

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).

Avoidable transfers—Preferential transfer under Code § 547: A properly-conducted and otherwise non-collusive sheriff’s foreclosure sale in Pennsylvania cannot be an avoidable preference under Code § 547(b) because a creditor cannot receive more through such a sale than it would receive under a hypothetical Chapter 7 liquidation. *In re Veltre*, 2017 WL 3481077 (W.D. Pa., August 14, 2017) (case no. 2:17-cv-239), appeal filed, Case No. 17-2889 (3rd Cir., filed Sept. 1, 2017).

Avoidable transfers—Preferential transfer under Code § 547: The prepetition transfer of the Chapter 13 debtors’ real property, with an estimated value of \$335,000, in satisfaction of a tax debt of roughly \$45,000 clearly enabled the tax sale purchaser’s transferee to receive more than it would otherwise have received in a hypothetical Chapter 7 liquidation, and was thus avoidable as a preference under Code § 547(b), even though the tax sale was regularly conducted in accordance with state law. *In re Hackler*, --- B.R. ---, 2017 WL 3701469 (Bankr. D. N.J., August 28, 2017) (adv. proc. no. 3:16-ap-1881), appeal filed, *Arianna Holding Company LLC v. Stelzle-Hackler*, Case No. 3:17-cv-6589 (D. N.J., filed August 31, 2017).

Chapter 13—Confirmation of plan—Calculation of projected disposable income: Under Code § 541(b)(7), a Chapter 13 debtor’s voluntary contributions to a 401(k) plan are excluded from the debtor’s projected disposable income, even if the debtor was not making the contributions prepetition, so long as the debtor’s plan is proposed in good faith. *In re Garza*, 2017 WL 3575875 (Bankr. S.D. Tex., August 15, 2017) (case no. 7:16-bk-70534).

Chapter 13—Confirmation of plan—Good faith—Effect of Social Security income: It is clear from the provisions of Chapter 13, in which Congress went to great lengths to prescribe a method of calculating income that explicitly excludes Social Security benefits, that Congress intended Social Security benefits to be beyond the reach of creditors who object to a proposed Chapter 13 repayment plan in order to boost their recovery. Accordingly, the bankruptcy court erred in holding that a Chapter 13 plan was not proposed in good faith where the plan did not propose to contribute a portion of the Social Security benefits already received by the debtor. *In re Manzo*, 2017 WL 3675809 (N.D. Ill., August 25, 2017) (case no. 1:16-cv-7218).

Chapter 13—Disposition of funds held by trustee—Upon dismissal of case: By the plain language of Code § 1326(a)(2), when a Chapter 13 case is dismissed before confirmation, the Chapter 13 trustee must first pay allowed administrative expenses, including any allowed fees and expenses of the debtor's counsel, before returning any funds on hand to the debtor. *In re Fairnot*, --- B.R. ---, 2017 WL 3605341 (Bankr. E.D. Mich., August 2, 2017) (case no. 2:16-bk-50730).

Chapter 13—Entitlement to discharge: Where a Chapter 13 debtor has failed to make direct postpetition mortgage payments and is therefore not entitled to a discharge, the debtor may be able to cure the default through either a consensual loan modification or a modification of the debtor's plan under Code § 1329. However, either of these options must be approved by the court prior to the expiration of the term of the debtor's plan. *In re Hanley*, 2017 WL 3575847 (Bankr. E.D. N.Y., August 11, 2017) (case no. 8:11-bk-76700).

Means test—Expenses—Vehicle ownership expense: A debtor may claim a vehicle ownership expense deduction under the means test even where the debt secured by the vehicle is an equity loan rather than a purchase-money or lease transaction. *In re Lopez*, --- B.R. ---, 2017 WL 3835935 (Bankr. E.D. Cal., August 30, 2017) (case no. 1:16-bk-11072).

Property of the estate—Exemptions—Effect of postpetition change in ownership of property: When the Chapter 7 debtor's nonfiling husband died postpetition, the tenancy in the entireties by which the debtor and her husband owned certain real property was extinguished, and the debtor was no longer able to claim the property as exempt under Code § 522(b)(3)(B). However, at that point the debtor acquired a new interest in the property as that term is used in Code § 541(a), and there was no statutory basis for bringing that property interest into the bankruptcy estate. *Bellinger v. Buckley*, 2017 WL 3722827 (D. Md., August 29, 2017) (case no. 1:17-cv-68).

Property of the estate—Exemptions—Under state law—Of homestead:

Ordinarily, a debtor who is not a U.S. citizen cannot legally formulate the intent to reside in the United States permanently for homestead purposes unless the debtor is a permanent resident as of the petition date, and, here, the debtor was not a permanent resident. The debtor could nevertheless claim a Florida constitutional homestead exemption in the residence she owned because she lived in the residence with her adult daughter, who was a permanent resident, and her minor granddaughter, who was a U.S. citizen, and the Florida Constitution permits an owner to claim property as homestead if the owner intends to make her home her family's permanent residence. *In re Oyola*, --- B.R. ----, 2017 WL 3638430 (Bankr. M.D. Fla., August 24, 2017) (case no. 8:15-bk-8716).

Violation of stay: The Chapter 13 debtor's mortgage creditor violated both the automatic stay and the court's Chapter 13 plan confirmation order by persistently misapplying the debtor's postpetition direct mortgage payments, and failing to maintain an accurate loan history, over the course of the debtor's bankruptcy case. As a sanction for contempt, the court awarded the debtor actual damages of \$5,320 as well as attorney's fees. *In re Franklin*, 2017 WL 3701214 (Bankr. D. N.H., August 24, 2017) (case no. 1:09-bk-13399).