National Consumer Bankruptcy Rights Center

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).

Automatic stay—Extension under Code § 362(c)(3): Courts continue to debate whether termination of the automatic stay under Code § 362(c)(3)(A), which occurs when the debtor had an earlier bankruptcy case dismissed in the year prior to the debtor's current bankruptcy filing and fails to establish that the current case was filed in good faith, extends to property of the estate or is limited to the debtor and the debtor's property. Compare *Vitalich v. Bank of New York Mellon*, 2016 WL 4205691 (N.D. Cal. August 10, 2016) (case no. 5:16-cv-420), appeal filed, *In re Vitalich*, Case No.16-16584 (9th Cir. filed Sept. 8, 2016) (stay terminates as to property of the estate) with *In re Roach*, 555 B.R. 840 (Bankr. M.D. Ala. August 25, 2016) (case no. 1:16-bk-10574) (stay does not terminate as to property of the estate).

Avoidable transfers—Constructively fraudulent transfer under Code § 548(a)(1)(B): College tuition payments by the debtors were not avoidable as constructively fraudulent under Code § 548(a)(1)(B) because the debtors received reasonably equivalent value for the payments. The debtors paid the college because they believed that a financially self-sufficient daughter offered them an economic benefit and that a college degree would directly contribute to financial self-sufficiency, and that motivation was both concrete and sufficiently quantifiable. A parent can reasonably assume that paying for a child to obtain an undergraduate degree will enhance the financial well-being of the child which, in turn, will confer an economic benefit on the parent. *In re Palladino*, 556 B.R. 10 (Bankr. D. Mass. August 10, 2016) (adv. proc. no. 1:15-ap-1126), appeal filed, Case No. 16-48 (B.A.P 1st Cir. filed August 18, 2016).

BAPCPA—Liability of attorney: After having previously awarded the Chapter 7 debtor $20,000 in emotional distress damages in her action under Code § 526(c)

against her former bankruptcy attorney, who negligently misrepresented that the debtor's debt to her former husband would be discharged, the court awarded the debtor $139,384 in attorney's fees. The debtor's case was anything but simple; in many ways, she was proceeding in uncharted territory by asserting claims under § 526 rather than pursuing a malpractice action in state court. *In re Dove*, 2016 WL 4384287 (Bankr. N.D. Cal. August 16, 2016) (adv. proc. no. 1:14-ap-1155).

Chapter 13—Confirmation of plan—Good faith—Fee-only plan: Fee-only Chapter 13 cases are not per se impermissible, but, as with any other Chapter 13 case, the debtor must have filed the case and proposed the plan in good faith within the totality of the circumstances. Here, the debtors, who were "septuagenarians with bad health history," had done so, and their plan would be confirmed. Because the debtors could not afford to pay their lawyer a Chapter 7 retainer in advance, they instead filed for Chapter 13 relief and proposed a plan that paid their attorney's fees and expenses of $3,350, along with a small dividend to their unsecured creditors, over 36 months. The debtors proposed this dividend even though they lived on Social Security income, which was excluded from the calculation of their current monthly income, and their very limited savings. None of the debtors' income could be reached by a general unsecured creditor, and the Bankruptcy Code did not require them to pay a dividend in any amount under the circumstances. *In re Moore*, 2016 WL 4247041 (Bankr. D. Kan. August 5, 2016) (case no. 6:15-bk-12254).

Chapter 13—Dismissal of case under Code § 1307(c): Where the Chapter 13 debtors needed a modest amount of time (10 months according to the debtors, 18 months according to the Chapter 13 trustee) beyond the 60-month maximum plan term to complete their plan obligations, it was not in the best interests of the debtors, their creditors or the estate to dismiss the case, and the court would not do so, unless the trustee presented evidence that the needed extension was not warranted. *In re Handy*, --- B.R. ----, 2016 WL 4548940 (Bankr. N.D. Ill. August 31, 2016) (case no. 1:15-bk-37632).

Chapter 13—Violation of plan confirmation order: By attempting to intercept the Chapter 13 debtor's work-related travel reimbursement check in order to apply the proceeds to the payment of a domestic support obligation, the State of Florida Department of Revenue violated the bankruptcy court's plan confirmation order, and the bankruptcy court did not err in holding the department in contempt and awarding the debtor attorney's fees. A plain reading of Code § 1327(a) made clear that the binding effect of a confirmed plan encompassed all issues that could have been litigated in the case, including whether the department could intercept the debtor's reimbursement payment. *In re Gonzalez*, 832 F.3d 1251 (11th Cir. August 11, 2016) (case no. 15-14804).

Dischargeability of debt—Status as domestic support obligation: Reversing *In re Rivera*, 511 B.R. 643 (9th Cir. B.A.P., June 4, 2014), the Court of Appeals held that the debtor's debt to the county probation department for costs of support of the debtor's child while the child was in juvenile detention was not a domestic support obligation and thus was not excepted from discharge under Code § 523(a)(5). Since the principal purpose of the county's custody over the debtor's son was public safety, not the son's domestic well-being or welfare, the fact that the debt represented in part the costs of the son's basic needs did not render the debt a domestic support obligation. *In re Rivera*, 832 F.3d 1103 (9th Cir. August 10, 2016) (case no. 14-60044).

Means test—Expenses—Secured debt expense: Courts continue to debate whether a Chapter 7 debtor may claim a secured debt expense deduction in the means test when the debtor intends to surrender the collateral for the debt. Compare *In re Lawrence*, 2016 WL 4487628 (Bankr. D. D.C. August 25, 2016) (case no. 1:15-bk-304) ("the better-reasoned decisions" allow the deduction) with *In re Campbell*, 2016 WL 4150663 (Bankr. E.D. Va. August 3, 2016) (case no. 1:15-bk-13426) ("the better view" is that the deduction is not allowed).

Means test—Expenses—Vehicle ownership expense: The Chapter 7 debtor was entitled to claim a motor vehicle ownership expense deduction under the means test, even though the debtor was not the owner of the automobile, was not the borrower under the automobile loan and was not legally obligated to repay that loan, where the debtor made the monthly payments on an automobile owned by her sister but possessed and used by the debtor, and it was undisputed that the debtor would lose possession of the automobile unless she continued to make the payments to the lender. This undisputed fact established for purposes of the means test that the relevant IRS local transportation expense standard of $517 for car ownership expenses was "applicable" to the debtor. Debtors who make monthly car loan payments or car lease payments as a prerequisite to their continued use of the vehicle may claim this expense under the means test even if they do not own the vehicle. *In re Drury*, 2016 WL 4437555 (B.A.P. 9th Cir. August 23, 2016) (case no. 15-1441).

Release of debtor's private information: Where a medical services provider filed hundreds of proofs of claim over several years that listed a debtor's full date of birth and Social Security number, and law firms representing two debtors brought the matter to the court's attention, the court awarded $37,000 in attorney's fees to one of the firms and $22,600 in attorney's fees to the other firm. While there was no evidence that the disclosure of personal information was malicious or intentional, the scope of the creditor's violations of Rule 9037 was extreme, and the court found that a punitive sanction in the amount of $70,000 was appropriate. The creditor would be directed to

pay $50,000 to the court and $10,000 to each of the debtors for their roles as "stalking horses" in bringing the matter to the attention of the court and forcing corrective action by the creditor. *In re Branch*, 2016 WL 4543770 (Bankr. E.D. N.C. August 31, 2016) (case nos. 5:14-bk-2379, 5:15-bk-5318, 5:15-bk-1265).