069 (5th Cir. 1992); *Small Business Administration v. Rinehart*, 887 F.2d 165 (8th Cir. 1989).

Distinction between setoff and recoupment in bankruptcy:

The crucial distinction between setoff and recoupment in bankruptcy is whether the obligation owed by the debtor to the creditor arose out of the same transaction as the obligation owed by the creditor to the debtor. Another significant difference is that setoff is only available when the opposing obligations both arose prepetition, whereas recoupment is not limited by this temporal requirement. See *In re University Medical Center*, 973 F.2d 1065 (3d Cir. 1992); *Lee v. Schweiker*, 739 F.2d 870 (3d Cir. 1984).

Test of "same transaction" for purpose of recoupment:

What constitutes the "same transaction" has been interpreted differently by the various courts that have examined this issue. A number of courts determining whether a "single transaction" has occurred have framed the issue as to whether a "logical relationship" exists between the competing demands. See e.g., *In re Holyoke Nursing Home, Inc.*, 372 F.3d 1 (1st Cir. 2004); *In re TLC Hospitals, Inc.*, 224 F.3d 1008 (9th Cir. 2000); *U.S. v. Consumer Health Servs. of America, Inc.*, 108 F.3d 390 (D.C. Cir. 1997). In the "logical relationship" test, the view of a "single or same transaction" is flexible and allows for a series of occurrences to be considered part of the "same transaction." Other courts, including the Third Circuit, take a more strict view of the "single transaction" requirement for recoupment. In this more narrow view, known as the "integrated transaction" test, a mere logical relationship is not enough; rather, the reciprocal obligations at issue must "arise out of a single integrated transaction so that it would be inequitable for the debtor to enjoy the benefits of that transaction without also meeting its obligations." *Lee v. Schweiker*, 739 F.2d 870 (3d Cir. 1984). See also *In re University Medical Center*, 973 F.2d 1065 (3d Cir. 1992) (declining to apply the doctrine of recoupment to enable the government to recapture Medicare overpayments because the reimbursement rights of the debtor arose in different years in which the overpayments were made by the government).

[continued on the following page]

Creditor could recoup overpayment of retirement benefits from disability benefits due debtor:

The debtor's debt to the Pennsylvania State Employees' Retirement System for overpaid early retirement benefits and the System's obligation to pay the debtor disability pension benefits arose from the same transaction under the "integrated transaction" test applicable in the Third Circuit, so that the System could recoup the overpayment from the debtor's disability pension benefits; both obligations emanated from the state's termination of the debtor's employment and the parties' subsequent settlement of the debtor's grievance.

Recoupment does not violate automatic stay or discharge injunction:

Because the debtor's debt to the Pennsylvania State Employees' Retirement System for overpaid early retirement benefits and the System's obligation to pay the debtor disability pension benefits arose from the same transaction, so that the System could recoup the overpayment from the debtor's disability pension benefits, the System's exercising its right to recoupment did not violate either the automatic stay or the discharge injunction.

In re Thomas, 529 B.R. 628 (Bankr. W.D. Pa., May 1, 2015)

(case no. 7:14-bk-70184; adv. proc. no. 7:14-ap-7032) (Chief Bankruptcy Judge Jeffery A. Deller)

Text of opinion

R

Proof of Claim: By Secured Creditor: Amount of Claim:

Topical compilations:

PDF Word (prepetition charges)

PDF Word (postpetition charges)

All topical compilations

All circuit compilations

There are no cases in this issue.

R

Proof of Claim: By Secured Creditor: Ownership of Claim

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

Holder of note may enforce it:

Under the Illinois Uniform Commercial Code, a person in possession of a promissory note payable to bearer is deemed the "holder" of the note and is entitled to enforce it.

Mortgage servicer may collect payments on behalf of holder of note:

A mortgage servicer is entitled to collect payments under a promissory note from the debtor on behalf of the holder of the note.

In re Schmeglar, 531 B.R. 735 (Bankr. N.D. Ill., May 22, 2015), **appeal filed**, Schmeglar v. Mortgage Electronic Registration Systems, Inc., Case No. 1:15-cv-5094 (N.D. Ill., filed June 10, 2015)

(case no. 1:12-bk-42283; adv. proc. no. 1:14-ap-121) (Bankruptcy Judge Jack B. Schmetterer)

Text of opinion

Rooker-Feldman doctrine precluded jurisdiction over debtor's claim that mortgage creditor was not entitled to enforce note and mortgage:

The *Rooker-Feldman* doctrine precluded the bankruptcy court's jurisdiction over the Chapter 13 debtor's adversary proceeding, which asserted that the creditor moving for relief from stay participated in a fraud that resulted in the foreclosure of the debtor's mortgage, and that the creditor was not entitled to enforce the note and mortgage.

In re Spencer, 532 B.R. 303 (Bankr. W.D. Wis., May 15, 2015), **appeal filed**, Spencer v. Federal Home Loan Mortgage Corporation, Case No. 3:15-cv-332 (W.D. Wis., filed June 1, 2015)

(case no. 1:15-bk-11204; adv. proc. no. 1:15-ap-60) (Chief Bankruptcy Judge Catherine Furay)

Text of opinion

R

Proof of Claim: By Secured Creditor: Secured Status of Claim

Scope note: This document collects cases addressing the status of a claim, as of the filing of the debtor's petition, as secured or unsecured. It also collects a few cases involving the avoidance of a lien solely on the basis of state law.

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

There are no cases in this issue.

R

Proof of Claim: By Unsecured Creditor

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

There are no cases in this issue.

R

Proof of Claim: Other Issues

Topical compilation: All topical compilations

PDF Word All circuit compilations

Bankruptcy court lacked authority to order creditor to return Chapter 13 debtors' payments after disallowing mortgage creditor's claim:

Affirming in part and vacating in part *In re Thompson*, 520 B.R. 731 (Bankr. E.D. Wis., Nov. 21, 2014), which denied reconsideration of *In re Thompson*, 520 B.R. 713 (Bankr. E.D. Wis., Oct. 21, 2014), the district court said that it could not find any authority for the bankruptcy court's order requiring the Chapter 13 debtors' purported mortgage creditor to return to the debtors $73,041.49 in monthly payments that the creditor had received directly from the debtors during the case. The bankruptcy court issued the order, some six and a half years after allowing the creditor's claim, when the court concluded that the creditor failed to establish its standing to enforce the debtors' mortgage note and disallowed the claim. The district court said that it could understand why the bankruptcy court took the path that it did, as it seemed to be the most logical and expedient way of accomplishing the task at hand. Unfortunately, the district court could not find any authority giving the bankruptcy court the power to take the step that it did.

Thompson v. Ocwen Loan Servicing LLC, 2015 WL 3454726 (E.D. Wis., May 29, 2015)

(case nos. 2:14-cv-1502, 2:14-cv-1522) (District Judge J.P. Stadtmueller)

Text of opinion

Comment: On remand, the bankruptcy court issued a new opinion ordering the creditor to return the funds to the Chapter 13 trustee. See *In re Thompson*, 2015 WL 4484238 (Bankr. E.D. Wis., July 22, 2015), appeal filed, *Wells Fargo Bank NA v. Thompson*, Case No. 2:15-cv-941 (E.D. Wis., filed August 5, 2015).

Amended proof of claim would not be allowed following claims bar date and Chapter 13 plan confirmation:

The mortgage creditor's amended proof of claim, filed after the claims bar date and after the debtor's Chapter 13 plan had been confirmed, would not be allowed, both because equitable factors did not weigh in favor of allowing the amendment and because the res judicata effect of a confirmed plan permits amendment of a proof of claim only in the most compelling of circumstances, which the creditor did not establish.

In re Green, 2015 WL 2374749 (Bankr. M.D. Fla., May 8, 2015)

(case no. 8:12-bk-9222) (Bankruptcy Judge Michael G. Williamson)

Text of opinion

R

Part F

Property of the Estate

Property of the Estate: Generally

Scope note: This topic collects cases determining whether an asset is property of the estate in the first place, prior to the consideration of exemptions and exclusions.

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

Claims accruing prior to conversion of Chapter 11 case to Chapter 7 were property of estate:

Affirming *Cantu v. Stone*, 2014 WL 2949456 (S.D. Tex., July 1, 2014), which had affirmed *In re Cantu*, 2013 WL 2286082 (Bankr. S.D. Tex., May 22, 2013), the Court of Appeals held that the debtors' malpractice claims against an accountant appointed by the bankruptcy court while their case was proceeding under Chapter 11 accrued before the case was converted to Chapter 7 and were therefore property of the debtors' Chapter 7 bankruptcy estate. See *In re Cantu*, 784 F.3d 253 (5th Cir., April 16, 2015) (similar case involving the debtors' malpractice claims against their original bankruptcy attorney).

In re Cantu, --- Fed. Appx. ----, 2015 WL 2386011 (5th Cir., May 20, 2015)

(case no. 14-40762)

Text of opinion

"Discovery rule" would be applied to determine whether debtor's claim for damages from defective prepetition hip replacement was property of the estate:

In the case of injuries that are potential but not certain, the "discovery rule" adopted by the state of Wisconsin is the fairer and more predictable rule in determining whether a claim is property of the estate. A bankruptcy debtor cannot be expected to predict and disclose possible future injury by each and every product he or she has previously used. Under the rule that a cause of action is property of the estate if it is rooted in the debtor's pre-bankruptcy past, there is no way of knowing how far back the root would go. Under the discovery rule, tort claims accrue on the date the injury is discovered or with reasonable diligence should have been discovered, whichever occurs first. Thus, here, whether the Chapter 7 debtor's claim for damages arising from a defective prepetition hip replacement was property of the estate could not be decided on motions for summary judgment and required further discovery.

In re Wagner, 530 B.R. 695 (Bankr. E.D. Wis., May 5, 2015)

(case no. 2:09-bk-33103) (Bankruptcy Judge Margaret Dee McGarity)

Text of opinion

Funds due Chapter 13 debtor under divorce decree were not estate property under estate termination approach:

Applying the estate termination approach adopted in *In re Jones*, 420 B.R. 506 (9th Cir. B.A.P. 2009), aff'd on other grounds, 657 F.3d 921 (9th Cir. 2011), the court held that $8,100 that the Chapter 13 debtor was to receive under her divorce decree when the martial residence was sold, and that the plan confirmation order required the debtor to turn over upon the sale of the residence, was not property of the estate. The debtor's confirmed plan dictated that property of the estate would vest in the debtor upon plan confirmation, and the confirmation order did not clearly provide that the $8,100 would remain property of the estate.

In re Thiel, 2015 WL 2398555 (Bankr. D. Idaho, May 18, 2015)

(case no. 1:11-bk-2703; adv. proc. no. 1:14-ap-6028) (Bankruptcy Judge Jim D. Pappas)

Text of opinion

Funds disgorged by Chapter 13 debtor's prior attorney were estate property that vested in debtor upon confirmation of debtor's plan:

Under Code § 1327(b), upon confirmation of a Chapter 13 plan, all property of the estate not only remains in the debtor's possession but also vests in the debtor, unless the plan provides otherwise. Here, where the Chapter 13 debtor's plan provided that all property would vest in him upon confirmation, $10,000 in unauthorized fees disgorged by the Chapter 13 debtor's prior attorney was estate property that vested in the debtor upon the confirmation of his plan, so that the Chapter 13 trustee was to return the funds to the debtor rather than distributing them to creditors.

In re Porras, 2015 WL 2357723 (Bankr. N.D. Cal., May 14, 2015)

(case no. 5:12-bk-58699) (Bankruptcy Judge M. Elaine Hammond)

Text of opinion

R

Exclusions from Property of the Estate

Topical compilation: All topical compilations
PDF Word All circuit compilations

There are no cases in this issue.

R

Property of the Estate: Exemptions: Availability under Code § 522(b)(3)

Scope note: This topic includes cases discussing whether the debtor is permitted or required to elect state or federal exemptions under Code § 522(b)(3)(A) and the hanging paragraph of § 522(b)(3), and, for debtors electing state exemptions, whether a state's exemptions are available to a nonresident debtor or applicable to property outside the state. Cases on certain related issues are also collected.

Topical compilation: All topical compilations

PDF Word All circuit compilations

There are no cases in this issue.

R

Property of the Estate: Exemptions: Avoidance of Liens under Code § 522(f)

Scope note: For cases on the debtor's avoidance of a lien under Code § 522(h), see Avoidable Transfers and Liens (in Part G. of this Section One).

Topical compilation: All topical compilations

PDF Word All circuit compilations

There are no cases in this issue.

R

Property of the Estate: Exemptions: Debtor Who Applies Federal Exemptions

Topical compilation: All topical compilations

PDF Word All circuit compilations

IRA that lost its tax-exempt status was not exempt under Code § 522(d)(12):

The Chapter 7 debtor husband caused his self-directed IRA to engage in prohibited transactions as defined in 26 U.S.C. § 4975(c)(1), so that under 26 U.S.C. § 408(e) the IRA lost its tax-exempt status as of January 1, 2007, and the debtors could not exempt the IRA under Code § 522(d)(12).

