

**The University of Texas School of Law
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CONSUMER BANKRUPTCY CASES
Recent Developments in Consumer Bankruptcy Law
July 2015 – June 2016

United States Supreme Court
5th Circuit Court of Appeal
Texas Federal District Courts
Texas Bankruptcy Courts

The summaries were prepared by Jaimeson Fedell and Andrew Geppert, law clerks to Bankruptcy Judge Marvin Isgur, with assistance from interns Paul Zachry, Zane Aubert, Eliane Ryder, Casey Weinstein, and Catherine Diktaban.

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Supreme Court

Husky Int'l Elec., Inc. v. Ritz, 131 S.Ct. 1581 (2016)

Discharge

Debtor owned a 30% share in Chrysalis Manufacturing Corp. Chrysalis purchased \$163,999.38 of products owned by Husky. Between 2006 and 2007, Debtor drained Chrysalis of its assets by transferring large sums to other entities he controlled. In December of 2009, Debtor filed for chapter 7 bankruptcy. Husky commenced an adversary proceeding seeking to hold him personally liable on the debt as well as seeking to deny his discharge based on 11 U.S.C. §523(a)(2)(A), i.e., actual fraud. The Supreme Court reversed the Fifth Circuit's ruling that "actual fraud" under the Bankruptcy Code required a showing of a misrepresentation from debtor to the creditor. Debtor's discharge could be denied under § 523(a)(2)(A) based on a fraudulent conveyance scheme even where the scheme did not involve a false representation.

Abuse

In re Croft, 539 B.R. 122 (Bankr. W.D. Tex. 2015).

Abuse

United States Trustee sought dismissal of Debtor's converted Chapter 7 case on grounds of § 707(b)(3) abuse. Debtor argued § 707(b) only applies to cases originally brought under Chapter 7, while Trustee argued § 707(b) also applies to converted cases. The Court determined that application of §707(b) to dismiss a case for abuse does not depend on how the case arrived in chapter 7. Furthermore, the Court found that Debtor's (i) excessive house and vehicle purchases made while in debt to the IRS, (ii) failure to pay current taxes during chapter 13 case, and (iii) inability to account for expenditures during chapter 13 case, despite making a six-figure income, constitute abuse.

In re Wilcox, 539 B.R. 137 (Bankr. W.D. Tex. 2015).

Abuse

Trustee sought conversion from Chapter 7 to Chapter 11, or alternatively, dismissal for cause pursuant to 11 U.S.C. § 707(a). The court found that cause existed under § 707(a) to dismiss the Debtor's case because (i) Debtor's failure to pay creditors out of fear that they would subsequently sued for a preference was not credible, (ii) Debtor led an extravagant lifestyle in the months leading up to the petition date, even after retaining a lawyer and receiving bankruptcy counsel, (iii) despite a gross income of \$23,193.33, the Debtor represented in his schedules a monthly net income of \$2.68, and (iv) Debtor's expenses, which included the cost of a housekeeper and monthly storage fee for excess furniture, indicated no hint of "belt-tightening."

Adequate Protection

In re Pennington, 2015 WL 7746295 (Bankr. S.D. Tex. Nov. 30, 2015)

Adequate Protection

Chapter 13 Debtor purchased a Toyota Camry in 2008 and gave Toyota a security interest in the vehicle. Debtor's plan provided for payment of Toyota's \$19,529.22 claim with 5.25% interest over the life of the plan. Debtor paid Toyota's secured claim in full. On July 30, 2015, the vehicle was damaged and declared a total loss. The parties stipulated that the insurance company was set to pay \$8,632.48 to cover the loss. Debtor proposed to use the insurance proceeds to purchase a replacement vehicle; Toyota objected, asserting that it is entitled to \$5,890.98 as adequate protection. Debtor responded that Toyota has been paid in full and is entitled to no adequate protection.

The bankruptcy court concluded that because Toyota was to be paid in full pursuant to the confirmed plan, it was bound by its terms, and was not entitled to adequate protection.

Appeals

Saldana v. Saldana, 2015 WL 5021415 (N.D. Tex. Aug. 25, 2015)

Appeals

The bankruptcy court entered a memorandum opinion and order regarding Debtor's claimed homestead exemption. Debtor appealed and filed a motion for stay pending appeal and waiver of bond. The district court denied the motion because Debtor's testimony was not credible, meaning he could not meet the likelihood of success on the merits threshold. Furthermore, the district court held that the mere fact that Debtor was in a chapter 7 bankruptcy did not indicate that he was so financially impaired he could not post a \$229,054.00 supersedeas bond as required by the bankruptcy court.

Foster v. Holder (In re Foster), 2016 WL 1273034 (5th Cir. March 30, 2016)

Appeals

The court dismissed Debtor and her children's appeal of bankruptcy court's denial of Debtor's motion to remove chapter 7 trustee under 11 U.S.C. § 324(a) and the court denied Debtor and her children's motion to appeal in forma pauperis.

The court ruled that the children lacked standing to appeal because they had no pecuniary interest in the estate, but presumed that Debtor had standing because her appeal might make the estate solvent. However, Debtor failed to produce any factual finding or legal point upon which the bankruptcy court erred. Therefore, the court, sua sponte, dismissed the appeal as frivolous.

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