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Recent Developments in Consumer Bankruptcy 2013

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Miscellaneous

***In re Domingue*, 2012 WL 3961212 (Bankr. S.D. Tex. 2012)**. Chapter 13 debtor lived in a home owned by his uncle. The uncle had taken out a reverse mortgage on the home. The uncle passed away in 2011, and shortly thereafter the debtor filed for Chapter 13 protection, claiming the home as his homestead. The plan proposed by debtor bifurcated the mortgage holder's claim into secured and unsecured portions based upon valuations offered by an appraiser provided by debtor. The mortgage holder objected, arguing that the plan would violate 11 U.S.C. § 1322(b)(2) by allowing the debtor to make less than full payment of the claims collateralized by debtor's principal residence.

The bankruptcy court found that, in the case of this particular reverse mortgage and based upon the language of the mortgage itself, 11 U.S.C. § 1322(c)(2) provided and exception to the requirements of § 1322(b)(2). Because the reverse mortgage at issue would become due between two and three months into the plan term, the debtor was required to bifurcate the mortgage holder's claim. Court furthermore accepted debtor's valuation of the home, noting that the testimony of debtor's appraiser was more reliable than the *ad valorem* tax data upon which the mortgage holder relied in its valuation efforts.

***Weisbart v. Momphard (In re Munro)*, 2013 WL 74414 (Bankr. E.D. Tex. 2013)**. Defendant in this adversary proceeding arranged mortgage loan on house in which he lived, daughter (wife of debtor) cosigned on the mortgage. As an estate planning device, daughter's name was added to the general warranty deed on the home. When daughter married debtor, debtor signed a quitclaim deed in order to disclaim any interest in defendant's house that debtor might have acquired by operation of law. Chapter 7 trustee initiated adversary proceeding, asserting section 362(h) right to sell estate's interest in the house. The court granted defendant summary judgment, finding that the house was the subject of a resulting trust in favor of defendant based upon the undisputed series of transactions concerning the house. Under the resulting trust theory, the debtor could have no more than a bare legal interest in the house, such an interest being of no value because all value would belong to defendant as the beneficial owner of the house.

***Dill Oil Company v. Stephens (In re Stephens)*, 704 F.3d 1279 (10th Cir. 2013)**. Individual Chapter 11 debtors proposed to cramdown confirmation of their plan. Creditors objected on grounds that plan violated the absolute priority rule. The bankruptcy court held that the plain language of BAPCPA abrogated the absolute priority rule as to individual Chapter 11 debtors. Noting that a significant circuit split had developed on the issue, the circuit court found that there was no clear indication that Congress intended to repeal the absolute priority rule and accordingly reversed the confirmation order and remanded for further proceedings.

***In re David*, 487 B.R. 843 (Bankr. S.D.Tex. 2013)**. Debtor filed Chapter 13 case that was subsequently dismissed. When debtor later initiated a separate lawsuit in state court, the bankruptcy court issued a show cause order against the debtor and his counsel because the values of certain real property tracts listed in the debtor's state court suit differed materially from the values that had been listed on the Schedules. At the show cause hearing, it also became apparent that debtor had used alternative names and social security numbers (ostensibly his brother's), a fact which resulted in the court issuing a second show cause order against the debtor. While the court declined to sanction the debtor under Bankruptcy Rule 9011 because the debtor was represented by counsel, the court nevertheless issued sanctions based upon its inherent powers and the authority granted by Section 105 of the Bankruptcy Code.

***Leavitt v. Finney (In re Finney)*, 486 B.R. 177 (9th Cir. BAP 2013).** Debtor filed Chapter 13 case and voluntarily converted to a Chapter 7 eight months later and was granted a discharge. Debtor filed another Chapter 13 case less than four years later, and the Chapter 13 trustee objected on the grounds that debtor would not be eligible for a discharge pursuant to Section 1328(f)(1), which instructs that courts shall not grant a discharge in a case "filed under" Chapter 7, 11, or 12 if the debtor has received. On appeal, the panel agreed with the majority of courts that operation of Section 348(a) causes a case filed under Chapter 13 upon conversion to be deemed retroactively "filed under" Chapter 7. Accordingly, Section 1328(f)(1) governed the applicable look-back period and the debtor was ineligible for a Chapter 13 discharge in the second case.

***In re Ball*, 2013 WL 2383662 (Bankr.W.D.Tex. 2013)**. Chapter 13 debtor's case was dismissed when her attorney failed to forward certain documentation required pursuant to Section 521(a) to the trustee in a timely manner. The debtor moved to reinstate her case. Finding that Section 521(i) did not give the court discretion to reinstate a case so dismissed, the court denied to motion to reinstate and issued a show cause on the attorney requiring her to justify her fees in light of her failure to timely file documents on behalf of her client.

***In Re Tagliavia,* 487 B.R. 70 (Bankr. D. Mass. 2013).** The Chapter 13 trustee objected to confirmation of the plan on the ground that the trustee's commission was fixed at 9% in the plan, less than the maximum commission established by the Attorney General of the United States under §11 U.S.C 586(e)(1)(A). The trustee asserted that 10% is also incorporated into the Chapter 13 plan in use in the district, Official Form 3 pursuant to Rule 9005-1 of the Local Bankruptcy Rules of the U.S. Bankruptcy Court for the District of Massachusetts.

The debtor objected, arguing that the trustee was already charging less than the maximum allowed commission and to the extent that the official form plan adopts a fixed 10% commission calculation, it violates the 28 U.S.C. § 2075.