In re Kellerman, 531 B.R. 219 (Bankr. E.D. Ark., May 26, 2015), **appeal filed**, Kellerman v. Rice, Case No. 4:15-cv-347 (E.D. Ark., filed June 11, 2015)

(case no. 4:09-bk-13935) (Chief Bankruptcy Judge Richard D. Taylor)

Text of opinion

R

Property of the Estate: Exemptions: Debtor Who Applies State Exemptions

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

California law: Exemption of IRA is based on its tax-exempt status, not deductibility of contributions to IRA:

The debtors could exempt their private IRAs under Cal. Civ. Proc. Code § 704.140(a)(3), which permits the exemption of qualified IRAs "to the extent the amounts held in the ... accounts do not exceed the maximum amounts exempt from federal income taxation," where the debtors did not fund their IRAs beyond permitted levels, so that the IRAs were tax-exempt, even though the debtors' contributions to the IRAs were not deductible from the debtors' income in calculating their federal income tax. The court said it was not persuaded that the phrase "exempt from federal income taxation" in the statute meant "actually deducted from the Debtors' income."

In re Weilert, 530 B.R. 830 (Bankr. E.D. Cal., May 26, 2015)

(case no. 1:13-bk-16155) (Bankruptcy Judge W. Richard Lee)

Text of opinion

Ohio law: Boat with outboard motor is not exempt "motor vehicle":

On an issue as to which there did not appear to be any prior decisions, either state or federal, that specifically addressed the matter, the court held that a boat with an outboard motor is not exempt under Ohio Rev. Code § 2329.66(A)(2) as a "motor vehicle." The court noted that, while the issue had not been litigated in Ohio, decisions in other states appeared to uniformly reject the contention that a boat may be a "motor vehicle" for exemption purposes.

In re Gilica, 530 B.R. 429 (Bankr. N.D., Ohio, May 11, 2015)

(case no. 3:14-bk-34590) (Bankruptcy Judge John P. Gustafson)

Text of opinion

Texas law: Debtor did not establish that noncontiguous parcel was part of rural homestead:

While, under Texas law, a debtor may claim a rural homestead exemption in a parcel that is not contiguous to the debtor's residential parcel if the debtor shows that he is using the noncontiguous parcel for the comfort, convenience, or support of his family, here the debtor did not make the required showing, where he testified only that he used the parcel to "grow some trees" and also had some cows on the property at some point. Any trees that the debtor was ever growing on the noncontiguous parcel were for a business that was no longer operating, while the debtor's statement of financial affairs stated that all his livestock had been sold, other than four horses that he kept on the residential parcel rather than on the noncontiguous parcel.

In re Saldana, 531 B.R. 141 (Bankr. N.D. Tex., May 22, 2015), appeal filed, Saldana v. Saldana, Case No. 3:15-cv-1918 (N.D. Tex., filed June 2, 2015)

(case no. 3:13-bk-34861) (Bankruptcy Judge Stacey G.C. Jernigan)

Text of opinion

Debtor's IRA did not engage in prohibited transaction and was exempt under Code § 522(b)(3)(C):

The purchase by the debtor's IRA of a 5% membership interest in an LLC was not a prohibited transaction under 26 U.S.C. § 4975, so that the IRA did not lose its tax-exempt status under 26 U.S.C. § 408(e), and the IRA was exempt under Code § 522(b)(3)(C).

In re Nolte, 2015 WL 2128670 (Bankr. E.D. Va., May 5, 2015)

(case no. 3:14-bk-36676) (Bankruptcy Judge Kevin R. Huennekens)

Text of opinion

R

Property of the Estate: Exemptions: Limitations on Right to Claim Exemption

Scope note: This topic collects cases involving general principles, and specific Code provisions, limiting a debtor's exemptions, often (although not always) in response to the debtor's misconduct.

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

There are no cases in this issue.

R

Property of the Estate: Exemptions: Procedure

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

Amended exemptions may not be denied on ground of bad faith:

As a result of the Supreme Court's decision in *Law v. Siegel*, it is clear that there is no federal authority to deny the debtor's amended exemptions due to her alleged bad faith delay in claiming the exemption.

Kansas law did not provide basis for denying debtor's amendment to exemptions:

Denying the objection of the Chapter 7 trustee, who asserted that the debtor delayed in claiming an exemption and allegedly engaged in a pattern of inexcusable conduct, to the debtor's amended claim of exemptions, the court said that Kansas did not recognize the waiver of state-created personal property exemptions under the circumstances presented here. The debtor, who amended her exemptions to claim a portion of her income tax refund as an earned income credit, made no "express declaration or unequivocal act" waiving the exemption, and she was actually rather prompt in claiming the exemption upon learning that she was eligible for it.

In re Jones, Case No. 5:14-bk-40876 (Bankr. D. Kan., May 7, 2015)

(Bankruptcy Judge Janice Miller Karlin)

Text of opinion

Exemptions may be amended in reopened case upon showing of excusable neglect:

A court may permit the debtor to amend his or her claim of exemptions in a reopened case if the court finds that the debtor's failure to claim the amended exemption prior to the closing of the case was the result of excusable neglect. See e.g., *In re Smith*, 2014 WL 7358808 (Bankr. D. N.M., Dec. 24, 2014).

In re Pearson, 2015 WL 3455305 (Bankr. N.D. W.Va., May 26, 2015)

(case no. 5:08-bk-1970) (Bankruptcy Judge Patrick M. Flatley)

Text of opinion

Amended exemptions may not be denied on ground of bad faith or prejudice to creditors:

While the issue in *Law v. Siegel* was whether a trustee could surcharge a debtor's exempt property based upon a debtor's egregious acts during a bankruptcy case, the court concluded that *Law v. Seigel* nonetheless implicitly overruled prior case law, including the Fifth Circuit's holding in *In re Williamson*, 804 F.2d 1355 (5th Cir. 1986) that relied on the Eleventh Circuit's holding in *In re Doan*, 672 F.2d 831 (11th Cir. 1982), that enabled a bankruptcy court to deny an amendment to the debtor's claimed exemptions based on bad faith or prejudice to creditors.

Judicial estoppel was not basis for disallowing amendment to homestead exemption:

While it was true that the doctrine of judicial estoppel had been developed by state courts in Texas, the Chapter 7 trustee had cited to no case (and the court was unable to find one) in which a Texas court had applied judicial estoppel to disallow a statutory homestead exemption. As a result, the court declined the trustee's invitation to create a "judge-made" exception to Texas homestead law and disallow, on the ground of judicial estoppel, the debtor's amendment to his claimed homestead exemption.

Court sanctions debtor and his counsel for bad-faith conduct in relation to claimed exemptions:

Law v. Siegel recognized a bankruptcy court's continuing authority to impose sanctions for improper conduct with regard to a debtor's claimed exemptions, and here, the existence of bad faith warranted the imposition of sanctions under Code § 105(a) on the Chapter 7 debtor and his counsel after the debtor amended his claimed homestead exemption more than 15 months after the debtor filed his bankruptcy case, more than two months after the court entered an order permitting the Chapter 7 trustee to sell a significant portion of the property now included in the debtor's amended homestead exemption, and more than an hour and six minutes after the court began hearing arguments and testimony about the merits of the debtor's claimed homestead exemption. Accordingly, the court held the debtor and his counsel jointly and severally liable to reimburse the $5,110 in fees incurred by the objecting creditor's counsel and $25,245 in fees incurred by the trustee's counsel. The court concluded that these amounts represented reasonable and necessary attorney's fees spent as a result of the debtor's and his counsel's "arbitrary, capricious, and recalcitrant bad faith behavior concerning the flip-flop on exemptions."

In re Saldana, 531 B.R. 141 (Bankr. N.D. Tex., May 22, 2015), appeal filed, Saldana v. Saldana, Case No. 3:15-cv-1918 (N.D. Tex., filed June 2, 2015)

(case no. 3:13-bk-34861) (Bankruptcy Judge Stacey G.C. Jernigan)

Text of opinion

Debtor was equitably estopped from amending her claimed exemptions:

The Chapter 7 debtor was equitably estopped, under California law, from amending her claimed exemptions, where the debtor initially amended her exemption schedules to disclaim any interest in residential property at which she lived with her non-debtor husband and to eliminate the homestead exemption that she had previously claimed in this property, and three years later, after the Chapter 7 trustee had successfully pursued an investigation to establish the estate's interest in the property, negotiated a settlement with the debtor's husband, and employed a broker to sell property, the debtor again amended her exemption schedule in order to claim a homestead exemption in the sales proceeds.

In re Lua, 529 B.R. 766 (Bankr. C.D. Cal., May 1, 2015), appeal dismissed, Case No. 2:15-cv-4026 (C.D. Cal., August 13, 2015)

(case no. 2:11-bk-41173) (Bankruptcy Judge Deborah J. Saltzman)

Text of opinion

R

Property of the Estate: Exemptions: Other Issues

Topical compilation:
PDF Word
All topical compilations
All circuit compilations

There are no cases in this issue.

R

Property of the Estate: Turnover

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

There are no cases in this issue.

R

Part G

Other Issues

Authority of the Court

Topical compilation: All topical compilations

PDF Word All circuit compilations

Bankruptcy court may not use equitable powers to expand scope of nondischargeable debts:

A bankruptcy court's equitable powers "must be exercised in a manner that is consistent with the Bankruptcy Code," and a bankruptcy court is not permitted "to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity." *In re Sadkin*, 36 F.3d 473 (5th Cir. 1994) (per curiam). Accordingly, a creditor could not rely upon general principles of equity to expand the exceptions to the discharge of debts found in Code § 523(a).

In re Ritz, 787 F.3d 312 (5th Cir., May 22, 2015)

(case no. 14-20526)

Text of opinion

Court sanctions debtor and his counsel for bad-faith conduct in relation to claimed exemptions:

Law v. Siegel recognized a bankruptcy court's continuing authority to impose sanctions for improper conduct with regard to a debtor's claimed exemptions, and here, the existence of bad faith warranted the imposition of sanctions under Code § 105(a) on the Chapter 7 debtor and his counsel after the debtor amended his claimed homestead exemption more than 15 months after the debtor filed his bankruptcy case, more than two months after the court entered an order permitting the Chapter 7 trustee to sell a significant portion of the property now included in the debtor's amended homestead exemption, and more than an hour and six minutes after the court began hearing arguments and testimony about the merits of the debtor's claimed homestead exemption. Accordingly, the court held the debtor and his counsel jointly and severally liable to reimburse the $5,110 in fees incurred by the objecting creditor's counsel and $25,245 in fees incurred by the trustee's counsel. The court concluded that these amounts represented reasonable and necessary attorney's fees spent as a result of the debtor's and his counsel's "arbitrary, capricious, and recalcitrant bad faith behavior concerning the flip-flop on exemptions."

In re Saldana, 531 B.R. 141 (Bankr. N.D. Tex., May 22, 2015), appeal filed, Saldana v. Saldana, Case No. 3:15-cv-1918 (N.D. Tex., filed June 2, 2015)

(case no. 3:13-bk-34861) (Bankruptcy Judge Stacey G.C. Jernigan)

Text of opinion

Filing bankruptcy petition in bad faith may warrant imposition of sanctions under Rule 9011:

Sanctions under Bankruptcy Rule 9011 are warranted when (1) the papers are frivolous, legally unreasonable or without factual foundation, or (2) the pleading is filed in bad faith or for an improper purpose. *In re Mroz*, 65 F.3d 1567 (11th Cir. 1995). Filing a bankruptcy petition in bad faith may constitute conduct that is sanctionable under Rule 9011. See *In re Ktona*, 329 B.R. 105 (Bankr. M.D. Fla. 2005); *In re Addon Corporation*, 231 B.R. 385 (Bankr. N.D. Ga. 1999). In determining whether a bankruptcy petition was filed in bad faith, courts generally consider the totality of the circumstances surrounding the filing. *In re Russell*, 2012 WL 5934648 (Bankr. M.D. Ala. 2012) (citing *In re Kitchens*, 702 F.2d 885 (11th Cir. 1983).

Filing of bankruptcy case in bad faith and for improper purpose violated Rule 9011:

The debtor's Chapter 13 petition was filed in bad faith and for an improper purpose, warranting the imposition of sanctions on the debtor and his counsel under Bankruptcy Rule 9011, although the debtor contended that he filed the petition in order to retain his home, where a foreclosure sale was scheduled for the day on which the debtor filed his petition, the home mortgage debt had been reduced to a prepetition judgment in the amount of $486,404, the debtor was unemployed and failed to show any financial ability to pay the mortgage, no plan was ever proposed that provided for retention of the home, and the debtor did not meaningfully participate in a mortgage modification process.

Written finding of bad faith was sufficient sanction for violation of Rule 9011 by debtor and attorney:

Under Bankruptcy Rule 9011(c)(2), sanctions for a bad faith filing should be "limited to what is sufficient to deter repetition" of the conduct that violated Rule 9011. Under the circumstances of this case, the court found that the written finding of bad faith contained in the court's opinion was sufficient to deter the debtor and the debtor's attorney from filing any future bankruptcy cases for an improper purpose.

In re Fazzary, 530 B.R. 903 (Bankr. M.D. Fla., May 21, 2015)

(case no. 3:14-bk-5515) (Bankruptcy Judge Paul M. Glenn)

Text of opinion

R

Avoidable Transfers and Liens

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

There are no cases in this issue.

