

Post-*Espinosa*

Espinosa (Review)

- “Scream or Die” Case
- Ch. 13 Plan – treatment of student loan
 - Repaid principal of loan through Ch. 13 Plan
 - Discharged interest
 - No Adversary Proceeding was filed
 - No “undue hardship” determination made by the Court
 - Creditor (United Student Aids Fund Inc.)
 - Served with Plan
 - Filed Proof of Claim (asserting both principal and accrued interest)
 - Received Notice of Plan but did not Object to Plan Confirmation

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(Review)

- Absent Objections – Bankruptcy Court confirmed Plan (1992)
- Debtor completed all plan payments and received discharge (1997)
- Creditor attempted to collect unpaid interest (2003)
 - Debtor filed Motion to enforce discharge (2003)
 - Creditor cross-moved under Fed. R. Civ. P. 60(b)(4) to set aside Confirmation Order as void because it violates §§523(a)(8) and 1328.

Espinosa

(Review)

- Supreme Court granted *certiorari*
 - to determine whether a confirmation order, which discharges student loan debt without a finding of undue hardship or an adversary proceeding (or both), is a “void” judgment under Fed. R. Civ. P. 60(b)(4)
 - The issue of “Silence” of creditor was NOT before the Supreme Court

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(Review)

- Supreme Court held (Parts I & II of the Opinion):
 - Creditor was bound by Confirmation
 - Rule 60 is not a license for litigants to sleep on their rights
 - Creditor forfeited its many arguments because Creditor failed to file a timely object to confirmation of the Plan
 - Order and Discharge were effective to discharge the interest even though the Plan violated §§ 523(a)(8) and 1328
 - Had a timely objection been made, the Plan could NOT have been confirmed
 - The above was clearly addressed in parts I and II of the *Espinosa* opinion (and parts I and II of the opinion are not controversial)

Espinosa

(Part III of Opinion)

- Let the Controversy and Debate Begin . . .

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