

Cases in Review  
January, 2018

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**Avoidable transfers—Constructively fraudulent transfer—Receipt of “reasonably equivalent value”:** The Chapter 7 trustee's adversary complaint, seeking to avoid tuition payments made by the debtor to a university for the debtor's adult son, stated a plausible cause of action to avoid the tuition payments as constructively fraudulent transfers under Code § 548(a)(1)(B), as the trustee plausibly pled that the debtor received less than reasonably equivalent value in exchange for the tuition payments. *In re Fisher*, 575 B.R. 640 (Bankr. M.D. Pa. Nov. 7, 2017) (adv. proc. no. 1:17-ap-84).

**Avoidable transfers—Constructively fraudulent transfer—Receipt of “reasonably equivalent value”:** The county that acquired the debtor's real property at a non-collusive tax foreclosure sale conducted in strict compliance with state law procedures that provided for notice, ample opportunity to cure, and judicial supervision of the sales was conclusively presumed to have provided the debtor with "reasonably equivalent value" for the property, so that the sale was not avoidable as constructively fraudulent under Code § 548(a)(1)(B). *In re Gunsalus*, 576 B.R. 302 (Bankr. W.D. N.Y. Nov. 6, 2017) (adv. proc. nos. 2:17-ap-2008, 2:17-ap-2009), appeal filed, *Gunsalus v. County of Ontario, New York*, Case No. 6:17-cv-6810 W.D. N.Y. filed Nov. 22, 2017).

**Chapter 7—Allowance of trustee’s commission:** The bankruptcy court did not err, in two cases, in concluding that the services of the Chapter 7 trustee and his counsel were neither necessary nor beneficial to the bankruptcy estate, and in denying, in their entirety, fee applications filed by the trustee and his counsel, where the trustee incurred administrative expenses of \$57,285 and \$61,514, respectively, in the two

cases in attempting to sell the debtors' fully-encumbered homesteads subject to \$10,000 carve-out agreements. *In re Bird*, --- B.R. ----, 2017 WL 5899654 (10th Cir. B.A.P., Nov. 30, 2017) (case nos. 16-39, 16-40).

**Chapter 7—Statement of intention regarding secured claim:** May a Chapter 7 debtor's discharge be delayed and the debtor forced to elect one of the options for the treatment of secured claims allowed under Code § 521(a)(2)? Two recent court decisions disagreed. Compare *In re Marquez*, 2017 WL 5438306 (Bankr. W.D. Tex. Nov. 13, 2017) (case no. 6:17-bk-60594) (the Chapter 7 debtors' discharge would be suspended until the debtors had amended their Statement of Intention to select between surrender, redemption, or reaffirmation as to a debt secured by a mobile home) with *In re McCray*, --- B.R. ----, 2017 WL 5956639 (Bankr. E.D. Mich., Nov. 30, 2017) (case no. 2:17-bk-51604) (although the Chapter 7 debtor stated “Pay and retain” on her Statement of Intention with regard to a debt secured by a mobile home, there was no legal authority for the court to delay the debtor's discharge; the Bankruptcy Code itself provided for specific legal consequences to become effective by operation of law as a consequence of a debtor's failure to perform under § 521(a)(2)).

**Chapter 13—Allowance of administrative expense:** The bankruptcy court did not err, in multiple cases, in denying the city's motion for allowance of an administrative expense claim based on postpetition parking and traffic tickets issued by the city to the debtors. *City of Chicago v. Marshall*, --- F.Supp.3d ----, 2017 WL 5891261 (N.D. Ill., Nov. 27, 2017) (case no. 1:17-cv-5361), appeal filed, Case No. 17-3630 (7th Cir. filed Dec. 27, 2017).

**Chapter 13—Confirmation of plan—Treatment of secured claims—Modification of claim:** So long as the redemption deadline has not passed, a debtor may redeem property sold in a prepetition tax sale under the debtor's Chapter 13 plan and pay the redemption amount over the term of the plan. *In re Alexander*, 2017 WL 5450248 (Bankr. N.D. Ga. Nov. 13, 2017) (case no. 1:17-bk-63938).

**Chapter 13—Confirmation of plan—Treatment of unsecured claims—Unfair discrimination—Student loan debt:** Although the Chapter 13 debtors' proposed plan provided that the debtors would maintain payments to their student loan creditors outside the plan, the plan did not unfairly discriminate among classes of unsecured creditors, in violation of Code § 1322(b)(1), where the plan provided for monthly payments by the debtors to the Chapter 13 trustee in an amount greater than that required under the projected disposable income test. *In re Kindle*, 2017 WL 5035080 (Bankr. D. S.C. Nov. 1, 2017) (case no. 3:17-bk-1245).

**Domicile of debtor:** The debtors' purchase of a residence in Tennessee with the intention to move there in the future did not have the effect of changing their domicile to Tennessee from Virginia, their long-time residence, where the debtors had not actually moved to Tennessee because they could not do so until their current residence was sold. Accordingly, the debtors could claim exemptions under Virginia law. *In re Kern*, 576 B.R. 817 (Bankr. W.D. Va. Nov. 29, 2017) (case no. 7:17-bk-71159).

**Fair Debt Collection Practices Act:** The debtors stated a supportable claim under the Fair Debt Collection Practices Act where the debtors asserted that a creditor had a practice of filing proofs of claim for amounts that included interest without disclosing that the claims included interest, as required under Bankruptcy Rule 3001. *In re Thomas*, --- B.R. ----, 2017 WL 5956641 (Bankr. W.D. Va. Nov. 30, 2017) (adv. proc. no. 5:17-ap-5010).

**Proof of claim—Secured claim—Postpetition attorney's fees:** Code § 506(b) is the only basis for allowing a secured creditor to include postpetition attorney's fees in its proof of claim; a secured creditor may not assert an unsecured claim for postpetition attorney's fees. *SummitBridge National Investment III, LLC v. Faison*, 2017 WL 5714111 (E.D. N.C. Nov. 27, 2017) (case no. 5:17-cv-384), appeal filed, Case No. 17-2441 (4th Cir., filed Dec. 20, 2017).