R

Required Documentation

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

Imminent foreclosure sale is not exigent circumstance for purpose of waiver of prepetition credit counseling requirement:

A foreclosure sale scheduled for the day following a debtor's bankruptcy filing did not give rise to an exigency within the meaning of Code § 109(h)(3). Much like the police cannot create the exigency for a warrantless search and seizure, neither can a debtor create, and then benefit from, an urgent situation necessitating filing without the prepetition credit counseling course. Allowing a debtor to rely on an imminent foreclosure sale ignores the months prior to the sale when the foreclosure case was pending and the debtor took no action. The debtor's degree of control is the antithesis of "urgent need." This understanding of exigency is supported by the Bankruptcy Code, which requires a debtor to make attempts to obtain the prepetition course. Under § 109(h)(3)(A)(ii), part of the exigency must exist because the debtor attempted, but could not obtain, the counseling. This requirement prevents a debtor from creating the exigent circumstances supporting a waiver.

In re Wise, 2015 WL 3424733 (Bankr. N.D. Ohio, May 27, 2015)

(case no. 6:15-bk-60934) (Bankruptcy Judge Russ Kendig)

Text of opinion

R

Scope and Violation of Discharge Injunction

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

Creditor did not violate discharge injunction where creditor held statutory lien on sums owed debtor for unpaid vacation and sick leave:

Under Puerto Rico law, an employees' association of which the Chapter 7 debtor was a member held a valid statutory lien on the debtor's prepetition accumulated vacation and sick leave licenses (entitlement to payment for unused vacation and sick leave), so that the association's claiming a right to liquidate the licenses in order to collect a prepetition debt following the debtor's discharge did not violate the discharge injunction.

In re Fonseca, --- B.R. ----, 2015 WL 2194474 (Bankr. D. Puerto Rico, May 7, 2015), **appeal filed**, Case No. 15-33 (1st Cir. B.A.P., filed May 21, 2015)

(case no. 3:12-bk-6148; adv. proc. no. 3:13-ap-184) (Bankruptcy Judge Mildred Caban Flores)

Text of opinion

Recoupment does not violate discharge injunction:

Because the debtor's debt to the Pennsylvania State Employees' Retirement System for overpaid early retirement benefits and the System's obligation to pay the debtor disability pension benefits arose from the same transaction, so that the System could recoup the overpayment from the debtor's disability pension benefits, the System's exercising its right to recoupment did not violate either the automatic stay or the discharge injunction.

In re Thomas, 529 B.R. 628 (Bankr. W.D. Pa., May 1, 2015)

(case no. 7:14-bk-70184; adv. proc. no. 7:14-ap-7032) (Chief Bankruptcy Judge Jeffery A. Deller)

Text of opinion

Filing proof of claim for discharged debt violates discharge injunction:

A secured motor vehicle creditor violated the discharge injunction issued in the Chapter 13 debtors' prior Chapter 7 case where the creditor filed a proof of claim in the prior case, the debtors' personal liability on the claim was included in their discharge, and the creditor's proof of claim in the current case expressly purported to reserve an unsecured claim for a deficiency if the collateral was liquidated. See *In re McLean*, 2013 WL 5963358 (Bankr. M.D. Ala., Nov. 8, 2013), aff'd, *McLean v. Greenpoint Credit LLC*, 515 B.R. 841 (M.D. Ala., August 25, 2014), aff'd, *In re McLean*, --- F.3d ----, 2015 WL 4480920 (11th Cir., July 23, 2015). See also *In re Moore*, 521 B.R. 280 (Bankr. E.D. Tenn. 2014) (holding that the act of filing a proof of claim on a discharged debt may be a violation of the discharge injunction).

In re Maddox, 530 B.R. 889 (Bankr. M.D. Ala., May 15, 2015)

(case no. 3:14-bk-81159; adv. proc. no. 3:15-ap-8011) (Chief Bankruptcy Judge William R. Sawyer)

Text of opinion

Collection of nondischargeable debt does not violate discharge injunction:

A creditor's collection of a nondischargeable debt does not violate the discharge injunction.

In re Brown, 533 B.R. 344 (Bankr. M.D. Fla., May 20, 2015)

(case no. 8:09-bk-27844) (Bankruptcy Judge Michael G. Williamson)

Text of opinion

R

Valuation of Property

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

There are no cases in this issue.

R

Miscellaneous Issues

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

There are no cases in this issue.

R

Section Two:
Chapter 7 Issues

Abuse

Topical compilations:

[All topical compilations](#)

[All circuit compilations](#)

[PDF](#) [Word](#) (in general)

[PDF](#) [Word](#) (under totality of circumstances)

Determination of abuse under totality of circumstances in Chapter 7 case may not take into account debtor's Social Security income:

Disagreeing with *In re Riggs*, 495 B.R. 704 (Bankr. W.D. Va., July 9, 2013), the court held that, in deciding whether to dismiss a Chapter 7 case under Code § 707(b)(3)(C) based on the totality of the circumstances of the debtor's financial situation, a court may not consider the debtor's Social Security income. Accord, *In re Johnson*, 2014 WL 814740 (Bankr. W.D. Mo., Feb. 28, 2014); *In re Suttice*, 487 B.R. 245 (Bankr. C.D. Cal., July 9, 2013).

In re Moriarty, 530 B.R. 637 (Bankr. W.D. Va., May 18, 2015)

(case no. 5:13-bk-51437) (Chief Bankruptcy Judge Rebecca B. Connelly)

[Text of opinion](#)

R

"Cause" for Dismissal under Code § 707(a)

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

There are no cases in this issue.

R

Conversion or Dismissal of Case by Debtor

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

Debtors owed no debts and therefore could not convert to Chapter 13 following Chapter 7 discharge:

The debtors could not convert their case to Chapter 13 after receiving a Chapter 7 discharge, as they had no remaining prepetition creditors, and a debtor must owe debts in order to be eligible for Chapter 13.

In re Pearson, 2015 WL 3455305 (Bankr. N.D. W.Va., May 26, 2015)

(case no. 5:08-bk-1970) (Bankruptcy Judge Patrick M. Flatley)

Text of opinion

R

Denial or Revocation of Discharge

Topical compilation: All topical compilations

PDF Word All circuit compilations

Chapter 7 debtor was not entitled to recover attorney's fees from creditor after successfully defending proceeding to deny debtor's discharge:

Because a creditor's adversary proceeding to deny the Chapter 7 debtor's discharge under Code § 727 was not an action on the parties' contract, the debtor, who prevailed, was not entitled to recover attorney's fees from the creditor under Cal. Civ. Code § 1717, which provides for mutuality of contractual attorney fee provisions.

In re Savage, 2015 WL 2452626 (9th Cir. B.A.P., May 20, 2015)

(case no. 14-1074)

Text of opinion

Debtor did not fraudulently conceal assets for purposes of denial of discharge:

The Chapter 11 debtor, in moving certain personal property from his business premises to his home prior to a site visit by the bankruptcy administrator in a bankruptcy case filed by the debtor's corporation, did not fraudulently conceal these assets, so there was no basis for denial of the debtor's discharge under Code § 727(a)(2). Since the visit related solely to the corporate case, it was completely natural for the debtor to remove his personal property from the business premises to avoid having it confused with assets of the business.

Debtors did not make false oath, for purposes of denial of discharge, despite omission of certain personal property from schedules:

The Chapter 11 debtors did not act fraudulently in omitting certain personal property from their bankruptcy schedules, given the sheer volume of personal property that the debtors had collected over the years, the debtors' prompt amendment of their schedules to add the omitted assets, and the fact that the debtors had proposed a plan that would result in a 100% distribution to unsecured creditors. Accordingly, there was no basis for denial of the debtors' discharge under Code § 727(a)(4)(A) for making a false oath.

Debtors did not make false oath, for purposes of denial of discharge, in listing value of military relic collection as "unknown":

The Chapter 11 debtors did not act fraudulently, for the purpose of denying the debtors' discharge under Code § 727(a)(4)(A) for making a false oath, in listing the value of their military relic collection as "unknown." Listing the value as "unknown" was reasonable in light of the extensive nature of the collection, the fact that the artifacts were never appraised, the fact that the debtor husband acquired the items over several decades, and the fact that the husband was no longer collecting and therefore lacked knowledge as to current prices.

Debtors did not make false oath, for purposes of denial of discharge, in valuing antique firearms collection on basis of two-decade-old valuation:

The Chapter 11 debtors did not act fraudulently, for the purpose of denying the debtors' discharge under Code § 727(a)(4)(A) for making a false oath, in utilizing values placed on certain antique firearms in an inventory prepared by the debtor husband's father roughly two decades earlier that had not been updated. The debtors clearly did not know whether and to what extent the values of the firearms had changed, so that it was reasonable for the debtors to rely on the inventory as the most accurate valuation that they had.

In re Parker, 531 B.R. 103 (Bankr. E.D. N.C., May 22, 2015)

(case no. 8:12-bk-3128; adv. proc. no. 8:12-ap-238) (Chief Bankruptcy Judge Stephani W. Humrickhouse)

Text of opinion

R

Reaffirmation Agreements; Statement of Intention; Surrender or Redemption of Collateral; Assumption of Lease of Personal Property

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

Debtor who surrenders property to secured creditor may not prevent creditor from foreclosing:

In order for a Chapter 7 debtor to surrender collateral to the secured creditor under Code § 521, or for a Chapter 13 debtor to surrender collateral under Code § 1325(a)(5)(C), the debtor cannot take any overt act to prevent the creditor from foreclosing on its interest in the property. While the Bankruptcy Code does not define the term "surrender," in order to surrender collateral to the secured creditor, the debtor must relinquish the property and make it available to the creditor, although the debtor is not required to deliver the collateral to the creditor.

In re Metzler, 530 B.R. 894 (Bankr. M.D. Fla., May 13, 2015)

(case nos. 8:12-bk-16792, 8:13bk9736) (Bankruptcy Judge Michael G. Williamson)

Text of opinion

R

Other Issues

Topical compilation: All topical compilations

PDF Word All circuit compilations

No basis for vacating debtor's discharge in order to enter into reaffirmation agreement:

There is no statutory or other basis to vacate a discharge at the request of a debtor in order to enter into a reaffirmation agreement.

In re Smith, 2015 WL 3455356 (Bankr. N.D. Ohio, May 28, 2015)

(case no. 3:14-bk-32433) (Bankruptcy Judge Mary Ann Whipple)

Text of opinion

R

Section Three:
Chapter 13 Issues

Part A

Confirmation of Plan—Treatment of Secured Claims

Confirmation of Plan: Treatment of Secured Claims: Generally

Topical compilations:

PDF	Word	(general matters)	All topical compilations
PDF	Word	(plan provisions restricting residential mortgage creditors)	All circuit compilations
PDF	Word	(910-day vehicles; other issues under hanging paragraph)	

Chapter 13 plans may pay no more than *Till* interest rate on 910-day car claims:

The court joined the majority of other courts in holding that a *Till* rate of interest is appropriate for a 910-day car claim. Additionally, the court held that, when a debtor's Chapter 13 plan proposes long-term treatment of a 910-day car claim under Code § 1322(b)(5) at an interest rate resulting in the creditor's receiving more interest than the creditor would receive using a *Till* rate, then a *Till* interest rate is mandatory. Accordingly, the court denied confirmation of a below-median debtor's Chapter 13 plan that proposed to maintain contractual payments on a 910-day car claim that included 20.5% interest.

In re Adkins, 2015 WL 2398412 (Bankr. W.D. La., May 14, 2015)

(case no. 5:14-bk-12611) (Bankruptcy Judge Jeffrey P. Norman)

Text of opinion

Creditor holding only lien right does not hold "claim" in Chapter 13 case:

A secured creditor whose claim is discharged by virtue of a debtor's Chapter 7 bankruptcy case no longer qualifies as a creditor for purposes of a subsequent Chapter 13 case; the Bankruptcy Code mandates such a result based upon its definition of "claim."

In re Pearson, 2015 WL 3455305 (Bankr. N.D. W.Va., May 26, 2015)

(case no. 5:08-bk-1970) (Bankruptcy Judge Patrick M. Flatley)

Text of opinion

Debtor who surrenders property to secured creditor may not prevent creditor from foreclosing:

In order for a Chapter 7 debtor to surrender collateral to the secured creditor under Code § 521, or for a Chapter 13 debtor to surrender collateral under Code § 1325(a)(5)(C), the debtor cannot take any overt act to prevent the creditor from foreclosing on its interest in the property. While the Bankruptcy Code does not define the term "surrender," in order to surrender collateral to the secured creditor, the debtor must relinquish the property and make it available to the creditor, although the debtor is not required to deliver the collateral to the creditor.

In re Metzler, 530 B.R. 894 (Bankr. M.D. Fla., May 13, 2015)

(case nos. 8:12-bk-16792, 8:13bk9736) (Bankruptcy Judge Michael G. Williamson)

Text of opinion

Secured creditors accepted Chapter 13 plan by failing to object:

The bankruptcy court did not err in confirming a Chapter 13 plan under which monthly payments to secured creditors did not begin until month seven, in order to pay the debtor's attorney's fees first, where the creditors did not object to the plan, and the creditors' silence constituted acceptance of the plan under Code § 1325(a)(5)(A). While the plan did not pay the creditors adequate protection payments over its first six months, the provision for "adequate protection" in § 1325(a)(5)(B)(iii)(II) is not the type of clear, "self-executing" provision of the Bankruptcy Code that, under *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S.Ct. 1367, 176 L.Ed.2d 158 (2010), would preclude the bankruptcy court from treating the secured creditors' failure to object to confirmation as acceptance for purposes of § 1325(a)(5)(A).

