

Cases in Review
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“Cases in Review” highlights recent cases that may be of particular interest to consumer bankruptcy practitioners. It is brought to you by Consumer Bankruptcy Abstracts & Research (www.cbar.pro) and the National Consumer Bankruptcy Rights Center (www.ncbrc.org).

Authority of the court—Imposition of sanctions—On creditor: Where the Chapter 11 debtor's sale of a parcel of real property, as called for in his plan, was unable to be completed because the mortgage creditor was unable to provide a payoff amount due to the creditor's failure to maintain a full and accurate accounting, and as a result the debtor was unable to sell the property for over a year, with a subsequent sale of the property yielding a substantially lower sale price, the mortgage creditor's claim would be reduced from \$82,043 to \$10,500, a reduction of \$71,543. In addition to the reduction of the sale price by some \$48,000, the debtor incurred significant legal fees, costs to maintain and repair the property, taxes relating to ownership of the property, and costs for insurance for the property. *In re Givens*, 2017 WL 187475 (Bankr. D. Del., Jan. 17, 2017) (case no. 1:09-bk-14401).

Chapter 7—Dismissal for cause—On basis of bad faith: Affirming *In re Romero*, 557 B.R. 875 (Bankr. D. Md., Sept. 19, 2016), the district court held that a Chapter 7 debtor did not file his bankruptcy petition in bad faith for the purpose of Code § 707(a), despite his desire to protect over \$4 million in exempt assets from a \$1.3 million prepetition judgment. A dismissal under § 707(a) based upon an ability to pay using exempt property would be doing indirectly that which the Supreme Court in *Law v. Siegel*, 134 S. Ct. 1188 (2014) has prohibited bankruptcy courts from doing directly—putting a constraint on exemptions without a clear statutory basis. *Janvey v. Romero*, 2017 WL 395275 (D. Md., Jan. 30, 2017) (case no. 1:16-cv-3355), appeal filed, Case No. 17-1197 (4th Cir., filed Feb. 13, 2017).

Chapter 13—Confirmation of plan—Calculation of projected disposable income: Veterans Administration disability benefits received by one of the Chapter 13 debtors were included in the debtors' projected disposable income. Because the

benefits were not received under the Social Security Act, they were not excluded from the debtors' "current monthly income," which was the basis for the calculation of projected disposable income. While the debtors claimed the benefits as exempt, the court agreed with the majority view that exempt property is not excluded from disposable income. Finally, while 38 U.S.C. § 5301(a)(1) provides that the benefits "shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary," considering the benefits as disposable income did not make the benefits liable for the claims of creditors since the debtors voluntarily chose to file a Chapter 13 bankruptcy case. *In re Brah*, 562 B.R. 922 (Bankr. E.D. Wis., Jan. 25, 2017) (case no. 2:16-bk-27291).

Chapter 13—Confirmation of plan—Claims treatable in plan: Property owned by the Chapter 13 debtor that was sold in a prepetition tax sale was property of the estate, although the tax sale purchaser held inchoate legal title to the property, and the debtor could pay the tax sale redemption amount over the term of the debtor's plan, with the purchaser holding a fully-secured claim. *In re Jimerson*, --- B.R. ---, 2017 WL 393675 (Bankr. N.D. Ga., Jan. 26, 2017) (case no. 1:16-bk-60838), appeal filed, *Deed Co., LLC v. Jimerson*, Case No. 1:17-cv-513 (N.D. Ga., filed Feb. 10, 2017).

Chapter 13—Confirmation of plan—Treatment of secured claims—

Permissibility of modification: Escrow funds, property insurance proceeds, and miscellaneous proceeds to which the Chapter 13 debtor's mortgage creditor was given rights in the debtor's deed of trust constituted "incidental property" under Code § 101(27B) that, under § 101(13A)(A), constituted part of the debtor's principal residence. Accordingly, the mortgage creditor's security interest extended only to the debtor's principal residence, so that the creditor's claim was protected by the anti-modification provision in Code § 1322(b)(2). Items that are inextricably bound to the real property itself as part of the possessory bundle of rights do not extend a lender's security beyond the real property. *In re Birmingham*, 846 F.3d 88 (4th Cir., Jan. 18, 2017) (case no. 15-1800).

Chapter 13—Confirmation of plan—Treatment of secured claims—

Permissibility of modification: Where the Chapter 13 debtors had executed three notes in favor of a creditor, all of which were secured by the same deed of trust on the debtors' residence, each note was secured by a different lien, so that the debtors could strip the two lower-priority liens, as the amount due on the note secured by the highest-priority lien was greater than the value of the residence. *In re Poole*, 2017 WL 401799 (Bankr. E.D. Tenn., Jan. 30, 2017) (case no. 4:16-bk-12638).

Chapter 13—Confirmation of plan—Treatment of secured claims—Vesting of title to collateral in creditor: Reversing *In re Sagendorph*, 2015 WL 3867955 (Bankr. D. Mass., June 22, 2015), the district court held that it is improper for a Chapter 13 plan to include a "forced vesting" provision—that is, a provision vesting title to a secured creditor's collateral in the creditor—without the creditor's consent. The court held that the plain language of Code § 1322(b)(9), considered alone or in combination with § 1322(b)(8) and/or § 1325(a)(5)(C), does not allow forced vesting of collateral in an objecting creditor. *In re Sagendorph*, 562 B.R. 545 (D. Mass. Jan. 23, 2017) (case no. 4:15-cv-40117).

Chapter 13—Voiding lien under Code § 506(d): The Chapter 13 debtor's mortgage creditor's lien was void under Code § 506(d) insofar as the lien secured the creditor's prepetition arrearage claim, where the debtor's plan paid in full the creditor's allowed arrearage claim for \$439.21, and the court had disallowed the creditor's amended claim asserting a prepetition arrearage of \$12,609, which the creditor had filed over three years postpetition, as unduly prejudicial to the debtor, who had by that point completed making the payments required under his plan. *In re Mason*, 2017 WL 394344 (Bankr. S.D. Miss., Jan. 27, 2017) (case no. 3:10-bk-4195; adv. proc. no. 3:15-ap-75).

Means test—Expenses: Addressing an issue that the Supreme Court declined to reach in *Ransom v. FLA Card Services*, 562 U.S. 61 (2011), and affirming *In re Jackson*, 537 B.R. 238 (Bankr. E.D. N.C., Sept. 10, 2015) on a direct appeal, the Court of Appeals held that, in the means test, a debtor is entitled to claim the full National and Local Standard amount for a category of expenses if the debtor incurs any expense in that category, even if the debtor's actual expenses are less than the amount of the standard. *Lynch v. Jackson*, --- F.3d ---, 2017 WL 59011 (4th Cir., Jan. 5, 2017) (case no. 16-1358).

Property of the estate—Exemptions—Limitations on right to exempt—Under Code § 522(o): Reversing *In re Crabtree*, 554 B.R. 174 (Bankr. D. Minn., August 8, 2016) on this issue, the Bankruptcy Appellate Panel held that, even if the objecting party establishes under Code § 522(o) that the debtor converted nonexempt property and used it to make improvements to the debtor's exempt homestead, with the required fraudulent intent, within 10 years of the petition date, the debtor's homestead exemption is not automatically reduced by the full amount spent on improvements, in the absence of a showing of the extent to which these improvements actually increased the value of the homestead. *In re Crabtree*, 562 B.R. 749 (8th Cir. B.A.P., Jan 24, 2017) (case no. 16-6028).