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# Recent Developments in Consumer Bankruptcy 2019

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# RECENT DEVELOPMENTS IN CONSUMER BANKRUPTCY 2019




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**MISCELLANEOUS..... .....**

***In re Henry*, 17-36854, 2019 WL 623873 (Bankr. S.D. Tex. Feb. 12, 2019)**. *Debtor will not be allowed to expunge voluntarily dismissed case where he signed and authorized the filing of the bankruptcy petition*. Chapter 13 debtor who had filed his case pro se and subsequently dismissed it, filed motion requesting that court expunge his bankruptcy case as it was a result of fraud. At hearing, debtor testified that fraudulent legal group had duped him into filing bankruptcy to stop foreclosure on his home. Hinging primarily on the fact that debtor acknowledged that he had signed and filed his Chapter 13 petition himself (as opposed to it having been filed without his permission by someone else), the court concluded that expungement was not appropriate and denied the motion.

***In re Hernandez*, 18-33200, 2019 WL 113664 (Bankr. S.D. Tex. Jan. 4, 2019)**. *Mistaken in warranty deed that is obviously clerical in nature does not invalidate warranty deed*. Debtors had repeatedly and continuously lost in state and federal court in efforts to prevent mortgage holder from foreclosing on their home and evicting them. After approximately six years of litigation, debtors filed chapter 7 petition. When mortgage holder moved for relief from stay, debtor argued *pro se* that fact that 2004 warranty deed which mistakenly identified them as grantors and the actual grantor as grantee meant that deed of trust held by mortgage holder was invalid because debtors were not legal owners of home. Mortgage holder argued that 2007 correction warranty deed which noted the mistaken reversal of grantors and grantees on the original deed corrected a clerical error and that under Tex. Prop. Code §§ 5.28-5.30 correction of a clerical error substitutes the original instrument. The bankruptcy court agreed with the mortgage holder, finding that facts that original deed had the correct names of the parties but only the roles transposed and that the correction deed was signed by all parties and recorded in the same county as the original warranty deed mandated the conclusion that it constituted a correction of a clerical error and that the debtors were therefore the legal owners of the home at of the 2004 warranty deed.

***In re Alfonso*, 16-51448-RBK, 2019 WL 4254329 (Bankr. W.D. Tex. Sept. 6, 2019)**. *Court will reject Rule 9019 compromise where evidence is strong that settlement amount is low and trustee is unable to present evidence explaining how proposed settlement amount was calculated*. Chapter 7 trustee sought approval of a settlement of a personal injury claim pursuant to Rule 9019 and the law firm that had been representing the debtors in the personal injury litigation objected, arguing that the settlement amount was far too low. The bankruptcy court reviewed the evidence supporting the factual basis for the personal injury claim and concluded that it had a strong probability of success on the merits at a dollar amount greatly in excess of the trustee's proposed settlement. In particular, the bankruptcy court focused on the trustee's inability to present anything more than generalizations as to why the proposed settlement amount was fair and equitable whereas the objecting law firm went into both specific facts and governing law relating to liability in order to establish the potential value of the personal injury litigation. Because it concluded that the trustee had not presented facts supporting the proposed settlement, the court sustained the law firm's objection and denied the 9019.

***In re Odam*, 17-50035-RLJ7, 2019 WL 1752584 (Bankr. N.D. Tex. Apr. 17, 2019)**. *Bankruptcy court can sua sponte dismiss case for debtor's contempt of court order and can retain jurisdiction over funds recovered by trustee*. Chapter 7 debtor who was under bankruptcy court order to refrain from filing further vexatious pleadings, blew up a chapter 7 sale by filing a vexatious pleading attacking the sale, the trustee, and the court. Noting the absurdity of a number of the debtor's filings and the debtor's apparent disdain for the authority of the court over his bankruptcy case, the court issued a contempt and sue sponte a show cause order against debtor instructing debtor to show cause why his case should not be dismissed with prejudice for two years with the court retaining jurisdiction over all funds collected by the trustee.

***In re Grundmeyer,* 2019 WL 3330790 (Bankr. E.D. La. July 24, 2019).** *Pursuant to a very specific set of facts presented in this case, the debtor's litigation rights are not property of the estate.* Trustee filed his motion to reopen bankruptcy case alleging that Mr. Grundmeyer filed a claim in state court related to a product liability suit and that such claim was not scheduled in debtors' bankruptcy case. Trustee wanted case reopened to administer funds related to this state court personal injury suit. Debtors filed an objection stating that Mr. Grundmeyer had not received the diagnosis until after the bankruptcy case was closed so there was no claim to disclose in the bankruptcy schedules. Mr. Grundmeyer had an unrelated diagnosis of renal cancer prior to the bankruptcy being filed. As a result of this cancer, Mr. Grundmeyer received frequent monitoring by his doctors to ensure that if the renal cancer reoccurred, it would be caught timely. Debtors included with their objection dated medical reports that showed that Mr. Grundmeyer had not yet been diagnosed with Non-Hodgkin's Lymphona which is the personal injury Mr. Grundmeyer sought compensation for. Mr. Grundmeyer had been exposed to products causing his injuries in the 1960s and 1970s but was not diagnosed until after the bankruptcy case was closed. The Trustee argued that the personal injury claim was property of the estate because it originated from pre-petition benzene exposure. Debtors urged that the claim could not be property of the estate because the lymphoma developed post-petition and the lawsuit could not have been filed until Mr. Grundmeyer sustained damages. Court concluded that even though some of the tortious conduct may have occurred pre-petition, where the damages do not manifest until post-petition, the cause of action cannot be property of the estate. Here, Mr. Grundmeyer contracted Non-Hodgkin's Lymphona after his bankruptcy case was closed. Here, the number of medical exams right before the debtor filed his bankruptcy petition clearly showed he did not receive a diagnosis until after the petition date. The Court thus held that any settlement funds from the personal injury claim were not property of the estate.

***In re Ryan,* 2019 WL 3759147 (Bankr. E.D. La. Aug. 8, 2019).** *Court granted Motion for Permission to Sell Naked Ownership as the proceeds of sale of certain property are subject to a usufruct and proceeds should be remitted at sale to the usufructuary and not the judicial lien creditor of the debtor where debtor was only a naked owner of the property.* Debtor, Mr. Ryan's, father died intestate. Debtor's mother owned half of the former community property ("Property") and as such had a legal usufruct over the other half. Debtor and his three siblings are the naked owners. Prior, a judgment was entered in favor of Main Street Acquisition Corp. ("Main Street") against debtor for a repossessed

# Title search: Recent Developments in Consumer Bankruptcy 2019

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