In re Bea, 533 B.R. 283 (9th Cir. B.A.P., May 29, 2015)

(case no. 14-1376)

Text of opinion

R

Confirmation of Plan:
Treatment of Secured Claims:
Bifurcation, Lien Stripping, Modification

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

Code § 1322(c)(2) does not allow modification of secured claims:

Disagreeing with *In re Hubbell*, 496 B.R. 784 (Bankr. E.D. N.C., August 23, 2013), the bankruptcy court held that *In re Witt*, 113 F.3d 508 (4th Cir. 1997), which held that Code § 1322(c)(2) does not permit the bifurcation of an undersecured claim encompassed by the provision (i.e., a secured debt on which the last payment is due prior to the end of the Chapter 13 plan), also prohibits the modification of a secured claim subject to § 1322(c)(2), including modification of a secured creditor's contractual interest rate, even though § 1322(c)(2) provides that "the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5)." To comply with § 1322(c)(2), a Chapter 13 plan may modify the payments to a mortgage creditor, such as by stretching payments out over the life of the plan, but the plan cannot modify the contractual interest rate, absent some other statutory basis. While other cases had allowed modification of a secured claim treated under § 1322(c)(2), these cases contained no significant analysis of *In re Witt*. See *In re Griffin*, 489 B.R. 638 (Bankr. D. Md., March 18, 2013); *In re Farooq*, 2010 WL 348039 (Bankr. E.D. Va. 2010); *In re Joyner*, 2008 WL 4346467 (Bankr. E.D. N.C. 2008).

In re Varner, 530 B.R. 621 (Bankr. M.D. N.C., May 1, 2015)

(case no. 6:14-bk-51410) (Chief Bankruptcy Judge Catharine R. Aron)

Text of opinion

Tax lien may be stripped where lien is unsecured:

In a Chapter 11 case, the court said that an IRS tax lien may be stripped off if there is no value in the collateral to support the lien. *In re Johnson*, 386 B.R. 171 (Bankr. W.D. Pa. 2008), aff'd, *I.R.S. v. Johnson*, 415 B.R. 159 (W.D. Pa. 2009). See also *In re Dever*, 164 B.R. 132 (Bankr. C.D. Cal. 1994) (allowing bifurcation of tax lien).

In re Rodriguez, 2015 WL 2194584 (Bankr. D. Md., May 6, 2015)

(case no. 1:13-bk-31164) (Bankruptcy Judge E. Stephen Derby)

Text of opinion

R

Part B

Confirmation of Plan—Treatment of Unsecured Claims

Confirmation of Plan:
Treatment of Unsecured Claims:
Compliance with Projected Disposable Income Requirement

Topical compilation: All topical compilations

PDF Word All circuit compilations

Chapter 13 plan complied with projected disposable income requirement despite disclosure of only partial information regarding non-filing spouse's finances:

The bankruptcy court did not err in confirming the Chapter 13 debtor's plan despite the Chapter 13 trustee's objection that the debtor, who stated that her non-filing husband contributed $600 per month towards household expenses, and who provided copies of her husband's pay stubs, failed to provide more comprehensive income and expense information for her husband. "Current monthly income" as defined in Code § 101(10A) includes only "any amount paid by any entity other than the debtor ... on a regular basis for the household expenses of the debtor or the debtor's dependents," and the debtor provided the monthly sum contributed by her husband for household expenses. While the trustee contended that, without additional information about the husband's finances, the bankruptcy court had no way of knowing whether the husband was contributing to household expenses in an appropriate amount, the district court declared that, although the bankruptcy court did not have a complete picture of the finances of the debtor's husband, it had enough information about his financial situation to calculate the debtor's disposable income and conclude that the debtor was devoting all of that income to plan payments, that the plan was proposed in good faith, and that the plan was feasible. The district court distinguished *In re Rodgers*, 2014 WL 4988388 (Bankr. W.D. Mo., Oct. 7, 2014); *In re Kuhns*, 2011 WL 4713225 (Bankr. N.D. Ohio, Oct. 7, 2011); and *In re Cardillo*, 170 B.R. 490 (Bankr. D. N.H. 1994) on the ground that, in those cases, the debtor did not provide any information regarding the non-filing spouse's contribution to household expenses.

In re Blackshear, 531 B.R. 711 (E.D. Mich., May 20, 2015), **appeal filed**, Case No. 15-1695 (6th Cir., filed June 17, 2015)

(case no. 2:14-cv-14399) (District Judge Patrick J. Duggan)

Text of opinion

R

Confirmation of Plan:
Treatment of Unsecured Claims:
Other Issues

Topical compilation:

PDF Word

All topical compilations

All circuit compilations

Treatment of claim as long-term debt in Chapter 13 plan is subject to unfair discrimination analysis:

Separate classification of a long-term claim under Code § 1322(b)(5) may still constitute unfair discrimination under § 1322(b)(1).

In re Adkins, 2015 WL 2398412 (Bankr. W.D. La., May 14, 2015)

(case no. 5:14-bk-12611) (Bankruptcy Judge Jeffrey P. Norman)

Text of opinion

R

Part C

Confirmation of Plan—Other Issues

Other Objections to Confirmation

Topical compilations:

PDF Word (general matters)

PDF Word (good faith)

PDF Word (plan term)

All topical compilations

All circuit compilations

Chapter 13 debtor's paying long-term secured debt over term of plan was in bad faith:

Ordinarily, a Chapter 13 debtor cannot use money that would otherwise go to his or her unsecured creditors in order to accelerate the payments on a secured debt and pay it off faster than the prepetition security agreement requires. See *In re Pearson*, 398 B.R. 97 (Bankr. M.D. Ga. 2008) (plan proposing to accelerate payments on secured debts and pay them in full before paying anything to unsecured creditors was not proposed in good faith); *In re Liles*, 292 B.R. 138 (Bankr. E.D. Tex. 2002) (plan proposing to pay almost $980 per month, instead of $408 required, on secured debt not proposed in good faith because it would take money from unsecured creditors to accelerate secured debt for debtors' benefit); *In re Crussen*, 264 B.R. 723 (Bankr. W.D. Okla. 2001) (plan proposing to pay extra $650 per month on second mortgage to pay it off in 36 months while paying unsecured creditors only 44% was example of attempt to manipulate and abuse bankruptcy system in manner court would not permit). But see *In re Elrod*, 270 B.R. 258 (Bankr. E.D. Tenn. 2001) (Chapter 13 plan was proposed in good faith even though the debtors, by increasing their monthly mortgage payments by $25 per month beyond that required by the mortgage, were building up equity in their home at the expense of unsecured creditors). Thus, here, the above-median Chapter 13 debtor's plan was not proposed in good faith for the purpose of Code § 1325(a)(3) where the plan provided that a secured motor vehicle debt, which was required to be paid in full because the vehicle was purchased within 910 days of the debtor's bankruptcy filing, would be paid in full over the 60-month plan term, rather than over the remaining 65 months of the parties' 72-month financing contract; the filed, nonpriority unsecured claims in the case totaled $18,805; and maintaining payments under the parties' contract, rather than accelerating payments, would make an additional $3,152 available to unsecured creditors over the term of the debtor's plan.

In re Jackson, 2015 WL 3465762 (Bankr. D. Kan., May 29, 2015)

(case no. 2:14-bk-20808) (Bankruptcy Judge Dale L. Somers)

Text of opinion

Exclusion of Social Security income does not show lack of good faith under Code § 1325(a)(3):

A Chapter 13 debtor's exclusion of Social Security income from the debtor's Chapter 13 plan does not, by itself, constitute a lack of good faith under Code § 1325(a)(3).

In re Mihal, 2015 WL 2265790 (Bankr. E.D. Mich., May 6, 2015)

(case no. 2:13-bk-54435) (Bankruptcy Judge Walter Shapero)

Text of opinion

R

Effect of Plan Confirmation

Topical compilation: All topical compilations

PDF Word All circuit compilations

Chapter 13 debtors' confirmed plan provided limit on fees that could be awarded to debtors' attorney:

Where the Chapter 13 debtors' confirmed plan provided that their attorneys would receive $3,000 in fees, that provision was binding on the attorneys, and they could not be awarded additional fees, even though the attorneys' retainer agreement with the debtors permitted the attorneys to apply for fees in excess of $3,000, which was the district's no-look fee. The confirmation of the plan, which specified the amount of the disbursement to counsel as attorney's fees, acted as a final adjudication of the matter. See *In re Young*, 285 B.R. 168 (Bankr. D. Md. 2002); *In re Hallmark*, 225 B.R. 192 (Bankr. C.D. Cal. 1998); *In re Black*, 116 B.R. 818 (Bankr. W.D. Okla. 1990).

In re Medina-Espinosa, 2015 WL 2400092 (Bankr. D. Puerto Rico, May 18, 2015)

(case no. 3:13-bk-4255) (Chief Bankruptcy Judge Enrique S. Lamoutte)

Text of opinion

Amended proof of claim would not be allowed following claims bar date and Chapter 13 plan confirmation:

The mortgage creditor's amended proof of claim, filed after the claims bar date and after the debtor's Chapter 13 plan had been confirmed, would not be allowed, both because equitable factors did not weigh in favor of allowing the amendment and because the res judicata effect of a confirmed plan permits amendment of a proof of claim only in the most compelling of circumstances, which the creditor did not establish.

In re Green, 2015 WL 2374749 (Bankr. M.D. Fla., May 8, 2015)

(case no. 8:12-bk-9222) (Bankruptcy Judge Michael G. Williamson)

Text of opinion

Confirmation of Chapter 13 plan did not render nondischargeable tax debt dischargeable:

The confirmation of the debtors' Chapter 13 plan, which treated the penalties portion of the IRS's tax claim as nonpriority unsecured debt, did not have the effect of rendering the tax penalties dischargeable, where they clearly were nondischargeable under Code § 523(a)(7). See *In re Newman*, 402 B.R. 908 (Bankr. M.D. Fla. 2009).

In re Brown, 533 B.R. 344 (Bankr. M.D. Fla., May 20, 2015)

(case no. 8:09-bk-27844) (Bankruptcy Judge Michael G. Williamson)

Text of opinion

Fraud is only basis for revocation of order confirming Chapter 13 plan:

Under Code § 1330(a), the court may revoke an order confirming a Chapter 13 plan upon a timely request "if such order was procured by fraud." Fraud is the only basis for revocation of a confirmation order; equitable grounds will not suffice.

Chapter 13 debtor did not commit fraud that would support revocation of order confirming Chapter 13 plan:

The creditor did not establish the Chapter 13 debtor's fraud, so there was no basis for revocation of the confirmation of the debtor's Chapter 13 plan under Code § 1330(a), where the Chapter 13 debtor did not intend to deceive the court, the trustee, or the creditors in any manner in connection with the confirmation of his plan, and, to the extent certain of the debtor's representations were untrue, they were not material.

In re Woods, 2015 WL 2375392 (Bankr. D. Haw., May 15, 2015), appeal filed, Sebetich v. Woods, Case No. 1:15-cv-233 (D. Hawaii, filed June 18, 2015)

(case no. 1:14-bk-39; adv. proc. no. 1:14-ap-90019) (Bankruptcy Judge Robert J. Faris)

Text of opinion

R

Part D

Issues Other Than Confirmation of Plan

Modification of Confirmed Plan

Topical compilation: All topical compilations

PDF Word All circuit compilations

Chapter 13 debtor's disability warranted modification of confirmed plan through early pay-off:

Modification of the debtor's confirmed Chapter 13 plan to pay off the amount due in a lump sum 15 months after confirmation, after the debtor had settled his workers' compensation claim, was appropriate, given the debtor's worsening health and his inability to find employment despite repeated attempts, the decrease in the debtor's monthly income from $2,919 to $1,395, and the absence of opposition to the modification motion. The debtor's proposal was consistent with Code § 1329(a)(2), which allows debtors to modify their plans to "reduce the time for [plan] payments." The change in the debtor's circumstances was unanticipated because the debtor could not "reasonably anticipate" that his disability would worsen, his income would decrease substantially, and he would not be able to find employment. A debtor's post-confirmation modification pursuant to § 1329(a) need not comply with Code § 1325(b)(1)(B) and, therefore, is not required to maintain the applicable commitment period. *In re White*, 411 B.R. 268 (Bankr. W.D. N.C. 2008). And *Pliler v. Stearns*, 747 F.3d 260 (4th Cir. 2014), holding that the applicable commitment period is binding in the context of plan confirmation, does not apply to plan modification.

In re Runnels, 530 B.R. 626 (Bankr. W.D. N.C., May 11, 2015)

(case no. 3:13-bk-30084) (Chief Bankruptcy Judge Laura T. Beyer)

Text of opinion

Effect of denial of proposed modification of Chapter 13 plan:

When a motion to modify a Chapter 13 plan is disapproved, the terms of the proposed modification apply from the time that the motion is filed until the modification is disapproved. When the modification is disapproved, the plan terms revert to those provided in the confirmed plan in effect immediately prior to the filing of the modification, as if the modification had never been filed. The court declined to follow the approach taken in *In re Taylor*, 215 B.R. 882 (Bankr. S.D. Cal. 1997), under which the terms of the proposed modified plan controlled during the interim period prior to disapproval of the modification, at which point the terms of the original plan resumed effect.

