

Cases in Review
December, 2017

“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: The bankruptcy court did not err in denying a loan servicer's motion to compel arbitration of the debtor's adversary proceeding, which sought a determination that a loan to pay for expenses associated with studying for the debtor's bar examination was not encompassed by Code § 523(a)(8). *In re Farmer*, 2017 WL 4619209 (W.D. Wash., Oct. 16, 2017) (case no. 2:17-cv-764), appeal filed, *Navient Solutions LLC v. Farmer*, Case No. 17-35922 (9th Cir., filed Nov. 15, 2017).

Consumer debts: A debt owed by the Chapter 7 debtor husband to his employer was a non-consumer debt, where the debt arose from a loan made to the debtor to permit him to purchase housing in the location of his new place of employment, and the debtor negotiated the loan as part of his employment package with his employer. *In re Cherrett*, 873 F.3d 1060 (9th Cir., Oct. 16, 2017) (case no. 14-60079).

Chapter 7—Abandonment of property of estate: The proceeds from a postpetition sheriff's sale of the Chapter 7 debtor's real property were not part of the bankruptcy estate where the Chapter 7 trustee had abandoned the property prior to the sheriff's sale. The abandonment of the property had the effect of removing the property from the bankruptcy estate and causing it to revert to the debtor, so that the proceeds arose out of the foreclosure sale of property belonging to the debtor rather than the bankruptcy estate. *In re Haber*, Case No. 17-3323 (6th Cir., Oct. 30, 2017).

Chapter 7—Denial of discharge—Standing: A creditor whose own debt was nondischargeable lacked standing to object to a Chapter 7 debtor's discharge under

Code § 727(a). *In re Rosenfeld*, 698 Fed. Appx. 300 (6th Cir., Oct. 6, 2017) (case no. 16-2439).

Dischargeability of debt—Under Code § 523(a)(9): The debtor's liability under a negligent entrustment theory to an individual injured in an automobile accident involving the debtor's vehicle, which was being driven by an allegedly-intoxicated friend of the debtor with the debtor as a passenger, did not come within Code § 523(a)(9), which renders nondischargeable a debt for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if the operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance. The mere act of surrendering one's keys to another person and becoming a passenger in a motor vehicle did not constitute "operation" of the vehicle. *In re Shade*, 2017 WL 4457427 (Bankr. N.D. Ohio, Oct. 4, 2017) (adv. proc. no. 6:17-ap-6012).

Chapter 7—Reaffirmation agreement—Role of court: Regardless whether the court has the authority to disapprove a reaffirmation agreement as not being in the debtor's best interests after the filing of an attorney certification under Code § 524(c)(3), the court has the authority to hold a hearing to determine the bona fides of a § 524(c)(3) certification. *In re Miller*, 575 B.R. 87 (Bankr. E.D. Pa., Oct. 18, 2017) (case no. 2:17-bk-15592).

Chapter 13—Confirmation of plan—Calculation of projected disposable income: Adopting the majority position on the issue, the court held that a Chapter 13 debtor's postpetition contributions to a qualified retirement account are fully deductible in calculating the debtor's projected disposable income. The contributions are subject to the requirement of good faith for plan confirmation, but, in the absence of any allegation or proof of bad faith, the contributions should be allowed. *In re Davis*, 2017 WL 4898166 (Bankr. C.D. Ill., Oct. 30, 2017) (case no. 3:17-bk-70784).

Property of the estate—Exemptions—Under state law—Of homestead proceeds: An exemption claimed by the Chapter 7 debtor in the proceeds of the prepetition sale of her homestead was not conditioned on the debtor's reinvesting the proceeds in a homestead within one year, even though under Illinois law the proceeds were exempt for only a year if not reinvested. A debtor's eligibility for an exemption is determined as of the petition date and is not dependant on postpetition events. *In re Awayda*, 574 B.R. 692 (Bankr. C.D. Ill., Oct. 18, 2017) (case no. 2:17-bk-90458).

Chapter 13—Confirmation of plan—Effect on secured claim: The Chapter 13 debtor's mortgage creditor was bound by the debtor's confirmed plan, of which the creditor had notice, even though the plan improperly modified the creditor's claim by reducing the principal amount and the applicable interest rate. Accordingly, where the

debtor paid off both the principal amount and the prepetition arrearage over the term of the plan, the debtor was entitled to an order declaring the mortgage satisfied. *In re Smith*, --- B.R. ----, 2017 WL 5256761 (Bankr. W.D. Ark., Oct. 26, 2017) (adv. proc. no. 1:16-ap-7042).

Dischargeability of debt—Student loan debt under Code § 523(a)(8): A loan obtained by the debtor to participate in the Medical Education Readiness Program, a preparatory course that, upon completion, allowed students to enroll in medical school was not an "obligation to repay funds received as an educational benefit, scholarship or stipend" within the meaning of Code § 523(a)(8)(A)(ii); to hold otherwise would ignore the plain language of the statute and render subsections § 523(a)(8)(A)(i) and § 523(a)(8)(B) largely meaningless. *In re Essangui*, 573 B.R. 614 (Bankr. D. Md., Oct. 2, 2017) (adv. proc. no. 1:16-ap-201).