



Cases in Review
July, 2018

“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).

Adversary procedure—Motion to compel arbitration: Denying a creditor's motion to compel arbitration of the Chapter 7 debtor's contempt proceeding, the court concluded that arbitration of a contempt proceeding for a violation of the discharge injunction inherently conflicted with the Bankruptcy Code and undermined the bankruptcy court's authority to enforce its orders and exercise its powers of contempt. *In re Bateman*, --- B.R. ----, 2018 WL 2324207 (Bankr. M.D. Fla. May 21, 2018) (case no. 8:14-bk-5369), appeal filed, *Verizon Wireless Personal Communications, LP v. Bateman*, Case No. 8:18-cv-1394 (M.D. Fla. filed June 11, 2018).

Chapter 7—Assumption of lease of personal property: A Chapter 7 debtor's agreement to assume a lease of personal property under Code § 365(p) remains enforceable following the debtor's discharge even if the assumption agreement was not reaffirmed under Code § 524(c). *Bobka v. Toyota Motor Credit Corp.*, --- B.R. ----, 2018 WL 2382766 (S.D. Cal. May 24, 2018) (case no. 3:17-cv-2380), appeal filed, Case No. 18-55688 (9th Cir. filed May 30, 2018).

Chapter 13—Confirmation of plan—Calculation of projected disposable income: Agreeing with the majority view on the issue, and reversing the bankruptcy court, the district court held that, under the plain language of the "hanging paragraph" in Code § 541(b)(7), Congress intended to exclude postpetition voluntary retirement account contributions from available disposable income as defined in Code § 1325(b). *Miner v. Johns*, --- B.R. ----, 2018 WL 2347095 (W.D. La. May 23, 2018) (case no. 5:17-cv-879).

Chapter 13—Confirmation of plan—Treatment of secured claims: Reversing the bankruptcy court's unreported decision, the district court held that, as a result of

cross-collateralization clauses in the Chapter 13 debtor's two car loan agreements with his credit union, the debtor's two vehicles each secured the debtor's obligations under both agreements, and the debtor could not retain one of the vehicles and pay the credit union the vehicle's present value over the course of his plan while surrendering the other vehicle to the credit union, but instead had to elect the same treatment for both vehicles. *In re Barragan-Flores*, --- B.R. ----, 2018 WL 2798411 (W.D. Tex. April 19, 2018) (case no. 3:17-cv-364), appeal filed, *Evolve Federal Credit Union v. Barragan-Flores*, Case No. 18-50420 (5th Cir. filed May 21, 2018).

Chapter 13—Dismissal of case under Code § 1307(c)—Procedural

requirements: Because the plain text of Code § 1307(c)(4) permits the dismissal of a Chapter 13 case at a party's request for failure to commence payments under Code § 1326 only after opportunity for a hearing, the bankruptcy court erred in dismissing the debtor's case without a hearing; a local bankruptcy rule permitting dismissal without a hearing was invalid to the extent that it conflicted with the requirement for a hearing in § 1307(c). *No v. Gorman*, 891 F.3d 138 (4th Cir. May 24, 2018) (case no. 17-1679).

Dischargeability of debt: A debt for a penalty that comes within both Code § 523(a)(2) and § 523(a)(7) may be nondischargeable under § 523(a)(2) in a Chapter 13 case even though the debt would not be nondischargeable under § 523(a)(7) in a Chapter 13 case as § 523(a)(7) is not an exception to a standard Chapter 13 discharge. *Andrews v. Michigan Unemployment Insurance Agency*, 891 F.3d 245 (6th Cir. May 29, 2018) (case nos. 16-2383, 16-2680).

Dischargeability of debt—Unlisted debt under Code § 523(a)(3)(B): Laches is a viable defense to a nondischargeability action under Code § 523(a)(3)(B), and this case was one justifying the application of laches where the creditor's delay in asserting that its debt was nondischargeable was unreasonable, unexplained, and prejudicial to the debtor. *In re Dos Santos*, 2018 WL 2472706 (Bankr. D. Colo. May 31, 2018) (adv. proc. no. 1:17-ap-1041).

Proof of claim—Limitation under Code § 502(b)(4): Disallowing in its entirety a claim for \$17,248 for legal services rendered prior to the Chapter 13 debtors' bankruptcy case by a law firm engaged by the debtor wife to settle or reduce her debts, the court held that the claim exceeded the reasonable value of the law firm's services and therefore was not allowable under Code § 502(b)(4), which provides for the disallowance of a claim "for services of an ... attorney of the debtor, [to the extent that] such claim exceeds the reasonable value of such services." The law firm had already received \$2,900 as a minimum nonrefundable fee to set up the wife's file and a \$5,339.20 contingency fee on settled accounts. The firm claimed the \$17,248 under a clause in the parties' agreement entitling the firm to a 20% flat fee on the total balance

of any outstanding unsettled debt, but the court said that it could think of no scenario in which a \$17,248 flat fee for termination, in addition to the fees already paid, would constitute reasonable value for debt reduction services for unsettled debts. *In re Regino*, --- B.R. ----, 2018 WL 2316915 (Bankr. E.D. N.Y. May 18, 2018) (case no. 8:16-bk-74352).

Property of the estate: Affirming on the basis of the district court's opinion, the Court of Appeals held that real property excluded from the Chapter 7 debtor's bankruptcy estate on the petition date under Code § 522(b)(3)(B) because the property was owned by the debtor and her non-filing husband as tenants by the entirety did not enter the estate upon the husband's postpetition death. The district court held, and the Court of Appeals agreed, that the debtor acquired a new "interest in property," within the meaning of Code § 541(a), when the tenancy by the entirety was extinguished, but there was no statutory provision that brought that new interest into the bankruptcy estate. *Bellinger v. Buckley*, 721 Fed. Appx. 315 (4th Cir. May 9, 2018) (case no. 17-2138) (per curiam).

Property of the estate—Exemptions—Under state law: The Chapter 7 debtors, who were required by Code § 522(b)(3)(A) to apply Louisiana exemption law although they were currently domiciled in West Virginia after moving from Louisiana, could exempt personal property located in West Virginia under Louisiana's exemption laws because those laws were not limited to property located within Louisiana. *Sheehan v. Ash*, 889 F.3d 171 (4th Cir. May 4, 2018) (case no. 17-1867).