In re Porras, 2015 WL 2357723 (Bankr. N.D. Cal., May 14, 2015)

(case no. 5:12-bk-58699) (Bankruptcy Judge M. Elaine Hammond)

Text of opinion


R

Other Issues

Topical compilations:

PDF Word (general matters)

PDF Word (other matters involving mortgage creditors)

All topical compilations

All circuit compilations

Award of fees to Chapter 13 debtor's attorney, generally:

Under Code § 330(a)(4)(B), a bankruptcy court may award reasonable fees to a lawyer for a Chapter 13 debtor in line with "the benefit and necessity" of the services rendered." Under § 330(a)(3), other considerations to be factored into the decisional calculus include the expertise of the attorney; the time expended by him; the reasonableness of the time given the nature, importance, and complexity of the case; and the reasonableness of the billing rates requested. These factors mirror those encapsulated in the traditional lodestar approach to calculating attorneys' fees. Under the lodestar method, a court determines a fee award by multiplying the number of hours productively spent by a reasonable hourly rate to calculate a base figure. After calculating the lodestar amount, the court may adjust it, up or down, in light of other considerations. See generally *In re Sullivan*, 674 F.3d 65 (1st Cir. 2012).

Bankruptcy court erred in substantially denying fee request by Chapter 13 debtors' attorney without applying lodestar analysis:

Here, the bankruptcy court erred in awarding the Chapter 13 debtors' attorney only $10,000 of the requested fees in the amount of $55,692.50, where the record did not demonstrate that the bankruptcy court applied the lodestar analysis or deviated from it for specific reasons. Instead, the transcript of the hearing on the attorney's fee application indicated that the reduced award was premised solely on the attorney's failure to ensure that the debtors were providing operating reports for the debtor husband's business to the Chapter 13 trustee, which led to the dismissal of the case.

Schold v. Stone, 2015 WL 3733649 (1st Cir. B.A.P., May 22, 2015)

(case no. 14-74)

Text of opinion

Chapter 13 debtors' confirmed plan provided limit on fees that could be awarded to debtors' attorney:

Where the Chapter 13 debtors' confirmed plan provided that their attorneys would receive $3,000 in fees, that provision was binding on the attorneys, and they could not be awarded additional fees, even though the attorneys' retainer agreement with the debtors permitted the attorneys to apply for fees in excess of $3,000, which was the district's no-look fee. The confirmation of the plan, which specified the amount of the disbursement to counsel as attorney's fees, acted as a final adjudication of the matter. See *In re Young*, 285 B.R. 168 (Bankr. D. Md. 2002); *In re Hallmark*, 225 B.R. 192 (Bankr. C.D. Cal. 1998); *In re Black*, 116 B.R. 818 (Bankr. W.D. Okla. 1990).

In re Medina-Espinosa, 2015 WL 2400092 (Bankr. D. Puerto Rico, May 18, 2015)

(case no. 3:13-bk-4255) (Chief Bankruptcy Judge Enrique S. Lamoutte)

Text of opinion

Chapter 13 debtor has absolute right to dismiss case not previously converted:

Discussing cases on both sides of the issue, the district court held that the language of Code § 1307(b) is unambiguous and grants the debtor an absolute right to dismiss a Chapter 13 case, so long as the case has not previously been converted under Code §§706, 1112, or 1208, even when another party's competing motion for conversion or dismissal under § 1307(c) is pending. The statute states that, if the debtor requests dismissal, the court "shall dismiss" the case, and the term "shall" creates an obligation impervious to judicial discretion. The Supreme Court's decision in *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 127 S.Ct. 1105, 166 L.Ed.2d 956 (2007) does not necessitate a different result. Moreover, Code § 105(a) does not allow bankruptcy courts to effectively amend the Bankruptcy Code by ignoring the Code's clear statutory language. *In re Williams*, 435 B.R. 552 (Bankr. N.D. Ill. 2010).

Chapter 13 debtor's right to voluntarily dismiss case is not self-executing:

Code § 1307(b) is not self-executing; the debtor must make a formal motion and serve it in accordance with Bankruptcy Rule 1017(a), and the court must enter a dismissal order. The dismissal order may impose sanctions and conditions if the circumstances indicate fraud, bad faith or abusive tactics. *In re Greenberg*, 200 B.R. 763 (Bankr. S.D. N.Y. 1996).

Ross v. AmeriChoice Federal Credit Union, 530 B.R. 277 (E.D. Pa., May 22, 2015), **appeal filed on other grounds**, In re Ross, Case No. 15-2222 (3rd Cir., filed May 22, 2015)

(case no. 2:15-cv-197) (District Judge Gerald J. Pappert)

Text of opinion

Codebtor stay does not extend to Chapter 13 debtor's business entity:

A business entity, even one wholly owned by Chapter 13 debtors, is not an "individual" protected by the codebtor stay under Code § 1301. *In re McCormick*, 381 B.R. 594 (Bankr. S.D. N.Y. 2008).

In re Brines, 2015 WL 3476695 (Bankr. D. Kan., May 28, 2015)

(case no. 5:14-bk-40442) (Bankruptcy Judge Janice Miller Karlin)

Text of opinion

Chapter 13 debtor's attorney was not entitled to award of additional fees:

Because the Chapter 13 debtor's discussion with her attorney regarding changes in her mortgage payment involved an "aspect" of the debtor's bankruptcy case, the attorney would not be allowed additional fees for this time, as the Disclosure of Compensation of Attorney for Debtor form filed by the attorney stated that he would provide "legal service for all aspects of the bankruptcy case" in return for the fee specified in the disclosure. And this was true even if the debtor's retention agreement with the attorney allowed him to apply for additional fees. See *In re Eland*, 2014 WL 718264 (Bankr. D. Kan., Feb. 24, 2014). On the other hand, the time spent by the attorney with the debtor in discussing strategies to rebuild the debtor's credit standing did not involve an "aspect" of her bankruptcy case, so the Disclosure did not prevent the attorney from recovering an additional fee for that time. However, because the discussion was not sufficiently connected with the debtor's bankruptcy case to be allowable under Code § 330(a)(4)(B) as an administrative expense, the attorney could not collect it through the debtor's plan. The fee for that time was simply a postpetition obligation the debtor incurred, which the attorney could collect from the debtor herself.

In re Smith, 2015 WL 2452946 (Bankr. D. Kan., May 19, 2015)

(case no. 2:14-bk-21191) (Bankruptcy Judge Dale L. Somers)

Text of opinion

Chapter 13 trustee's statutory fee, generally:

The general rule, established in 28 U.S.C. § 586(e)(1)(B)(i), is that the Chapter 13 trustee is permitted to deduct a maximum of 10% from all payments received by the trustee under Chapter 13 plans. The actual percentage is often less, and the trustee percentage fee in the Shreveport Division of the Western District of Louisiana is currently seven percent. The actual percentage is set after the Chapter 13 trustee projects a yearly budget and consults with and is granted budget approval by the U.S. Trustee for the region. The percentage fee is subject to periodic adjustment upon approval by the U.S. Trustee if trustee receipts and expenses vary.

Chapter 13 trustee was not entitled to collect statutory fee from insurance proceeds to be paid in full to secured creditor:

Finding *In re Derickson*, 226 B.R. 879 (Bankr. S.D. Ill. 1998) more persuasive than *In re Nardello*, 514 B.R. 105 (Bankr. D. N.J. 2014), the court held that the Chapter 13 trustee was not entitled to collect a statutory fee from insurance proceeds remitted to the trustee by the Chapter 13 debtor's auto insurer after the debtor's vehicle was totaled in an accident, where the proceeds were to be distributed in full to the secured motor vehicle creditor. Insurance proceeds are not intended as a payment from the debtor's income or other property. Rather, such proceeds flow from destruction of the creditor's security, and serve as a replacement of that collateral, albeit in a different form. For this reason, payment of the insurance proceeds fails to qualify as a "payment" from the debtor's income or other property, but instead constitutes a surrender of collateral to the creditor. Because there was no "payment" within the meaning of 28 U.S.C. § 586(e)(2), which provides that a Chapter 13 trustee "shall collect such percentage fee from all payments received by such individual under plans in the cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee," the trustee was not entitled to collect a fee on the insurance proceeds. The court noted that, while insurance proceeds in this case would be paid in full to the secured creditor, there might be other instances in which this would not be the case. If insurance proceeds exceeded both the total of a secured creditor's claim as well as the exemption allowed the debtor, there might be insurance proceeds that could be disbursed to unsecured creditors by the trustee. In these instances, the trustee would be entitled to collect her statutory fee based on the insurance proceeds that would be disbursed to unsecured creditors.

In re James, 2015 WL 3464129 (Bankr. W.D. La., May 29, 2015), appeal filed, Sikes v. James, Case No. 5:15-cv-1865 (W.D. La., filed June 11, 2015)

(case no. 5:13-bk-12826) (Bankruptcy Judge Jeffrey P. Norman)

Text of opinion

Court permits U.S. Trustee's examination of mortgage creditor's auditing procedures:

After the Chapter 13 debtors received four collection notices from the new servicer of their mortgage, the court granted the U.S. Trustee's motion under Bankruptcy Rule 2004 to be permitted to examine, subject to assurances of confidentiality, the new servicer's "documentation relating to policy, directives and/or procedures regarding auditing mortgage accounts" obtained from a prior servicer for customers who were in an active bankruptcy case. Without discovery of the collection information that accompanied the transfer of the debtors' loan, there was no means to determine why the debtors received the collection notices.

In re Stambaugh, 531 B.R. 191 (Bankr. S.D. Ohio, May 21, 2015)

(case no. 2:09-bk-55198) (Bankruptcy Judge Charles M. Caldwell)

Text of opinion

Debtor must owe debts in order to qualify as Chapter 13 debtor:

A debtor must owe debts in order to qualify as a Chapter 13 debtor. And a secured creditor whose claim is discharged by virtue of a debtor's Chapter 7 bankruptcy case no longer qualifies as a creditor for purposes of a subsequent Chapter 13 case; the Bankruptcy Code mandates such a result based upon its definition of "claim."

In re Pearson, 2015 WL 3455305 (Bankr. N.D. W.Va., May 26, 2015)

(case no. 5:08-bk-1970) (Bankruptcy Judge Patrick M. Flatley)

Text of opinion

Secured creditor must file timely proof of claim in order to receive distributions under Chapter 13 plan:

Reversing *In re Pajian*, 508 B.R. 708 (Bankr. N.D. Ill., Apr 15, 2014), the Court of Appeals held that the "better interpretation" of Bankruptcy Rule 3002 is that all creditors—secured and unsecured—must file a proof of claim by the 90-day deadline specified by Rule 3002(c) in order to receive distributions under a Chapter 13 plan.

In re Pajian, 785 F.3d 1161 (7th Cir., May 11, 2015)

(case no. 14-2052)

Text of opinion

Chapter 13 case filed in bad faith would be converted to Chapter 7 rather than dismissed:

The debtor filed her Chapter 13 case in bad faith, warranting conversion to Chapter 7 under Code § 1307(c) and denial of the debtor's motion to dismiss under § 1307(b), where the debtor attempted to surrender five parcels of real property to her husband so that she would be below the Chapter 13 secured debt limit, the debtor attempted to use the filing of her bankruptcy petition to halt the foreclosure sale of property owned by the debtor's wholly-owned corporation, the debtor filed misleading or inaccurate schedules, and the debtor had been in bankruptcy for almost two years without proposing a viable plan. The court noted that, under *In re Jacobsen*, 609 F.3d 647 (5th Cir. 2010), a Chapter 13 debtor proceeding in bad faith does not have an absolute right to dismiss the case under § 1307(b).

In re Smith, 530 B.R. 327 (Bankr. S.D. Miss., May 21, 2015), **appeal filed**, Smith v. Henley, Case No. 3:15-cv-408 (S.D. Miss., filed June 5, 2015)

(case no. 3:13-bk-1920) (Bankruptcy Judge Edward Ellington)

Text of opinion

Chapter 13 debtor was not entitled to discharge under Code § 1328(f) despite absence of motion objecting to debtor's discharge:

The Chapter 13 debtor was not entitled to a discharge under Code § 1328(f), and this was true even though Bankruptcy Rule 4004(a) requires that a motion objecting to the debtor's discharge in a Chapter 13 case be filed no later than 60 days after the first date set for the meeting of creditors, and, here, no party filed a motion objecting to the debtor's discharge; rather, the court raised the issue sua sponte.

In re Davis, 2015 WL 3484561 (Bankr. E.D. Mich., May 29, 2015)

(case no. 4:15-bk-30158) (Bankruptcy Judge Daniel S. Opperman)

Text of opinion

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Section Four:
Cases under
Related Federal Statutes

Fair Credit Reporting Act (FCRA)

Mortgage creditor's failure to report voluntary post-discharge payments does not violate FCRA:

A home mortgage creditor's reporting of the Chapter 7 debtor's loan as having a zero balance and no payment activity, even though the debtor had continued making mortgage payments to avoid foreclosure, was not false or inaccurate, and therefore did not violate the Fair Credit Reporting Act, since the debtor's personal obligation to pay the debt was discharged in bankruptcy, and the fact that the creditor accepted the debtor's voluntary payments and refrained from foreclosing on his home did not suggest that any new debtor-creditor or similar relationship arose between the two parties. See *Schueller v. Wells Fargo & Co.*, 559 Fed. Appx. 733 (10th Cir., May 22, 2014) (case no. 13-2057); *Horsch v. Wells Fargo Home Mortgage*, ---F.Supp.3d ----, 2015 WL 1344836 (E.D. Pa., March 25, 2015) (case no. 2:14-cv-2638) (District Judge William H. Yohn, Jr.).

