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Recent Developments in Consumer Bankruptcy 2017

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MISCELLANEOUS..... .....

Capistrano v. Bank of New York Mellon, 4:16-CV-871-ALM-KPJ, 2017 WL 1758052 (E.D. Tex. Apr. 3, 2017), report and recommendation adopted, 4:16-CV-00871, 2017 WL 1739961 (E.D. Tex. May 3, 2017). Arising from debtor's attempts to delay foreclosure and/or avoid repaying creditors' real estate loans on a property, debtor filed numerous claims against his creditors. However, during the course of this lawsuit, debtor and creditors entered an agreed order modifying the bankruptcy stay under which debtor admitted that creditors held a valid promissory note secured by the property and also agreed that upon debtor's failure to comply with the order, creditors could initiate foreclose proceedings pursuant to the terms of the Note and Deed of Trust. Thus, the creditors filed a Rule 12(b)(6) Motion to Dismiss. Bankruptcy court granted the motion based on these facts and found that debtor lacked standing to assert any claims against creditors because

these claims were the property of his bankruptcy estate and may only be asserted by the bankruptcy trustee. Additionally, the court ruled that even if debtor had standing, the claims asserted against creditors are insufficient to withstand Rule 12(b)(6) scrutiny due to the debtor's failure to adequately fulfill the requirements for any of his several claims.

In re King, 559 B.R. 158 (Bankr. S.D. Tex. 2016). Fees and expenses of $28,461.93 requested by trustee were reduced to $5,692.39. This determination was based on time spent, effective hourly rate, and skill and experience of the trustee, with the court concluding that Chapter 7 trustees are not automatically entitled to the maximum amount allowed under Section 326(a).

Kelly v. D Realty Investments, Inc. (In re Kelly), 568 B.R. 19 (Bankr. N.D. Tex. 2017). Debtor filed adversary complaint against tax sale purchaser, seeking, inter alia, a declaratory judgment that, following tax sale of business at which debtor resided, he was entitled to redeem the property. Bankruptcy court held that the debtor properly chose to pursue his claim through declaratory judgment, rather than through a trespass to try title suit. Additionally, and more substantively, the court held that the debtor, as an adverse possessor of the subject property, was an "owner" of the property for purposes of the Texas Tax Code section 34.21 ("the redemption statute") since the debtor successfully fulfilled the requirements for adverse possession of the property as required by Texas law.

Matter of Rosbottom, 16-31108, 2017 WL 3034261 (5th Cir. July 17, 2017). Chapter 11 trustee for estate of debtor who was incarcerated for committing bankruptcy crimes sought a declaratory judgment that a condominium (the "condo") belonged to the bankruptcy estate rather than to the debtor's trust. The condo had been purchased with proceeds from the sale of a Louisiana home originally owned by the debtor and his wife but subsequently conveyed into separate trusts, one for the husband and one for the wife. The Trustee argued that the conveyance by the debtor and his wife into their separate trusts was void because it violated article 2337 of the Louisiana Civil Code, which prohibits a spouse subject to a community property regime from alienating, encumbering, or leasing his undivided interest in any community property. The Circuit Court held that the original conveyance of the Louisiana home was an absolute nullity because it was done in violation of article 2337, and as such title to the Louisiana home was never transferred and therefore the condo purchased with the proceeds from the sale of the Louisiana home was property of the bankruptcy estate and not the trust.

Schott v. Raborn (In re Raborn), 15-10938, 2017 WL 1417204 (Bankr. M.D. La. Apr. 20, 2017). Chapter 7 trustee sued debtor to avoid as a fraudulent conveyance under 11 U.S.C. § 548 the prepetition rescission of a transfer of stock resulting from a state court judgment. The trustee sought approval from the bankruptcy court, under Federal Rules Bankruptcy Procedure 9019(a), of a compromise of that lawsuit as well as other claims between the estate and several other persons and entities. Debtor subsequently objected to the compromise. Bankruptcy court first held that the debtor does not have standing to oppose the settlement since her estate is insolvent. Additionally, the court held that the compromise serves the best interests of the creditors and the estate since the 5th Circuit's Jackson Brewing and Foster Mortgage factors support this decision. Thus, the compromise was

approved and all the debtor's objections were overruled because even assuming arguendo that the debtor had standing to oppose the compromise, her objections either lack a legal basis or if based in law, lack evidentiary support.

United States v. Collier, 846 F.3d 813 (5th Cir. 2017). Defendant plead guilty to bankruptcy fraud. At sentencing, Defendant and Government agreed that an eight-level adjustment to his sentencing was appropriate in light of the amount of the intended loss in his case. On appeal, the Defendant argued that the intended losses involved in his offense warranted only a six-level increase in his offense level. The Circuit Court held that by agreeing at sentencing to the eight-level adjustment the defendant had waived the right to challenge the intended loss calculation applicable to his case.

U.S. v. Grant, 850 F.3d 209 (5th Cir. 2017), cert. denied, 17-5390, 2017 WL 3222317 (U.S. Oct. 2, 2017). Serial filing debtor was indicted for bankruptcy fraud under 18 U.S.C. § 152(3). Among the allegations were that in her bankruptcy filings she had failed to disclose all of the Social Security numbers that she had used and failed to disclose prior bankruptcy filings. The debtor argued that the indictment was defective because it misstated the disclosure requirement with respect to her Social Security numbers, and argument that the Circuit Court rejected because it found that the indictment nevertheless informed the debtor as to the charges against her. The Circuit Court also held that any error in the jury instructions with respect to the Social Security numbers was harmless because the jury was presented with applicable law governing the disclosure issue being challenged by the debtor and therefore was able to discern whether there were any discrepancies between the indictment's legal conclusions and the actual law. Rejecting the debtor's argument that a fraud standard should apply and that her creditors were not harmed by any potential flaws in her disclosures, the Court applied the perjury standard and upheld the debtor's conviction.

LIENS.....

21st Mortg. Corp. v. Glenn, 1:16-CV-162-SA, 2017 WL 2912474 (N.D. Miss. July 7, 2017).* The issue before the court was whether delivery and setup costs may be included in the valuation of the Debtor's mobile home. The Debtor filed for chapter 13 bankruptcy; 21st Mortgage held a perfected security interest in the Debtor's mobile home. The Debtor planned to keep possession of the mobile home and pay 21st Mortgage the value of the home, plus interest. Section 506(a)(2) of the Bankruptcy Code requires individual debtors to include a retail valuation of personal property "without deduction for costs of sale and marketing." 21st Mortgage argued that this provision applied in the instant case, and that delivery and setup should be included in the sale and marketing consideration. The bankruptcy court and the district court disagreed, finding that the Debtor's proposed use was relevant and that delivery and setup were not within the types of costs contemplated by § 506 and its amendments.

In re Hutchings, 17-51137-CAG, 2017 WL 4174394 (Bankr. W.D. Tex. Sept. 19, 2017). The Debtor received a home equity loan from HomeEq, secured by her homestead. Later,

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