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**Recent Developments in  
Consumer Bankruptcy 2018**

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## RECENT DEVELOPMENTS IN CONSUMER BANKRUPTCY 2018

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### MISCELLANEOUS.....

***In re Marquez*, 2017 WL 5438306 (Bankr. W.D. Tex. Nov. 13, 2017).** Pursuant to §521(a)(2), debtors must select between surrender, redemption, and reaffirmation; there is no “ride through” option. Chapter 7 debtors filed a statement of intent indicating that they intended to retain a mobile home and continue making payments without reaffirming. Secured lender sent reaffirmation agreement to debtors, but debtors refused to sign. Secured lender moved the court to compel the debtors to make a selection under §521(a)(2) to either surrender, redeem, or reaffirm their debt on the mobile home. The court found that post-BAPCPA there is no “ride-through” option and that the debtors were limited to choosing between surrender, redemption, and reaffirmation.

***Haynes v. Wells Fargo Bank, N.A. et al*, 208CV00183RWSRSP, 2017 WL 5895160 (E.D. Tex. Oct. 30, 2017), report and recommendation adopted sub nom. *Haynes v. Wells Fargo Bank, N.A.*, 208CV00183RWSRSP, 2017 WL 5890050 (E.D. Tex. Nov. 29, 2017).** Class certification denied with respect to claims that mortgage holder assessed fees and costs in violation of Rule 2016(a) and § 506. Chapter 13 debtor’s plan included provisions to pay mortgage arrearages. After successful completion of plan, mortgage

holder sent default notices claiming debtor was in default based upon undisclosed fees assessed during the Chapter 13 case. Debtor sought class certification in lawsuit claiming FDCPA violations related to the mortgage holders failure to comply with Rule 2016(a). The court denied class certification, holding that the predominance and superiority requirements of Rule 23(b)(3) were not met because Rule 2016(a) had not been uniformly applied nationally and that the implementation of Rule 3002.1 meant that most of the proposed class members were individuals who did not face further harm from the mortgage holder's actions.

***Matter of JFK Capital Holdings, L.L.C*, 16-31151, 2018 WL 564371 (5th Cir. Jan. 26, 2018).** *Absent extraordinary circumstances, the commissions for Chapter 7 trustee's governed by Section 326 are presumptively reasonable compensation not to be subject to downward adjustment.* In a Chapter 7 case that had seen many contested issues, objection was made to the trustee's fee application. Applying Section 330 and 326, the Circuit held that the commission percentages reflected in Section 326(a) are presumptively reasonable and that only under "extraordinary circumstances" could that compensation scheme be altered.

***Carmona v. Carmona (In re Carmona)*, 16-50155, 2018 WL 889358 (Bankr. S.D. Tex. Jan. 19, 2018).** *Foreign judgment will not be recognized when it contradicts resolution provided by divorce decree that was entered previously.* Debtor and ex-wife were involved in long-running dispute that included cross-border issues. As part of the their divorce, the former spouses had entered into a mediated settlement agreement that purported to settle all disputes between them. After the divorce decree (which incorporated the mediated settlement agreement) was entered, the debtor sued his ex-wife in Mexico for claims that had been raised during the divorce proceedings. The debtor obtained judgments in Mexico, subsequently filing for Chapter 11. The ex-wife brought an adversary seeking a nondischargeability determination as to certain amounts owed under the divorce decree and the debtor sought to enforce the Mexican judgments against his ex-wife. The ex-wife moved for non-recognition of the Mexican judgments under the Texas Recognition Act (Tex. Civ. Prac. & Rem. Code § 36A). Because the Mexican judgments dealt exclusively with issues that the bankruptcy court found had been resolved in the divorce proceedings, the court declined to recognize them on the grounds that to do so would violate Texas public policy and would conflict with the previously entered divorce decree.

***In re Parson*, 15-30080-BJH, 2018 WL 1452295 (Bankr. N.D. Tex. Mar. 22, 2018).** *Debtor will not be entitled to relief where automatic stay terminates because debtor fails to show court that mortgage payments required pursuant to agreed order on mortgage lender's motion for relief from stay.* Debtor entered into agreed order with mortgage lender which required debtor to timely make certain payments and file with the court proofs of such payment, with the automatic stay terminating automatically if debtor failed to do so. Debtor subsequently failed to do so, but then filed objection to mortgage lender's notice of termination of automatic stay and requested that the automatic stay be reinstated, as well as multiple other pro se requests aimed at punishing the mortgage lender. The bankruptcy court granted debtor various extensions prior to hearing, but debtor failed to file proof of

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