Groff v. Wells Fargo Home Mortgage, Inc., --- F.Supp.3d ----, 2015 WL 2169811 (E.D. Mich., May 8, 2015)

(case no. 2:14-cv-12250) (District Judge David M. Lawson)

Text of opinion Text of opinion in Horsch Text of opinion in Schueller

Mortgage creditor's failure to report voluntary post-discharge payments does not violate FCRA:

A mortgage creditor's failure to report a Chapter 7 debtor's post-discharge voluntary payments on the mortgage, in the absence of a reaffirmation of the mortgage, was not a violation of the Fair Credit Reporting Act; the creditor reported the debt as discharged in bankruptcy with a zero balance.

Dixon v. Green Tree Servicing, LLC, 2015 WL 2227741 (N.D. Ind., May 11, 2015), **appeal filed**, Case No. 15-2269 (7th Cir., filed June 12, 2015)

(case no. 2:13-cv-227) (Chief District Judge Philip P. Simon)

Text of opinion

Fair Debt Collection Practices Act (FDCPA)

Filing proof of claim for time-barred debt does not violate FDCPA:

While filing a proof of claim in a bankruptcy case is an action to collect on a debt, filing a proof of claim for a time-barred debt is not deceptive, unfair or unconscionable and therefore does not violate the Fair Debt Collection Practices Act. Because of this conclusion, the court did not have to decide whether the Bankruptcy Code precluded an action under the FDCPA for filing a proof of claim for a time-barred debt.

In re Dunaway, 531 B.R. 267 (Bankr. W.D. Mo., May 19, 2015), appeal filed, Dunaway v. LVNV Funding, LLC, Case No. 4:15-cv-415 (W.D. Mo., filed June 2, 2015)

(case no. 4:14-bk-41073; adv. proc. no. 4:14-ap-4132) (Bankruptcy Judge Dennis R. Dow)

Text of opinion

"*Crawford* claim" was untimely:

The district court adopted the recommendations stated in *In re Williams*, 2015 WL 3429365 (Bankr. M.D. Ala., April 2, 2015) (case no. 2:10-bk-31037; adv. proc. no. 2:14-ap-3118), in which the bankruptcy court concluded that the Chapter 13 debtor's "*Crawford* claim" (i.e., a claim that a creditor's filing a proof of claim for a time-barred debt violated the Fair Debt Collection Practices Act) was precluded by the one-year statute of limitations in the Act. In cases in which an alleged FDCPA violation is based upon the filing of a proof of claim in bankruptcy, courts have ruled, the bankruptcy court said, that the limitations period begins to run with the filing of the proof of claim. See *In re Simmerman*, 463 B.R. 47 (Bankr. S.D. Ohio 2011); *Kline v. Mortgage Electronic Sec. Systems*, 659 F.Supp.2d 940 (S.D. Ohio 2009); *In re Rice–Etherly*, 336 B.R. 308 (Bankr. E.D. Mich. 2006). The bankruptcy court agreed with this view and declined to embrace the debtor's contention that the violation continued so long as the claim was allowed. Thus, here, where the creditor's proof of claim was filed in 2010, the debtor's claim was untimely.

Williams v. Resurgent Capital Servs., L.P., 2015 WL 3440321 (M.D. Ala., May 28, 2015)

(case no. 2:15-cv-254) (Chief District Judge W. Keith Watkins)

Text of opinion Text of bankruptcy court opinion

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Permanent Resources

Bankruptcy Code, Rules and Forms

Bankruptcy Code

Full Text of Code (Cornell Law School)

Bankruptcy Rules and Forms Currently in Effect

Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") (PDF document provided by the Administrative Office of the U.S. Courts; current through December 2014 amendments)

—HTML version at Cornell Law School

Official bankruptcy forms

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Federal Rulemaking Resources

Background:

- Federal Rules of Practice and Procedure
- The Judicial Conference of the United States

The Administrative Bodies Involved in Bankruptcy Court Rulemaking:

- The Advisory Committee on Bankruptcy Rules (the "Advisory Committee"), which initiates proposed changes to the Bankruptcy Rules or Official Forms.
- The Committee on Rules of Practice and Procedure (referred to as "the Standing Committee") of the Judicial Conference of the United States, which reviews the proposed changes.
- The Judicial Conference itself, which approves proposed changes and submits proposed Rule (but not bankruptcy form) changes to the Supreme Court. The 27-member Judicial Conference is the policy-making body for the federal court system. The Chief Justice of the Supreme Court serves as its presiding officer. Its other members are the chief judges of the 13 courts of appeals, a district judge from each of the 12 geographic circuits, and the chief judge of the Court of International Trade.

The process for the approval of a new or amended Bankruptcy Rule is as follows:

- Formulation by the Advisory Committee.
- Approval for publication for public comment by the Standing Committee. The public comment period generally is six months. Technical changes may be approved without publication for public comment
- Review of comments by the Advisory Committee; possible modification of proposal. If the modification is significant, the proposal may be submitted to the Standing Committee for publication for another round of public comment. Otherwise, the proposal is submitted to the Standing Committee for final approval.
- Final Approval by the Standing Committee.
- Approval by the Judicial Conference, typically at its annual conference in September.
- Approval by the U.S. Supreme Court. Must be by May 1 for a rule to be effective that year; the rule may not be effective earlier than December 1. See 28 U.S.C. § 2075.
- Lack of disapproval by the U.S. Congress.

Amendments to the Official Bankruptcy Forms follow a similar route, except that, under Bankruptcy Rule 9009, the Judicial Conference is the final authority on amendments to the forms; the amendments are not submitted to the Supreme Court or Congress.

The Advisory Committee makes available the suggestions for changes to the Bankruptcy Rules and Forms, and comments on proposed changes, it has received from members of the legal community:

Archived Bankruptcy Rule Suggestions

Archived Bankruptcy Rule Comments

Reports of the various bodies involved in the rulemaking process are available online:

- Proceedings of the Judicial Conference

- Standing Committee Meeting Reports
- Standing Committee Meeting Minutes
- Standing Committee Meeting Agendas

- Advisory Committee Meeting Reports
- Advisory Committee Meeting Minutes
- Advisory Committee Meeting Agendas

For a compilation of amendments to the Bankruptcy Rules and Official Forms adopted since 2009, when CBAR started keeping track of these things, click here

R

Bankruptcy Rules:

Proposed Amendment Effective December 1, 2015

Rule Involved:

- 1007 (Lists, Schedules, Statements and Other Documents)

Status: Approved by the Supreme Court on April 29, 2015. The rule will go into effect unless Congress disapproves it. See the Supreme Court transmittal letter

Summary of Change: In sections (a)(1) and (a)(2), references to "Schedules D, E, F, G, and H" are changed to refer to Official Forms 106 D, E/F, G, and H, reflecting the combining of Schedules E and F and the renumbering of all of the schedules)

History:

Proposed by the Advisory Committee at its September 24-25, 2013, meeting for submission directly to the Standing Committee as a conforming change for which publication for public comment is not required. See the draft minutes of that meeting on page 36 of Agenda for Advisory Committee Meeting of April 22-23, 2014.

Approved by the Standing Committee at its January 9-10, 2014, meeting for submission to the Judicial Conference. See the draft minutes of the Standing Committee meeting on page 57 of the Agenda for Advisory Committee Meeting of April 22-23, 2014.

Approved for submission to the Supreme Court by the Judicial Conference at its March 11, 2014, meeting. See page 23 of the Report of the Proceedings of the Judicial Conference on March 11, 2014.

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Bankruptcy Forms:

Proposed New and Amended Forms Effective December 1, 2015

Most Official Bankruptcy Forms are scheduled to be replaced with substantially revised, reformatted and renumbered versions effective December 1, 2015, if approved by the Judicial Conference at its September 2015 meeting. While these forms are described in greater detail in the following pages, information is also available on the Administrative Office for the U.S. Courts website. This website includes a Forms Number Conversion Chart and a large file with the Full Text of the Revised Forms, along with their corresponding Committee Notes. This file includes the following forms in the stated order:

- 11A (General Power of Attorney)
- 11B (Special Power of Attorney)
- 101 (Voluntary Petition for Individuals)
- 101A (Initial Statement About an Eviction Judgment Against You)
- 101B (Statement About Payment of an Eviction Judgment Against You)
- 103A (Application for Individuals to Pay the Filing Fee in Installments)
- 103B (Application to Have the Chapter 7 Filing Fee Waived)
- 104 (List of 20 Largest Creditors For Individual Chapter 11 Cases)
- 105 (Involuntary Petition Against an Individual)
- 106A/B (Schedule A/B: Property)
- 106C (Schedule C: Property Claimed as Exempt)
- 106D (Schedule D: Secured Creditors)
- 106E/F (Schedule E/F: Unsecured Creditors)
- 106G (Schedule G: Executory Contracts and Unexpired Leases)
- 106H (Schedule H: Codebtors)
- 106I (Schedule I: Income)
- 106J (Schedule J: Expenses)
- 106J-2 (Schedule J-2: Expenses for Separate Household of Debtor 2)
- 106Sum (Summary of Assets and Liabilities and Certain Statistical Information)
- 106Dec (Declaration about an Individual Debtor's Schedules)

- Committee Note for Forms 106
- 107 (Statement of Financial Affairs)
- 108 (Statement of Intention for Individuals Filing Under Chapter 7)
- 119 (Bankruptcy Petition Preparer's Notice, Declaration, and Signature)
- 121 (Statement About Your Social Security Numbers)
- 122A—1 (Chapter 7 Statement of Your Current Monthly Income)
- 122A—1Supp (Statement of Exemption from Presumption of Abuse Under § 707(b)(2))
- 122A–2 (Chapter 7 Means Test Calculation)
- 122B (Chapter 11 Statement of Current Monthly Income)
- 122C–1 (Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period)
- 122C–2 (Chapter 13 Calculation of Your Disposable Income)
- Committee Note for Forms 122
- 201 (Voluntary Petition for Non-Individuals)
- 201A (Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11)
- 202 (Declaration Under Penalty of Perjury for Non-Individual Debtors)
- 204 (Chapter 11 or Chapter 9 Cases: List of 20 Largest Creditors)
- 205 (Involuntary Petition Against a Non-Individual)
- 206A/B (Schedule A/B: Assets — Real and Personal Property)
- 206D (Schedule D: Secured Creditors)
- 206E/F (Schedule E/F: Unsecured Creditors)
- 206G (Schedule G: Executory Contracts and Unexpired Leases)
- 206H (Schedule H: Codebtors)
- 206Sum (Summary of Assets and Liabilities for Non-Individuals)
- Committee Note for Forms 206
- 207 (Statement of Financial Affairs for Non-Individuals)

- 309A (For Individuals or Joint Debtors) (Notice of Chapter 7 Bankruptcy Case -- No Proof of Claim Deadline)
- 309B (For Individuals or Joint Debtors) (Notice of Chapter 7 Bankruptcy Case -- Proof of Claim Deadline Set)
- 309C (For Corporations or Partnerships) (Notice of Chapter 7 Bankruptcy Case -- No Proof of Claim Deadline)
- 309D (For Corporations or Partnerships) (Notice of Chapter 7 Bankruptcy Case -- Proof of Claim Deadline Set)
- 309E (For Individuals or Joint Debtors) (Notice of Chapter 11 Bankruptcy Case)
- 309F (For Corporations or Partnerships) (Notice of Chapter 11 Bankruptcy Case)
- 309G (For Individuals or Joint Debtors) (Notice of Chapter 12 Bankruptcy Case)
- 309H (For Corporations or Partnerships) (Notice of Chapter 12 Bankruptcy Case)
- 309I (Notice of Chapter 13 Bankruptcy Case)
- Committee Note for Forms 309
- 312 (Order and Notice for Hearing on Disclosure Statement)
- 313 (Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof)
- 314 (Class [ ] Ballot for Accepting or Rejecting Plan of Reorganization)
- 315 (Order Confirming Chapter 11 Plan)
- 318 (Order of Discharge in Individual Chapter 7 Case)
- 401 (Chapter 15 Petition for Recognition of a Foreign Proceeding)
- 410 (Proof of Claim)
- 410A (Mortgage Proof of Claim Attachment)
- 410S1 (Notice of Mortgage Payment Change)
- 410S2 (Notice of Postpetition Mortgage Fees, Expenses, and Charges)
- Committee Note for Form 410
- 416A (Caption: Full)
- 416B (Caption: Short Title)
- 416D (Caption for Use in Adversary Proceeding)

- 417A (Notice of Appeal And Statement of Election)
- 417B (Optional Appellee Statement of Election to Proceed in District Court)
- 417C (Certificate of Compliance With Rule 8015(a)(7)(B) or 8016(d)(2))
- 423 (Certification About a Financial Management Course)
- 424 (Certification to Court of Appeals by All Parties)
- 427 (Cover Sheet for Reaffirmation Agreement)

Note that most, if not all, of the forms are accompanied by Committee Notes, but the above list includes only those Committee Notes that apply to groups of forms and therefore do not directly follow the forms to which they apply.

