National Consumer Bankruptcy Rights Center

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).

Chapter 7—Denial of discharge: As there was no "case or controversy," the bankruptcy court lacked jurisdiction over a proceeding in which a creditor holding only a claim for a nondischargeable debt sought to deny the Chapter 7 debtor's discharge under Code § 727. *Reed v. Blount*, 2016 WL 6211691 (E.D. Mich. Oct. 25, 2016) (case no. 2:16-cv-11777).

Chapter 7—Surrender of collateral for secured debt: Code § 521(a)(2) requires a Chapter 7 debtor who files a statement of intention to surrender the property serving as collateral for a secured claim to surrender the property both to the Chapter 7 trustee and to the creditor. Even if the trustee abandons the property, the debtor's duty to surrender the property to the creditor remains. Moreover, "surrender" requires a debtor to discontinue his opposition to a foreclosure action, and the bankruptcy court has the authority to order a debtor to cease his opposition. *In re Failla*, 838 F.3d 1170 (11th Cir. Oct. 4, 2016) (case no. 15-15626).

Chapter 7—Surrender of collateral for secured debt: Explicitly disagreeing with *In re Failla*, 838 F.3d 1170 (11th Cir. Oct. 4, 2016), above, the bankruptcy court held that surrender under Code § 521(a)(2) does not require a Chapter 7 debtor to give up all rights to defend against a post-discharge foreclosure. Instead, the debtor's stated intent to surrender merely means that the debtor does not intend to reaffirm, redeem, or exempt the property. *In re Ryan*, --- B.R. ----, 2016 WL 6102312 (Bankr. D. Haw. Oct. 19, 2016) (case no. 1:09-bk-1604), appeal filed, Case No. 16-1391 (9th Cir. B.A.P., filed Nov. 4, 2016).

Chapter 13—Confirmation of plan—Claims treatable in plan: Resolving appeals in two cases raising the same issue, the district court held that, at the time the debtors filed their Chapter 13 petitions, after their prepetition pawn transactions had matured but before their right to redeem their pawned motor vehicles had expired, the debtors still had an ownership interest in the vehicles, so that the vehicles were included in property of the estate in each case, and the pawn shop had a secured claim for the payment of the contractual redemption amount that could be modified in the debtors' proposed Chapter 13 plans. *Title Max v. Northington*, 559 B.R. 542 (M.D. Ga. Oct. 27, 2016) (case nos. 4:16-cv-172, 4:16-cv-174).

Chapter 13—Confirmation of plan—Treatment of unsecured claims—Unfair discrimination—Student loan debt: The separate classification of the Chapter 13 debtor's student loan debts in her proposed Chapter 13 plan did not unfairly discriminate against other unsecured creditors, and therefore was permissible under Code § 1322(b)(1), where (1) there was a good-faith, rational basis for the proposed classification, with the reason being to cure the student loan default and to improve the debtor's prospects for reemployment as a paralegal; (2) the separate classification was necessary to the debtor's rehabilitation; and (3) there was a meaningful payment to the class discriminated against. *In re Belton*, Case No. 3:16-bk-3040 (Bankr. D. S.C., Oct. 13, 2016).

Dischargeability of debt—Tax debt under Code § 523(a)(1): The Internal Revenue Service failed to prove by a preponderance of the evidence that the Chapter 7 debtor failed to file a tax return for 2006, and thus the debtor's tax debt for that year was discharged. While the debtor's 2006 return was not reflected on the debtor's tax transcript, the debtor provided a firsthand account of preparing and mailing her returns for five years, including 2006, to the address the IRS provided, the IRS never answered that testimony, and the debtor's testimony was credible. *In re McGrew*, --- B.R. ----, 2016 WL 5947239 (Bankr. N.D. Iowa, Oct. 13, 2016) (adv. proc. no. 6:15-ap-9024).

Proof of claim—Timeliness: In a Chapter 13 case, a creditor must file a timely proof of claim in order to participate in the distribution of the debtor's assets, even if the debt was listed in the debtor's bankruptcy schedules. A debtor's acknowledgment of a debt in a bankruptcy schedule—whether or not that amounted to a judicial admission—does not satisfy a creditor's affirmative duty to file a proof of claim. Moreover, the deadline to file a proof of claim in a Chapter 13 proceeding is "rigid," and the bankruptcy court lacks equitable power to extend this deadline after the fact. *In re Barker*, 839 F.3d 1189 (9th Cir., Oct. 27, 2016) (case no. 14-60028).

Property of the estate—Exemptions: Regardless of the bankruptcy court's take on

the multiple amendments filed by the debtors to their schedule of claimed exemptions, which the bankruptcy court assessed as inappropriately impeding the bankruptcy process, the court could not lawfully award any of the equity in the debtors' exempt property to pay the Chapter 7 trustee's fees. The bankruptcy court therefore erred in ruling that the Chapter 7 trustee's administrative expenses could be paid from the proceeds of the sale of the debtors' homestead property where the trustee agreed to sell the property to a friendly buyer selected by the debtors for a price that was $136,000 less than the amount offered by an unrelated buyer; the bankruptcy court reasoned that the debtors had received a benefit that was greater than their $70,000 homestead exemption, so that allowing the trustee to be paid from the proceeds was equitable. *In re Holley*, --- Fed. Appx. ----, 2016 WL 6211975 (6th Cir., Oct. 25, 2016) (case no. 16-1081).

Property of the estate—Exemptions: The portion of the debtors' federal tax refund attributable to the additional child tax credit was exempt under Idaho law as a "benefit" received "under federal, state, or local public assistance legislation." Examining the amendments that had been made to the legislation authorizing the tax credit, the court receded from its prior holding disallowing the exemption. *In re Farnsworth*, 558 B.R. 375 (Bankr. D. Idaho, Oct. 11, 2016) (case no. 4:15-bk-40724).

Property of the estate—Exemptions—Under state law—Extraterritorial application: Where the plain language of the Massachusetts automatic homestead exemption was silent as to its extraterritorial effect, the bankruptcy court would construe it in favor of the debtor as mandated by Massachusetts law. Accordingly, the Massachusetts automatic homestead exemption may be applied to a principal residence located outside of Massachusetts, and the debtor could claim a homestead exemption for property located in Florida. *In re St. James*, --- B.R. ----, 2016 WL 6155899 (Bankr. D. Mass., Oct. 21, 2016) (case no. 1:15-bk-13341).