Cases in Review
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"Cases in Review" highlights recent cases that may be of particular interest to consumer bankruptcy practitioners. It is brought to you by Consumer Bankruptcy Abstracts & Research (www.cbar.pro) and the National Consumer Bankruptcy Rights Center (www.ncbrc.org).

**Authority of the court—Imposition of sanctions—On creditor:** A creditor's motion for relief from stay, filed after the deadline for objections to the debtor's Chapter 13 plan and one day prior to the court's confirmation of the plan, constituted an attempt by the creditor to alter its treatment under a plan to which it did not object, despite having notice of the opportunity to do so, and, as such, amounted to a violation of the confirmation order, an abuse of process, bad-faith conduct, and a burden upon the administration of the debtor's case by the court. It was well-established that the broad powers vested in the court by Code § 105 permit the sanctioning of a creditor where it is necessary to prevent abuse of the judicial process, and, here, an award of attorneys' fees and costs to the debtor in the amount of $8,500.00 was appropriate. *In re Ford*, 522 B.R. 842 (Bankr. D. S.C. Jan. 12, 2015) (case no. 2:14-bk-3138).

**Authority of the court—Imposition of sanctions—On creditor:** Where the Chapter 13 debtors' statute of limitations defense to the proofs of claim filed by two creditors was "blindingly obvious," the creditors violated Bankruptcy Rule 9011, and the court imposed a $1,000 sanction on each creditor. A proof of claim is no different from any other matter presented to the bankruptcy court. The filing of a proof of claim is subject to Rule 9011, and sanctions may be imposed for filing claims in violation of the rule's requirements. *In re Sekema*, 523 B.R. 651 (Bankr. N.D. Ind. Jan. 7, 2015) (case no. 4:14-bk-40145).

**Authority of the court—Imposition of sanctions—On creditor:** Where the creditor violated Bankruptcy Rule 9037(a) by filing an unredacted document with the bankruptcy court that revealed the debtor's full Social Security number, home telephone number, address, and date of birth, the court awarded the debtor

compensatory damages in the amount of attorney's fees incurred and $1,000 in punitive damages. While Rule 9037 does not itself create a private right of action, the court has the power to sanction contemptuous violations of Rule 9037 pursuant to Code § 105(a) and its inherent authority to sanction a party for contempt. *In re Lunden*, 524 B.R. 410 (Bankr. D. Mass. Jan. 15, 2015) (case no. 4:14-bk-40412).

**Chapter 7—Determination of abuse:** If the 540-day period during which a Chapter 7 debtor is exempted from the means test under Code § 707(b)(2)(D)(ii) has not expired as of the petition date, the means test does not thereafter become applicable if the 540-day period expires while the debtor's case remains open; the debtor's exemption from the means test is permanent. While the court did not "cavalierly disagree" with the drafters of Interim Rule 1007–I and revised Form 22A, which embraced the position that the exemption terminates upon the expiration of the 540-day period, the Bankruptcy Code took precedence over conflicting rules and forms. *In re Rowell*, --- B.R. ----, 2015 WL 128003 (Bankr. E.D. Wis. Jan. 8, 2015) (case no. 2:14-bk-25460).

**Chapter 7—Reaffirmation agreement—Rescission:** Under Code § 524(c)(4), a reaffirmation agreement is enforceable only if, among other things, "the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim." Under the statute, rescission of a reaffirmation agreement requires only timely notice of such to the creditor. While it may be appropriate to file a notice of rescission with the court, the court has no involvement in such rescission absent a dispute as to its timeliness or receipt by the creditor. *In re Jones*, 2015 WL 237240 (Bankr. N.D. Ohio Jan. 16, 2015) (case no. 3:14-bk-33566).

**Chapter 13—Confirmation of plan—Claims treatable in plan:** The Chapter 13 debtor could include a motor vehicle debt in her plan, and pay the creditor's claim over the term of the plan, even though, in the debtor's prior Chapter 7 case, the debtor failed to reaffirm the debt or redeem or surrender the collateral, as required under Code § 512(a)(2). The court extended the automatic stay under Code § 362(c)(3) in the Chapter 13 case, and nothing in the Bankruptcy Code specifically precludes the restructuring in Chapter 13 of a debt that was not reaffirmed in a prior Chapter 7 case. *In re Francis*, 2015 WL 139520 (Bankr. N.D. Tex. Jan. 8, 2015) (case no. 4:14-bk-42974).

**Proof of claim—Amendment:** By waiting until three months before the Chapter 13 debtor completed the payments called for under her confirmed plan, and until 55 months had elapsed since the mortgage creditor filed its original proof of claim, which included a prepetition arrearage of $3,764, the creditor waived its right to file an

amended proof of claim asserting that the prepetition arrearage was actually $13,298. The secured creditor had ample time to correct its mistake but failed to do so; allowance of the amended claim would result in unfair prejudice not only to unsecured creditors, which had already received their distributions, but also to the debtor, who paid the secured creditor as requested in its original proof of claim. *In re Alonso*, --- B.R. ----, 2015 WL 224937 (Bankr. D. Puerto Rico Jan. 15, 2015) (case no. 3:09-bk-6996).

**Proof of claim—Secured claim—Right to enforce note:** The mortgage creditor (Wells Fargo) did not establish that it was the holder of the Chapter 13 debtor's promissory note, entitled to enforce the note, where (1) the creditor introduced two conflicting versions of the note, one with only a specific endorsement to another party and a second with both the specific endorsement and an endorsement in blank; and (2) the court found "substantial evidence that Wells Fargo's administrative group responsible for the documentary aspects of enforcing defaulted loan documents created new mortgage assignments and forged indorsements when it was determined by outside counsel that they were required to enforce loans," which the court emphasized was "EXTRAORDINARY." *In re Carrsow-Franklin*, 524 B.R. 33 (Bankr. S.D. N.Y. Jan. 29, 2015) (case no. 7:10-bk-20010).

**Property of the estate—Exclusions:** 529 plans are excluded from the bankruptcy estate under Code § 541(b)(6) even when they are inherited. Such plans are not similar to inherited IRAs that, under *Clark v. Rameker*, 134 S.Ct. 2242, 189 L.Ed.2d 157 (2014), are not exempted from the estate. Unlike an inherited IRA, which is an opportunity for consumption, an inherited 529 plan is meant to serve the same purpose whether owned by the settlor or the heir. *In re Hennessy*, --- B.R. ----, 2015 WL 237231 (Bankr. D. Minn. Jan. 16, 2015) (case no. 6:14-bk-60426).

**Property of the estate—Exemptions—Availability to debtor under savings clause of Code § 522(b)(3):** Affirming *In re Capelli*, 518 B.R. 873 (Bankr. N.D. W.Va. Sept. 29, 2014), the district court held that the debtor was entitled to claim federal exemptions under the savings clause of Code § 522(b)(3) where the debtor was required by § 522(b)(3) to claim exemptions under Virginia law but, as a nonresident, he was not entitled to utilize that state's exemptions, and the fact that the debtor held certain real property as a tenant by the entireties and so could exempt his interest in that property under § 522(b)(3)(B) if he elected state exemptions did not change the analysis. *Capelli v. Capelli*, 2015 WL 410525 (N.D. W.V. Jan. 29, 2015) (case no. 2:14-cv-87).