R

Bankruptcy Forms:

Proposed New and Amended Forms Effective December 1, 2015 (first group)

Forms Involved:

- 101 (Voluntary Petition for Individuals Filing for Bankruptcy)
- 101A (Initial Statement About an Eviction Judgment Against You) (new form)
- 101B (Statement About Payment of an Eviction Judgment Against You) (new form)
- 104 (For Individual Chapter 11 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims Against You and Are Not Insiders)
- 105 (Involuntary Petition Against an Individual)
- 106A/B (Schedule A/B: Property)
- 106C (Schedule C: The Property You Claim as Exempt)
- 106D (Schedule D: Creditors Who Hold Claims Secured by Property)
- 106E/F (Schedule E/F: Creditors Who Have Unsecured Claims)
- 106G (Schedule G: Executory Contracts and Unexpired Leases)
- 106H (Schedule H: Your Codebtors)
- 106Dec (Declaration About an Individual Debtor's Schedules)
- 106Sum (Summary of Your Assets and Liabilities and Certain Statistical Information)
- 107 (Statement of Financial Affairs for Individuals Filing for Bankruptcy)
- 108/112 (Statement of Intention for Individuals Filing Under Chapter 7; formerly Form 8; published as Form 112 and now proposed to be renumbered as Form 108)
- 119 (Bankruptcy Petition Preparer's Notice, Declaration, and Signature)
- 121 (Statement About Your Social Security Numbers)
- 318 (Order of Discharge; formerly Form 18)
- 423 (Certification About a Financial Management Course; formerly Form 23)
- 427 (Cover Sheet for Reaffirmation Agreement; formerly Form 27)
- Instructions (Bankruptcy Forms for Individuals)

Status: To be considered for final approval by the Judicial Conference at its September 2015 meeting.

Full Text: Report of Advisory Committee's April 22-23, 2014, Meeting [pages 113-237] (these do not reflect minor revisions made in 2015)

For changes made to Forms 106A/B, 106D, 106E/F and 106G, and to the Committee Note to Official Form 107, in 2015, see Bankruptcy Appendices to the Agenda for the Standing Committee's Meeting of May 28-29, 2015 (pages 209-230 [Forms 106], 287-290 [Committee Note])

History:

Proposed for publication by the Advisory Committee at its April 2-3, 2013, meeting. See "Action Item 14" on pages 26-31 of the Report of the Advisory Committee's April 2013 Meeting.

Approved for publication by the Standing Committee at its June 3-4, 2013: Report of the Standing Committee's June 3-4, 2013, meeting (pp 12-17)

Published for public comment from August 15, 2013, through February 18, 2014.

Approved by the Advisory Committee at its April 22-23, 2014, meeting for submission to the Standing Committee. Certain changes were made as a result of the public comments received. See "Action Item 4" on pages 6-12 of the Report of the Advisory Committee's April 22-23, 2014, Meeting

Approved by the Standing Committee at it May 29-30, 2014, meeting. See page 15 of the Minutes of Standing Committee's Meeting on May 29-30, 2014. Submission to the Judicial Conference was withheld so that all the modernized forms can go into effect on December 1, 2015.

Reconsidered by the Advisory Committee at its April 20, 2015, meeting and submitted to the Standing Committee for approval, at its May 28-29, 2015, meeting, for submission to the Judicial Conference. See Action Items 7 and 9, on pages 10-15 of the Report of the Advisory Committee's April 20, 2015, meeting (pages 448-453 overall) in the Agenda for the Standing Committee's Meeting of May 28-29, 2015.

The Advisory Committee made minor changes to Forms 106A/B, 106D, 106E/F and 106G, and to the Committee Note to Official Form 107. In particular, in Official Form 106A/B the Committee added qualified ABLE accounts to the list of accounts in question 24 that may be excluded from the estate. The Committee also proposed that Form 112 be renumbered as Form 108.

Apparently approved by the Standing Committee at its May 28-29, 2015, meeting for submission to the Judicial Conference for final approval, although the Committee's report is not yet available.

R

Bankruptcy Forms:

Proposed New and Amended Forms Effective December 1, 2015 (second group)

Forms Involved:

- 11A (General Power of Attorney) (Abrogated)
- 11B (Special Power of Attorney) (Abrogated)
- 106J (Schedule J: Your Expenses)
- 106J-2 (Schedule J-2: Expenses for Separate Household of Debtor 2) (new form)
- Instruction booklet for non-individuals
- 201 (Voluntary Petition for Non-Individuals Filing for Bankruptcy)
- 202 (Declaration Under Penalty of Perjury for Non-Individual Debtors)
- 204 (Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders)
- 205 (Involuntary Petition Against a Non-Individual)
- 206Sum (Summary of Assets and Liabilities for Non-Individuals)
- 206A/B (Schedule A/B: Assets—Real and Personal Property)
- 206D (Schedule D: Creditors Who Have Claims Secured by Property)
- 206E/F (Schedule E/F: Creditors Who Have Unsecured Claims)
- 206G (Schedule G: Executory Contracts and Unexpired Leases)
- 206H (Schedule H: Codebtors)
- 207 (Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy)
- 309A (Notice of Chapter 7 Bankruptcy Case—No Proof of Claim Deadline (For Individuals or Joint Debtors))
- 309B (Notice of Chapter 7 Bankruptcy Case—Proof of Claim Deadline Set (For Individuals or Joint Debtors))
- 309C (Notice of Chapter 7 Bankruptcy Case—No Proof of Claim Deadline (For Corporations or Partnerships))
- 309D (Notice of Chapter 7 Bankruptcy Case—Proof of Claim Deadline Set (For Corporations or Partnerships))
- 309E (Notice of Chapter 11 Bankruptcy Case (For Individuals or Joint Debtors))

- 309F (Notice of Chapter 11 Bankruptcy Case (For Corporations or Partnerships))
- 309G (Notice of Chapter 12 Bankruptcy Case (For Individuals or Joint Debtors))
- 309H (Notice of Chapter 12 Bankruptcy Case (For Corporations or Partnerships))
- 309I (Notice of Chapter 13 Bankruptcy Case)
- 312 (Order and Notice for Hearing on Disclosure Statement)
- 313 (Order Approving Disclosure Statement and Fixing Time for Filing Acceptances and Rejections of Plan, Combined With Notice Thereof)
- 314 (Class Ballot for Accepting or Rejecting Plan of Reorganization)
- 315 (Order Confirming Plan [Chapter 11])
- 401 (Chapter 15 Petition) (new form)
- 410 (Proof of Claim) (currently Form 10)
- 410A (Mortgage Proof of Claim Attachment) (currently Form 10A)
- 410S1 (Notice of Mortgage Payment Change) (currently Form 10S1)
- 410S2 (Notice of Postpetition Mortgage Fees, Expenses, and Charges) (currently Form 10S2)
- 424 (Certification to Court of Appeals by All Parties)

Status: To be considered for final approval by the Judicial Conference at its September 2015 meeting.

Full text: Bankruptcy Appendices to the Agenda for the Standing Committee's Meeting of May 28-29, 2015 (pages 9-175)

Full text as published for public comment

History: Originated by the Advisory Committee at its April 22-23, 2014, meeting and proposed for publication for public comment. See "Action Item 11" (relating to Form 401, Chapter 15 Petition) on page 24, "Action Item 12" (relating to Form 410A, Mortgage Proof of Claim Attachment) on pages 24-26, and "Action Item 13" (relating to the other forms) on pages 26-29, in the Report of the Advisory Committee's April 22-23, 2014, Meeting

Approved for publication by the Standing Committee at its May 29-30, 2014, meeting. See page 8 of the Report of the Standing Committee's May 29-30, 2014, Meeting

Published for public comment from August 15, 2014, through February 17, 2015. Comments are available at the regulations.gov website. Comments are also analyzed in the Agenda for the Advisory Committee's April 20, 2015, Meeting.

Approved by the Advisory Committee at its April 20, 2015, meeting and submitted to the Standing Committee for approval, at its May 28-29, 2015, meeting, for submission to the Judicial Conference. See Action Items 4-6, on pages 5-10 of the Report of the Advisory Committee's April 20, 2015, meeting (pages 443-448 overall) in the Agenda for the Standing Committee's Meeting of May 28-29, 2015. The Advisory Committee made minor changes to some forms.

Apparently approved by the Standing Committee at its May 28-29, 2015, meeting for submission to the Judicial Conference for final approval, although the Committee's report is not yet available.

R

Bankruptcy Forms:

Proposed Amended and Renumbered Forms Effective December 1, 2015 (third group)

Forms Involved:

- 103A (Application for Individuals to Pay the Filing Fee in Installments; formerly 3A)
- 103B (Application to Have the Chapter 7 Filing Fee Waived; formerly 3B)
- 106I (Schedule I; formerly 6I)
- 122A-1 (Chapter 7 Statement of Your Current Monthly Income; formerly 22A-1)
- 122A-1Supp (Statement of Exemption from Presumption of Abuse Under §707(b)(2); formerly 22A-1Supp)
- 122A-2 (Chapter 7 Means Test Calculation; formerly 22A-2)
- 122B (Statement of Current Monthly Income—Chapter 11; formerly 22B)
- 122C-1 (Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period; formerly 22C-1)
- 122C-2 (Chapter 13 Calculation of Your Disposable Income; formerly 22C-2)
- 201A (Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11)
- 416A (Caption [Full]; formerly 16A)
- 416B (Caption [Short Title]; formerly 16B)
- 416D (Caption for Use in Adversary Proceeding; formerly 16D)
- 417A (Notice of Appeal and Statement of Election; formerly 17A)
- 417B (Optional Appellee Statement of Election to Proceed in District Court; formerly 17B)
- 417C (Certificate of Compliance with Rule 8015(a)(7)(B) or 8016(d)(2); formerly 17C)

Status: To be considered for final approval by the Judicial Conference at its September 2015 meeting.

Full Text: Bankruptcy Appendices to the Agenda for the Standing Committee's Meeting of May 28-29, 2015 (pages 199-305)

Summary of Changes: All of the forms are renumbered, and minor amendments are made to some of the forms. With respect to the means test forms, the Advisory Committee's report states that "the Committee approved several formatting and line numbering changes and the correction of a few errors in the listed forms. It also made a change to Official Forms 22A-2 and 22C-2 in response to the Tax Increase Prevention Act of 2014, Pub. Law No. 113-295, which authorized contributions to qualified ABLE accounts, as defined by 26 U.S.C. § 529A(b), to be included in the means test deduction for contributions to the care of household or family members."

History: Approved by the Advisory Committee at its April 20, 2015, meeting and submitted to the Standing Committee for approval (without publication) at its May 28-29, 2015, meeting. See Action Item 7 on pages 10-12 of the Report of the Advisory Committee's April 20, 2015, meeting (pages 448-450 overall) in the Agenda for the Standing Committee's Meeting of May 28-29, 2015. Apparently approved by the Standing Committee at that meeting for submission to the Judicial Conference for final approval, although the Committee's report is not yet available.

R

Bankruptcy Rules:

Proposed Amendments Effective December 1, 2016

Rules Involved:

- Rule 1010 (Service of Involuntary Petition and Summons)
- Rule 1011 (Responsive Pleading or Motion in Involuntary Cases)
- Rule 1012 (Responsive Pleading in Cross-Border Cases; new rule)
- Rule 2002 (Notices to Creditors)
- Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence)
- Rule 9006 (Computing and Extending Time) (two amendments)

Status: To be considered for approval by the Standing Committee at its May 28-29, 2015, meeting for submission to the Judicial Conference for final approval. See page 5 of the Agenda for the Standing Committee's Meeting of May 28-29, 2015. Reportedly approved at the meeting, although the Committee's report is not yet available.

Full Text: Bankruptcy Appendices to the Agenda for the Standing Committee's Meeting of May 28-29, 2015 (pages 177-196)

Full text as published for public comment

Summary of Changes:

- Rule 1010 (subdivision (a) is amended to remove provisions regarding the issuance of a summons for service in certain Chapter 15 proceedings; the requirements for notice and service in Chapter 15 proceedings are found in Rule 2002(q))
- Rule 1011 (amended to remove provisions regarding Chapter 15 proceedings)
- Rule 1012 (new rule added to govern responses to petitions for recognition in cross-border cases; it incorporates provisions formerly found in Rule 1011)
- Rule 2002 (subdivision (q) is amended to clarify the procedures for giving notice in cross-border proceedings)

- Rule 3002.1 (amended to clarify that the rule applies whenever a Chapter 13 plan provides that contractual payments on the debtor's home mortgage will be maintained; further amended to provide that, unless the court orders otherwise, the notice obligations imposed by this rule cease on the effective date of an order granting relief from the automatic stay with regard to the debtor's principal residence)

- Rule 9006(f) (the first amendment changes "after service" to "after being served" so as to clarify that only the party that is served by mail or under the specified provisions of Civil Rule 5—and not the party making service—is permitted to add three days to any prescribed period for taking action after service is made; the second amendment would eliminate the three-day extension to time periods when service is effected electronically)

History (first amendment to Rule 9006(f):

Proposed for publication by the Advisory Committee at its April 2-3, 2013, meeting. See "Action Item 12" on page 25 of the Report of Advisory Committee's April 2-3, 2013, Meeting

Approved for publication by the Standing Committee at its June 3-4, 2013, meeting. See page 16 of Report of Standing Committee's June 3-4, 2013, Meeting

Published for public comment from August 15, 2013, through February 18, 2014.

No comments were received on the proposed amendment. See page 262 of the Agenda for Advisory Committee's Meeting of April 22-23, 2014.

