National Consumer Bankruptcy Rights Center

Cases in Review
March, 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).

Chapter 13—Confirmation of plan—Treatment of secured claims—Permissibility of modification: A motor vehicle purchased by the Chapter 13 debtor in the 910 days prepetition was not purchased for the "personal use" of the debtor, and therefore was not encompassed by the hanging paragraph following Code § 1325(a), so that the debtor could bifurcate the creditor's claim secured by the vehicle, where the debtor purchased the vehicle for use by his non-filing partner, and she was the exclusive operator of the vehicle from the time of its purchase in June 2015 to at least October 2016, when the debtor's vehicle developed mechanical problems such that he could not operate it to support his livelihood, at which time the debtor began using the vehicle purchased for his partner. *In re Douay*, 2018 WL 501334 (Bankr. N.D. W. Va. Jan. 19, 2018) (case no. 3:17-bk-750).

Discharge injunction—Scope of discharge: Agreeing with *In re Khan*, 504 B.R. 409 (Bankr. D. Md. 2014), the court held that, under Code § 523(a)(16), a Chapter 13 debtor's postpetition condominium assessments are included in the debtor's discharge. However, since it was not certain that the debtor would ultimately receive a discharge under Code § 1328(a), and it might be unfair to the debtor's condominium association to delay indefinitely reduction of its postpetition assessment claim to judgment, the court granted relief from stay to permit the association to reduce its postpetition claims against the debtor to judgment and to enforce them against the debtor, but not against property of the debtor's bankruptcy estate. *In re Wiley*, 2018 WL 604401 (Bankr. D. Md. Jan. 26, 2018) (case no. 1:16-bk-15361).

Means test—Current monthly income—Contribution by nondebtor: Although the Chapter 13 debtor and his mother lived together and constituted a single household, under Code § 101(10A) Social Security income received by the mother was

not included in the debtor's current monthly income. *In re Palcher*, 2018 WL 481863 (Bankr. D. S.C. Jan. 16, 2018) (case no. 7:17-bk-3938).

Chapter 13—Cure of default under plan following completion of plan term: Denying approval of the Chapter 13 trustee's stipulation to allow the Chapter 13 debtors to cure a $17,000 default under their confirmed plan seven months after the end of the debtors' 60-month plan term, the court concluded that it did not have the discretion to allow a Chapter 13 debtor to make plan payments beyond five years. Even if the court had this discretion, it would decline to exercise it under the circumstances, given the length and amount of the default, the debtors' failure to modify their plan to account for an expected increase in income, and the availability to the debtors of another remedy, namely, a discharge after conversion of the case to Chapter 7. *In re Humes*, 579 B.R. 557 (Bankr. D. Colo. Jan. 23, 2018) (case no. 1:11-bk-39684).

Dischargeability of debt—Tax debt under Code § 523(a)(1)—Filing of "return": Applying the definition of "return" added by BAPCPA in the hanging paragraph following Code § 523(a), the court concluded that "applicable filing requirements" under the hanging paragraph include the statutory due date for a tax return, so that a late-filed tax return does not constitute a "return" for the purpose of § 523(a)(1), with the result that a tax debt arising under a late-filed return is not dischargeable. *In re Kline*, 2018 WL 813313 (Bankr. W.D. Ark. Jan. 25, 2018) (adv. proc. no. 5:17-ap-7012).

Means test—Expenses—Vehicle operation expense: Under the plain meaning of the Bankruptcy Code, a single debtor who actually incurs operating expenses for two motor vehicles may claim a deduction in the means test for operating expenses for both vehicles, even though the Internal Revenue Service manual specifically states that "a single taxpayer is normally allowed ownership and operating costs for one vehicle." *In re Addison*, --- B.R. ----, 2018 WL 461122 (Bankr. E.D. N.Y. Jan. 11, 2018) (case no. 8:16-bk-74856).

Property of the estate—Exemptions—Availability to debtor under Code § 522(b)(3): Although the debtors currently resided in Idaho, they were required by Code § 522(b)(3)(A) to apply the exemption law of North Dakota. While the exemptions available under North Dakota law to nonresidents were limited, it appeared that the debtors were entitled to claim certain "absolute" exemptions. Because of this, the debtors were not "ineligible for any exemption" under North Dakota law, so that the hanging paragraph in § 522(b)(3), permitting the debtors to claim the federal exemptions in § 522(d), did not apply. *In re Rodenbough*, 579 B.R. 545 (Bankr. D. Idaho Jan. 10, 2018) (case no. 4:17-bk-40658).

Property of the estate—Exemptions—Procedure: If a debtor's entire interest in an asset is less than or equal to any dollar-value limitation imposed by the applicable exemption, then the debtor may exempt her 100% interest in that asset. However, the Court of Appeals declined to address whether a debtor's claiming a 100% interest in an asset as exempt allows the debtor to "walk away" with the asset itself and potentially benefit from any postpetition appreciation of the asset. *Peake v. Ayobami*, 879 F.3d 152 (5th Cir., Jan. 3, 2018) (case no. 16-20589).

Violation of discharge injunction: The Chapter 7 debtor's mortgage creditor violated the discharge injunction by offering the debtor a loan modification four years after her discharge where the modification required the debtor to execute a subordinate note and mortgage under the Department of Housing and Urban Development's partial claim program and, while the primary loan documents contained limiting language recognizing the debtor's lack of personal liability on the modified loan, the subordinate note and mortgage in favor of HUD did not. *In re Eppolito*, 2018 WL 539773 (Bankr. S.D. N.Y., Jan. 23, 2018) (case no. 4:12-bk-36721).

Violation of stay: After awarding the Chapter 13 debtors $1,074,581 in actual damages and $5 million in punitive damages for their mortgage creditor's "kafkaesque nightmare of stay-violating foreclosure and unlawful detainer" extending over several years, as well as awarding an additional $40 million in punitive damages to be paid to certain public-interest entities, the court approved the parties' settlement, under which the debtors were to receive "a substantial premium over their $6,074,581 share of the initial judgment." Denying, however, the parties' joint motion to dismiss the adversary proceeding and vacate the court's opinion, the court said that it would vacate the damages component of the judgment and close the adversary proceeding, while reserving jurisdiction over the settlement agreement. This case "implicated sufficient public interest" that the court said it was reluctant to exercise its discretion to "sweep the matter under the carpet because the parties in a secret compromise were agreeing not to appeal." *In re Sundquist*, --- B.R. ----, 2018 WL 494630 (Bankr. E.D. Cal., Jan. 18, 2018) (adv. proc. no. 2:14-ap-2278).