CHAPTER 13 "DIRT FOR DEBT"

THE BASICS OF PRE AND POST CONFIRMATION PROCESS FOR DEBTOR

PRESENTERS

JUDGE JEFFREY P. NORMAN

- CURRENTLY THE BANKRUPTCY JUDGE FOR THE SOUTHERN DISTRICT
- BANKRUPTCY JUDGE FOR THE WESTERN DISTRICT OF LOUSIANAN FROM 2014 TO 2018

MARQUISE BRYANT

- ASSOCIATE ATTORNEY AT PAYNE & ASSOCIATES
- SPECIALIZING IN BANKRUPTCY

WHAT IS "DIRT FOR DEBT" ?

- The debtor proposes that a secured lender should accept collateral in satisfaction of some or all debt.
- The title is transferred to a lienholder. Absent an agreement, possession is relinquished on the transfer date.
- The debtor is no longer liable for the encumbered property as long as the title has been successfully transferred under a confirmable plan.

CASE LAW

- *Landmark Case*
  - In re Sagendorph, 2015 WL 3867955 at *4-5(Bankr. D. Mass. June 22, 2015): A correct application of the relevant provisions of the Bankruptcy Code permits a chapter 13 debtor to propose a plan that provides for transferring title to mortgage real estate to the mortgagee in full satisfaction of its claim subject to the mortgagee's right to object, in which case the court must determine if the plan has been proposed in good faith, is otherwise in compliance with the Code, and should be affirmed. This approach maintains the integrity of both §1325(a)(5) and § 1322(b) and is consistent with the most basic principles of bankruptcy restructuring as enunciated in the Code's reorganization provisions embodied in chapters 11, 12 and 13.
  - ***ADDITIONAL CASE***
  - In re Watt , 520 B.R. 834 (Bankr. D. Or. 2014)(1)This decision was reversed, 2015 WL 1879680 (D. Or. April 22, 2015), and was appealed to the Ninth Circuit, Docket No. 15-35484. However, consistent with Sagendorph, it takes a different view of vesting than the Rose and Rosa courts.(2)This court Holds that surrender under § 1325(a)(5) does not require acceptance by the secured creditor and that § 1329(b)(9) allows a plan to provide for vesting without consent from the lender. (3)Its rationale is plain meaning. (4)Watt states that the good faith requirement of § 1325(a)(3) would prevent a plan from forcing a third party to accept property that is a nuisance or be set with environmental problems.

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