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RECENT DEVELOPMENTS IN CONSUMER BANKRUPTCY 2023

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RECENT DEVELOPMENTS IN CONSUMER BANKRUPTCY 2023

MISCELLANEOUS..... .....

***Matter of Amberson*, 21-50960, 2023 WL 19793 (5th Cir., January 3, 2023)**. Debtor challenged bankruptcy court's confirmation of an arbitration award against him on several grounds. The Circuit Court rejected as being utterly unfounded in case law the argument that the court should have assessed the propriety of the arbitrator's denial of summary judgment based upon the record as it existed at the time summary judgment was denied and held that the bankruptcy court's incorporation into the judgment confirming the award of facts founds by the arbitrator made them the bankruptcy court's own findings for purposes of review and they were therefore not subject to de novo review.

***Matter of Assadi*, 22-50452, 2022 WL 17819599 (5th Cir., December 20, 2022**). Litigious pro se debtor brought several levels of challenge to the bankruptcy trustee's Rule 9019 settlement with a creditor that had prevailed in state court litigation against debtor. Easily upholding the bankruptcy court's approval of the settlement, the Fifth Circuit noted in particular that the settlement involved litigation in which the creditor had prevailed in the trial court and the settlement would allow the trustee to pay all claims against the estate in full.

***Matter of Foster*, 22-10310 and 22-10318, 2023 WL 20872 (5th Cir., January 3, 2023)**. After the close of her case, disgruntled chapter 7 debtor sued the bankruptcy trustee and her counsel in state court. The bankruptcy court reopened the case and the trustee removed the lawsuit to the bankruptcy court. The bankruptcy court dismissed the complaints against the trustee and her counsel under the *Barton* Doctrine standard. The Fifth Circuit affirmed, noting that debtor failed to allege any facts outside the scope of the trustee acting qua trustee and her counsel acting qua trustee counsel and therefore finding that the debtor had failed to allege sufficient ultra vires acts necessary to circumvent the *Barton* Doctrine.

***Ton v. Ton (Matter of Ton)*, No. 22-30378, 2023 WL 2706829 (5th Cir. 2023).** On appeal from a district court's decision affirming a bankruptcy court's order partitioning former community property in a divorce where one spouse was a chapter 11 debtor, a Fifth Circuit panel held that the appellant had failed to meet her burden to establish that the bankruptcy court erred. The Fifth Circuit reviews such orders *de novo* and therefore was required to first determine what constituted community property in the first instance. In determining such, courts in the Fifth Circuit presume that obligations incurred by spouses during the marriage are community obligations unless and until the challenging party demonstrates either that such obligation was not incurred for the common interest or that the interest of one spouse did not benefit the other spouse. Because the appellant failed to rebut this presumption or show that the bankruptcy court otherwise erred in calculating the community obligations, the Fifth Circuit affirmed the district court's holding that additional loans taken out after the divorce were merely refinanced community obligations.

***In re Flores, Jr.*, 23-70007, 2023 WL 4551166 (Bankr. S.D. Tex., July 14, 2023)**. At initial hearing, pro se chapter 13 debtor informed court that he had paid an entity $1,200.00 to help him file his bankruptcy case. The bankruptcy ordered the entity to show cause with respect to it having apparently engaged in unauthorized practice of law and serving as an

undisclosed bankruptcy petition preparer. After a hearing, the court rejected arguments that the assistance provided was just administrative, finding instead that the preparer had helped the debtor determine what information would be included in the bankruptcy petition and then sanctioned the preparer under Section 110(1).

***In re Turner*, 22-60410, 2022 WL 9575494 (Bankr. W.D. Tex. Oct. 14, 2022).** Three months after the filing of a chapter 13 case, the court dismissed the case as a bad-faith two-party dispute between the debtor and a bank. Two weeks after this dismissal, debtor filed for chapter 7. The court found that that the chapter 7 case was filed in bad faith and served no legitimate bankruptcy purpose. The court found that the case should be dismissed with prejudice, with a one-year bar to refiling.

***Verner Aaron Noll, et al v. Scott Oran Noll, et al (In re Noll)*, Adv. Pro. No. 22-05014-mmp, 2022 WL 17573643 (Bankr. W.D. Tex. Dec. 9, 2022).** The Bankruptcy Court denied one defendant's motion for summary judgment where conflicting testimony and statements, along with the timing and price of the transaction and volume of phone records created a genuine issue of material fact about whether the defendant potentially acted in bad faith and had actual notice of a claim and interest when it took Property in contravention thereof. The Bankruptcy Court then denied another defendant's motion for summary judgment where that defendant's bald assertions that there was no basis to support claims against him did not satisfy his burden to establish no issue of material fact as to those claims.

AUTOMATIC STAY (SEE ALSO TURNOVERS/PROP. OF ESTATE).....

***Giles-Flores v. Braeburn Plaza, Inc. (In re Giles-Flores)*, 21-4406, 2022 WL 12025689 (Bankr. S.D. Tex., October 20, 2022)**. Debtor claimed homestead as exempt and creditor foreclosed without seeking relief from the automatic stay. Debtor sued creditor for violating the automatic stay and the creditor moved to dismiss arguing that because the debtor had claimed a homestead exemption the home was not property of the bankruptcy estate. The bankruptcy court denied the motion to dismiss, finding that there was in intra-circuit split on the question of law as to whether property claimed as exempt remains property of the bankruptcy estate and that therefore the homestead was arguably property of the bankruptcy estate. Because the undisputed fact was that the creditor knew of the bankruptcy filing when it foreclosed, the court found that the willfulness standard had been met with respect to the alleged violation of the automatic stay. Finding that the debtor had plausibly alleged injury, the court denied dismissal.

***Satija v. Page et al (In re Page)*, 22-01012, 2023 WL 4986406 (Bankr. W.D. Tex., August 3, 2023)**. Post-petition, debtor became the beneficiary of a probate estate. The executor made distributions to debtor instead of the chapter 7 trustee. The chapter 7 trustee brought an adversary proceeding seeking turnover and contempt against the debtor and the executor as well as revocation of the debtor's discharge. The bankruptcy court granted summary judgment as to turnover because the inheritance was unquestionably property of the bankruptcy estate, held the debtor in contempt for violation of the automatic stay and revoked the debtor's discharge, but denied summary judgment on the request for contempt

Title search: Recent Developments in Consumer Bankruptcy

Also available as part of the eCourse
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