

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](http://www.cbar.pro)) and the National Consumer Bankruptcy Rights Center ([www.ncbrc.org](http://www.ncbrc.org)).

**Chapter 7—Reaffirmation of debt:** The Chapter 7 debtor's secured motor vehicle creditor violated the discharge injunction by repossessing the debtor's vehicle after she had done everything in her capacity to reaffirm the debt and was current on all her contractual obligations to the creditor; the debtor entered into an agreement to reaffirm the debt but the creditor prevented her from bringing the agreement before the court for approval. *In re Nuckoles*, 546 B.R. 651 (Bankr. W.D. Va. March 9, 2016) (case no. 5:15-bk-50904).

**Chapter 7—Surrender of collateral for secured debt:** The Bankruptcy Code contains no provision authorizing the court to order a Chapter 7 debtor to physically surrender the collateral for a secured debt to the creditor. *In re Foster*, 2016 WL 1105594 (Bankr. W.D. Okla. March 21, 2016) (case no. 5:15-bk-14050).

**Chapter 13—Confirmation of plan—Treatment of secured claims—Vesting of title to collateral in creditor:** Two decisions issued on the same day by different judges of the Bankruptcy Court for the District of Massachusetts reached opposite conclusions as to whether a Chapter 13 plan may provide for the vesting of title to collateral in the secured creditor without the creditor's consent. Compare *In re Brown*, Case No. 1:14-bk-12357 (Bankr. D. Mass. March 4, 2016) (permitting vesting plan) with *In re Tosi*, 546 B.R. 487 (Bankr. D. Mass. March 4, 2016) (case no. 1:13-bk-14017) (not permitting vesting plan).

**Dischargeability of debt—For governmental fine, penalty or forfeiture under Code § 523(a)(7):** Costs charged to inmates under Minnesota's “pay to stay” program are not excepted from discharge under Code § 523(a)(7), as the costs are not a “fine, penalty, or forfeiture,” and the costs compensate the county for actual pecuniary loss.

*In re Milan*, 546 B.R. 187 (Bankr. D. Minn. March 1, 2016) (case no. 3:14-bk-34685; adv. proc. no. 3:15-ap-3034), appeal filed, Case No. 16-6012 (8th Cir. B.A.P., filed March 16, 2016).

**Dischargeability of debt—Student loan debt under Code § 523(a)(8)—Status of obligation as educational loan:** A loan from a commercial lender to allow the debtor to study for the bar exam was not an “educational benefit” under Code § 523(a)(8)(A)(ii), nor was the loan encompassed by § 523(a)(8)(A)(i) or 523(a)(8)(B), so that the debt arising from the loan was dischargeable under § 523(a)(8). *In re Campbell*, 547 B.R. 49 (Bankr. E.D. N.Y., March 24, 2016) (case no. 1:14-bk-45990; adv. proc. no. 1:15-ap-1038).

**Proof of claim—Secured claim—Postpetition charges:** The mortgage creditor's claim for postpetition fees and expenses would be disallowed, and the creditor's claim declared to have been paid in full, where over the term of the debtor's confirmed Chapter 13 plan the trustee paid the original amount of the creditor's claim, but the creditor applied the trustee's payments to pay property taxes before the principal of the debt, in violation of the debtor's confirmed plan, resulting in an unexpected balance remaining on the debt. *In re Tavares*, 547 B.R. 204 (Bankr. S.D. Tex., March 11, 2016) (case no. 1:10-bk-10739).

**Property of the estate—Avoidance of lien impairing exemption:** Although a creditor's judgment was against the debtor's non-debtor spouse only, the debtor could avoid the creditor's judgment lien under Code § 522(f)(1) because the lien attached to the debtor's exempt homestead property and the property was community property under California law and therefore was property of the estate. *In re Obedian*, 546 B.R. 409 (Bankr. C.D. Cal., March 1, 2016) (case no. 2:14-bk-24247).

**Property of the estate—Avoidance of security interest under Code § 522(f)(1)(B):** The Chapter 13 debtor's riding lawn mower, a "Murray Select" rear-engine riding mower with a rotary blade that had one main function—to cut the debtor's grass—and that could not be used to haul any serious weight or for any other material tasks was an "appliance" under Code § 522(f)(4)(A)(iii) rather than a "lawn tractor" within the meaning of § 522(f)(4)(B)(v). Accordingly, the riding mower was a "household good" under § 522(f)(1)(B)(i), and, since the riding mower was exempt under Mississippi law, the debtor could avoid the creditor's nonpossessory, nonpurchase-money security interest in the mower under § 522(f)(1)(B). *In re Evans*, -- B.R. ---, 2016 WL 1238853 (Bankr. N.D. Miss., March 29, 2016) (case no. 1:15-bk-13910).

**Reopening of case:** Two Bankruptcy Appellate Panels held that the bankruptcy court abused its discretion in denying, on the ground of laches, a debtor's motion to reopen the debtor's case. See *In re Yomish*, 2016 WL 832587 (6th Cir. B.A.P., March 3, 2016) (case no. 15-8006) (unpublished table opinion) (the bankruptcy court abused its discretion in denying the debtor's July 2014 motion to reopen a Chapter 7 case closed in September 2012; the debtor sought to avoid two judgment liens); *In re Kochetov*, 2016 WL 1180230 (9th Cir. B.A.P., March 25, 2016) (case no. 15-1034) (the bankruptcy court abused its discretion in denying the debtor's 2014 motion to reopen a case closed in 1996; the debtor sought to determine whether a tax debt had been discharged).

**Violation of stay—Damages:** In two cases, district courts affirmed substantial damage awards for violation of the automatic stay. See *Zokaites v. Lansam*, 2016 WL 1012597 (W.D. Pa., March 15, 2016) (case no. 2:15-cv-404), appeal filed, *In re Lansam*, Case No. 16-1867 (3rd Cir., filed April 14, 2016) (the bankruptcy court did not err in awarding the debtors \$50,100 in damages, consisting of actual damages of \$2,600, emotional distress damages of \$7,500 and punitive damages of \$40,000, for the "egregious" violations of the automatic stay by the lessor of commercial space for the debtors' daycare business); *In re Ogden*, 2016 WL 1077355 (D. Colo., March 18, 2016) (case no. 1:15-cv-1274), appeal filed, Case No. 16-1132 (10th Cir., filed April 18, 2016) (the bankruptcy court did not err in awarding, for a mortgage creditor's violating the automatic stay by sending the Chapter 13 debtor two letters threatening foreclosure, damages of \$69,405, including \$10,000 for emotional distress, \$35,000 in punitive damages, and \$24,405 in attorney's fees)