Approved by the Advisory Committee at its April 22-23, 2014, meeting for submission to the Standing Committee. See "Action Item 1" on page 3 of the Report of the Advisory Committee's April 22-23, 2014, Meeting. The Advisory Committee recommended that, if the Standing Committee approves the amendment, the amendment be held in abeyance until the second amendment to Rule 9006(f) is ready for submission to the Judicial Conference.

The Standing Committee met on May 29-30, 2014, but its report does not indicate any action taken on this amendment. See pages 6-13 of the Report of the Standing Committee's May 29-30, 2014, Meeting

History (Rules 1010, 1011, 1012, 2002, 3002.1, and second amendment to Rule 9006(f)):

Originated by the Advisory Committee at its April 22-23, 2014, meeting. See "Action Item 8" (Rules 1010, 1011, 1012 and 2002; pages 20-22); "Action Item 9" (Rule 3002.1; pages 22-23); and Action Item 10 (second amendment to Rule 9006(f); pages 23-24) of the Report of the Advisory Committee's April 22-23, 2014, Meeting. The Advisory Committee submitted the proposed amendments to the Standing Committee with a recommendation that they be published for public comment.

Approved for publication by the Standing Committee at its May 29-30, 2014, meeting. See page 8 of the Report of the Standing Committee's May 29-30, 2014, Meeting

Published for public comment from August 15, 2014, through February 17, 2015 (other than the first amendment to Rule 9006, which has completed the public comment process and is on hold pending the completion of the process for the second proposed amendment to that rule). Comments are on the regulations.gov website. Comments are also analyzed in the Agenda for the Advisory Committee's April 20, 2015, Meeting.

Approved by the Advisory Committee at its April 20, 2015, meeting and submitted to the Standing Committee for approval, at its May 28-29, 2015, meeting, for submission to the Judicial Conference. See Action Items 1, 2 and 3, on pages 3-5, of the Report of the Advisory Committee's April 20, 2015, meeting (pages 441-443 overall) in the Agenda for the Standing Committee's Meeting of May 28-29, 2015.

R

Bankruptcy Rules:
Proposed Amendments Effective December 1, 2017

Rules involved:

- Rule 1001 (Scope of Rules and Forms)
- Rule 1006(b)(1) (Filing Fee)

Status: Published for public comment from August 14, 2015, through February 16, 2016:

Public Comment Site

Public hearings will be held in Washington, DC, on January 22, 2016, and in Pasadena, CA, on January 29, 2016.

Full Text: Full text as published for public comment Also available here

Summary of Changes:

- Rule 1001 (The last sentence of the rule is amended to read "These rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding" so as to reflect amendments to Fed. R. Civ. P. 1)
- Rule 1006 (Amended to provide that an individual debtor's petition must be accepted for filing so long as the debtor submits a signed application to pay the filing fee in installments and even if a required initial installment payment is not made at the same time)

History (Rule 1001):

Approved by the Advisory Committee at its September 29-30, 2014, meeting and submitted to the Standing Committee for approval for publication at its January 8-9, 2015, meeting. See page 2 of the Report of the Advisory Committee's September 29-30, 2014, meeting (page 80 overall) in the Agenda for the Standing Committee's January 8-9, 2015, Meeting.

Approved for publication in August 2015 by the Standing Committee at its January 8-9, 2015, meeting. See page 5 of the draft minutes for that meeting (page 29 overall), in the Agenda for the Standing Committee's Meeting of May 28-29, 2015. The report from that meeting is not yet available.

History (Rule 1006):

Approved by the Advisory Committee at its April 20, 2015, meeting and submitted to the Standing Committee for approval for publication at its May 28-29, 2015, meeting. See Action Item 10 on pages 16-17 of the Report of the Advisory Committee's April 20, 2015, meeting (pages 454-455 overall) in the Agenda for the Standing Committee's Meeting of May 28-29, 2015.

Approved for publication by the Standing Committee at its May 28-29, 2015, meeting. See page 6 of the Agenda for the Standing Committee's Meeting of May 28-29, 2015. The report from that meeting is not yet available.

R

Bankruptcy Rule and Form Amendments Being Held in Abeyance

The Judicial Conference originally approved for transmission to the Supreme Court, in the group of Rule amendments slated to take effect on December 1, 2014, amendments to Rules 7008(a) (general rules of pleading in adversary proceedings), 7012 (defenses and objections in adversary proceedings), 7016 (pretrial procedures in adversary proceedings), 9027 (removal of case), and 9033 (proposed findings of fact and conclusions of law) that reflected the Supreme Court's decision in *Stern v. Marshall*. However, as noted in footnote 1 on page 30 of the Report of the Proceedings of the Judicial Conference (September 17, 2013), the Conference subsequently decided to recommit these proposed amendments to the Standing Committee because they "implicated an issue to be considered by the Supreme Court in *Executive Benefits Insurance Agency v. Arkison*," namely, whether the parties have the authority to consent to the bankruptcy court's jurisdiction See also page 40 of the Agenda for the Advisory Committee Meeting on April 22-23, 2014, which recounts the discussion of this matter by the Advisory Committee at its September 24-25, 2013, meeting. While the Court in *Arkison* declined to resolve the issue of consent, the Court decided the issue in *Wellness Int'l Network v. Sharif* on May 26, 2015, and the proposed amendments are being held in abeyance by the Advisory Committee pending that decision. See page 11 (item 7, "Report by the Subcommittee on Business Issues") of the Minutes of the Advisory Committee's Meeting of September 29-30, 2014 (page 103 overall). The Court had not rendered its decision when the Advisory Committee held its April 20, 2015, meeting, so these items remain pending. See page 29 of the Agenda for the Advisory Committee's April 20, 2015, Meeting.

A proposed national Chapter 13 form plan (Form 113), and associated Rule changes, have been published twice for public comment. As there remains substantial opposition to the proposal, the Advisory Committee voted at its April 20, 2015, meeting to study a "compromise" proposal "that would involve promulgating a national plan form and related rules, but would allow districts to opt out of the use of the Official Form if certain conditions were met." See pages 17-20 of the Report of the Advisory Committee's April 20, 2015, meeting (pages 455-458 overall) in the Agenda for the Standing Committee's Meeting of May 28-29, 2015. If the Committee decides to go forward with the compromise proposal, the effective date could be as early as December 1, 2016, and as late as December 1, 2018, depending on whether the Rules and Form are published again for public comment.

Forms Involved:

- Form 113 (national Chapter 13 form plan

Rules Involved:

- Rule 2002 (Notices to Creditors)
- Rule 3002 (Filing Proof of Claim or Interest)
- Rule 3007 (Objections to Claims)
- Rule 3012 (Valuation of Security)

- Rule 3015 (Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case)

- Rule 4003 (Exemptions)

- Rule 5009 (Closing Chapter 7, Chapter 12, Chapter 13, and Chapter 15 Cases; Order Declaring Lien Satisfied)

- Rule 7001 (Scope of Rules of Part VII)

- Rule 9009 (Forms)

Full Text: See the Report of the Advisory Committee's April 22-23, 2014, Meeting [pages 249–251 (Rule 2002); pages 253-255 (Rule 3002); pages 259-260 (Rule 3007); pages 261-262 (Rule 3012); pages 263-266 (Rule 3015); page 267 (Rule 4003); page 269-270 (Rule 5009); page 271 (Rule 7001); pages 275-276 (Rule 9009)]

Summary of Changes:

- Rule 2002 (Subdivisions (a) and (b) are amended and reorganized to alter the provisions governing notice under this rule in chapter 13 cases)

- Rule 3002 (extensively amended)

- Rule 3007 (amended to specify the manner in which an objection to a claim and notice of the objection must be served and to no longer require that a hearing be scheduled or held on every objection)

- Rule 3012 (several changes)

- Rule 3015 (extensively amended)

- Rule 4003 (subdivision (d) is amended to provide that a request under § 522(f) to avoid a lien or other transfer of exempt property may be made by motion or by a Chapter 12 or Chapter 13 plan)

- Rule 5009 (subdivision (d) is added to provide a procedure by which a debtor in a Chapter 12 or Chapter 13 case may request an order declaring a secured claim satisfied and a lien released under the terms of a confirmed plan)

- Rule 7001 (subdivision (2) is amended to provide that the determination of the amount of a secured claim under Rule 3012 or the validity, priority, or extent of a lien under Rule 4003(d) does not require an adversary proceeding)

- Rule 9009 (amended and reorganized into separate subdivisions; amended to require that an Official Form be used without alteration, except when another rule, the Official Form itself, or the national instructions applicable to an Official Form permit alteration)

History (Form 113):

Proposed for publication by the Advisory Committee at its April 2-3, 2013, meeting. See "Action Item 10" on pages 19-20 of the Report of Advisory Committee's April 2-3, 2013, Meeting. For the full text, see pages 451-459.

Approved for publication by the Standing Committee at its June 3-4, 2013:
Report of Standing Committee's June 3-4, 2013, Meeting (pp 12-17)

Published for public comment from August 15, 2013, through February 18, 2014.

Reconsidered and revised by the Advisory Committee at its April 22-23, 2014, meeting. See "Action Item 7" on pages 17-20 of the Report of the Advisory Committee's April 22-23, 2014, Meeting. The Advisory Committee submitted the proposed amendments to the Standing Committee with a recommendation that they be again published for public comment. For the full text, see pages 297-309.

History (amendments to Rules):

Proposed for publication by the Advisory Committee at its April 2-3, 2013, meeting. See "B. Items for Publication in August 2013" beginning on page 17 of the Report of Advisory Committee's April 2-3, 2013, Meeting.

Approved for publication by the Standing Committee at its June 3-4, 2013:
Report of Standing Committee's June 3-4, 2013, Meeting (pp 12-17)

Published for public comment from August 15, 2013, through February 18, 2014.

Reconsidered and in some cases redrafted by the Advisory Committee at its April 22-23, 2014, meeting. See "Action Item 6" on pages 12-17 of the Report of the Advisory Committee's April 22-23, 2014, Meeting. The Advisory Committee submitted the proposed amendments to the Standing Committee with a recommendation that they be again published for public comment.

Latest History (both Rules and Form 113):

Approved for publication by the Standing Committee at its May 29-30, 2014, meeting. See page 8 of the Report of the Standing Committee's May 29-30, 2014, Meeting

Published for public comment from August 15, 2014, through February 17, 2015. Comments are available on the regulations.gov website. Comments are collected on pages 2-73 of Appendix A to the Agenda for the Advisory Committee's Meeting of April 20, 2015. Comments are also analyzed in the Agenda for the Advisory Committee's April 20, 2015, Meeting.

R

Internet Resources

Exemptions

John Bates' Exemptions Express

National Consumer Law Center

No Fresh Start: How States Let Debt Collectors Push Families into Poverty (October 2013)

Foreclosing a Dream: State Laws Deprive Homeowners of Basic Protections (February 2009)

—Summary of State Foreclosure Laws

50-State Report on Unfair and Deceptive Acts and Practices Statutes (February 2009)

—State-by-State Analysis

For more, see the National Consumer Law Center (NCLC) website

United States Trustee Program

USTP website

Means Test Expense Allowances and Other Figures

Guidelines for Reviewing Mortgage Proofs of Claim (April 2009) (for Chapter 13 trustees)

Chapter 13 Trustees Weigh Advantages and Disadvantages of Paying Debtors' Ongoing Mortgages (June 2009)

United States Trustee Manual

Chapter 7 Handbooks and Reference Materials

Chapter 11 Handbooks and Reference Materials

Chapter 12 Handbooks and Reference Materials

Chapter 13 Handbooks and Reference Materials

Statement of the U.S. Trustee's Program on Legal Issues Arising under the Chapter 13 Disposable Income Test (April 20, 2010)

Statement of the U.S. Trustee's Program on Legal Issues Arising under the Chapter 7 Means Test (April 23, 2010)

U.S. Trustee FAQs

Other Websites

13Network

Administrative Office of the U.S. Courts

-- Bankruptcy Case Policies

American Bankruptcy Institute (ABI)

--- Bankruptcy Blogs Exchange

Association of Bankruptcy Judicial Assistants

Bankruptcy Blogs (Justia)

Electronic Bankruptcy Noticing (EBN)

Federal Judicial Center

--- History of Bankruptcy Judgeships

Internal Revenue Manual: Financial Analysis Handbook (IRS)

National Association of Bankruptcy Trustees (NABT—Chapter 7)

National Association of Chapter 13 Trustees (NACTT)

--- NACTT Academy

National Association of Consumer Advocates (NACA)

National Association of Consumer Bankruptcy Attorneys (NACBA)

--- National Consumer Bankruptcy Rights Center

National Conference of Bankruptcy Judges

--- American Bankruptcy Law Journal

National Creditor Registration Service

PACER Service Center

States Association of Bankruptcy Attorneys

R

Supreme Court Case Status

Certiorari petitions granted:

None.

Certiorari petitions pending:

Lawson v. Sauer Inc., Case No. 15-113 (U.S. Sup. Ct., pet. for cert. filed, July 24, 2015)

The debtor has filed a petition for certiorari seeking review of *In re Lawson*, 791 F.3d 214 (1st Cir., July 1, 2015), which held, in agreement with *McClellan v. Cantrell*, 217 F.3d 890 (7th Cir. 2000) and in disagreement with the recent decision in *In re Ritz*, 787 F.3d 312 (5th Cir., May 22, 2015), that "actual fraud" under Code § 523(a)(2)(A) is not limited to fraud predicated on a misrepresentation or omission.

Supreme Court docket

General Resources

SCOTUSblog

R

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