

Cases in Review
July, 2015

“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 7—Determination of abuse—Under totality of the circumstances: In deciding whether to dismiss a Chapter 7 case for abuse based on the totality of the circumstances of debtor's financial situation under Code § 707(b)(3)(B), the court may not consider the debtor's Social Security income. *In re Moriarty*, 530 B.R. 637 (Bankr. W.D. Va. May 18, 2015) (case no. 5:13-bk-51437).

Chapter 13—Confirmation of plan—Calculation of projected disposable income: The bankruptcy court did not err in confirming the Chapter 13 debtor's plan, although the debtor stated only that her non-filing husband contributed \$600 per month toward household expenses but did not provide figures for her husband's income and expenses, where the husband refused to provide that information. *In re Blackshear*, --- B.R. ----, 2015 WL 2405848 (E.D. Mich. May 20, 2015) (case no. 2:14-cv-14399).

Chapter 13—Confirmation of plan—Good faith—Effect of Social Security income: The debtors' Chapter 13 plan was proposed in good faith for the purpose of Code § 1325(a)(3) even though the debtors failed to contribute any of their Social Security income to the plan, and the income would, over the life of the plan, amount to some \$180,000, which would be sufficient to pay a 100% dividend to unsecured creditors if it were used to fund the plan. *In re Mihal*, 2015 WL 2265790 (Bankr. E.D. Mich. May 6, 2015) (case no. 2:13-bk-54435).

Chapter 13—Creditors entitled to distribution under plan: In a Chapter 13 case, a secured creditor must file a proof of claim by the 90-day deadline specified in Bankruptcy Rule 3002(c) in order to receive distributions under the debtor's plan. *In re Pajian*, 785 F.3d 1161 (7th Cir. May 11, 2015) (case no. 14-2052).

Chapter 13—Modification of confirmed plan: Modification of the debtor's confirmed Chapter 13 plan, so as to make his plan payments in a lump sum instead of in installments, after the debtor had settled his workers' compensation claim, was appropriate, given the debtor's worsening health and his inability to find new employment despite repeated attempts, the decrease in the debtor's monthly income, and the lack of opposition from creditors. *In re Runnels*, 530 B.R. 626 (Bankr. W.D. N.C. May 11, 2015) (case no. 3:13-bk-30084).

Chapter 13—Voluntary dismissal of case: Courts continue to disagree as to whether a Chapter 13 debtor's right to dismiss the case under Code § 1307(b), so long as the case was not previously converted, is absolute. Compare *Ross v. AmeriChoice Federal Credit Union*, 530 B.R. 277 (E.D. Pa. May 22, 2015) (case no. 2:15-cv-197) (the right to dismiss is absolute) with *In re Smith*, 530 B.R. 327 (Bankr. S.D. Miss. May 21, 2015) (case no. 3:13-bk-1920) (the right to dismiss is not absolute if a motion to convert the case is pending).

Dischargeability of debt—For actual fraud under Code § 523(a)(2)(A): Disagreeing with *McClellan v. Cantrell*, 217 F.3d 890 (7th Cir. 2000), and stating that no subsequent appellate court had adopted that court's interpretation of Code § 523(a)(2)(A), the Court of Appeals held that a misrepresentation is required to establish "actual fraud" under § 523(a)(2)(A). *In re Ritz*, --- F.3d ----, 2015 WL 3372812 (5th Cir. May 22, 2015) (case no. 14-20526).

Examination of party: After the Chapter 13 debtors received four collection notices from the new servicer of their mortgage, the court granted the U.S. Trustee's motion under Bankruptcy Rule 2004 to be permitted to examine, subject to assurances of confidentiality, the new servicer's "documentation relating to policy, directives and/or procedures regarding auditing mortgage accounts" obtained from a prior servicer for customers who were in an active bankruptcy case. Without discovery of the collection information that accompanied the transfer of the debtors' loan, there was no means to determine why the debtors received the collection notices. *In re Stambaugh*, --- B.R. ----, 2015 WL 2437906 (Bankr. S.D. Ohio May 21, 2015) (case no. 2:09-bk-55198).

Means test—Special circumstances: The financial support provided by the Chapter 7 debtor to her family was an additional expense, beyond the amount entered on Form 22A, that qualified as a special circumstance under the means test, since it was undisputed that the debtor was a primary source of support for at least five of her elderly or dependent relatives. Moreover, the debtor suffered from serious medical conditions, and her health conditions also constituted special circumstances under Code § 707(b)(2)(B), where the debtor testified that her employment required extensive travel, but that her medical conditions might adversely affect her ability to continue working. *In re Chabre*, --- B.R. ----, 2015 WL 3486038 (Bankr. M.D. Fla. May 27, 2015) (case no. 3:14-bk-4981).

Surrender of real property: At a minimum, “surrender” under Code §§ 521 and 1325 means a debtor cannot take an overt act that impedes a secured creditor from foreclosing its interest in secured property; accordingly, by actively opposing state-court foreclosure actions, the debtors in these cases—one in Chapter 7, one in Chapter 13—failed to “surrender” their property. *In re Metzler*, --- B.R. ----, 2015 WL 2330131 (Bankr. M.D. Fla. May 13, 2015) (case nos. 8:12-bk-16792, 8:13bk9736).