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In *Heritage Bank v. Woodward (In re Woodward)*, No. 15-6001 (B.A.P. 8th Cir. Aug. 13, 2015), the BAP held that the absolute priority rule is applicable in individual chapter 11 cases.

The individual debtor initially filed a petition under Chapter 7, but converted her case to one under Chapter 11 five months later. After filing, but prior to conversion, the debtor acquired property as her principal residence. As part of the purchase price, the debtor signed a promissory note in favor of the sellers, which required regular monthly payments and a balloon payment. Sellers perfected their lien on the debtor's property and filed a secured proof of claim in the case.

A creditor holding an allowed unsecured claim in the case objected to the sellers' claim. The creditor did not object to the claim on its merits, but due to its timeliness. The bankruptcy court overruled the objection, and the creditor did not appeal. Rather, the creditor objected to the sellers voting on the plan as an impaired class on the grounds that the claim was a post-petition claim. The debtor's plan sought to extend the date on which the balloon payment was due. Sellers voted in favor of the plan and by doing so agreed to waive Section 1123(b)(5)'s prohibition against the modification of a security interest on a debtor's principal residence. Since at least one class of impaired claims voted in favor, the debtor's plan was confirmed.

The BAP held that the merits of the sellers' claim were not reviewable on appeal under principals of *res judicata* because the creditor did not object to the claim on its merits, the bankruptcy court already ruled that the sellers had an allowed claim, and the creditor did not appeal that order. However, the BAP questioned whether the sellers should have had an allowed claim in the first place and stated it was "not convinced that the Bankruptcy Code allows for [such] a postpetition claim." Nevertheless, since there was a final order that the sellers had an allowed claim and the plan altered the sellers' rights under the note by extending the maturity date, the BAP held that an impaired class had accepted the plan as required by Section 1124.

Next, the BAP addressed whether the "absolute priority rule" of 11 U.S.C. § 1129(b)(2)(B)(ii), which requires that a dissenting class of unsecured creditors be paid in full before any junior class can receive or retain any property under a reorganization plan, applies to individual Chapter 11 debtors. The Bankruptcy Code contains a statutory exception to the absolute priority rule and allows individual Chapter 11 debtors to retain some property without first paying unsecured creditors. That is, property that is "included in the estate under section 1115." Section 1115(a) states that "property of the estate includes, *in addition to the property specified in section 541* – all property . . . that the debtor acquires after the commencement of the case. . ." The BAP reasoned that in an individual Chapter 11 case, Section 1115 augments existing estate property by including post-petition property and income.

The BAP then undertook a detailed analysis of the relevant statutory language and determined that the language of 11 U.S.C. §§ 1129 and 1115 favors the continuing application of the absolute priority rule in individual Chapter 11 cases. "Contextually, the only property that § 1115 can take into the estate is postpetition property and income because prepetition property is already part of the estate under § 541." So, the BAP concluded that pre-petition property is not property that is included under section 1115 and therefore excluded from the absolute priority rule. So, the BAP held that the absolute priority rule applies in individual Chapter 11 cases to prevent debtors from retaining pre-petition property unless unsecured creditors are paid in full.

The BAP further reasoned that had Congress intended to abrogate the absolute priority rule in individual Chapter 11 cases, it could have used clearer statutory language, and noted its decision is consistent with the weight of authority in other circuits.

BAP Suggests Simple Test for Determining Claim in Cases Involving a Pre-Petition Termination of Lease

In *Larait Companies, Inc. v. Wigley (In re Wigley),* No. 14-6043 (B.A.P. 8th Cir. June 19, 2015), the BAP examined the claim held by a commercial landlord and suggested a "simple test" for determining claim amounts in cases involving a pre-petition termination of a lease.

The debtor executed a guaranty on a ten-year commercial lease. The tenant defaulted and was evicted. The landlord subsequently sued the tenant and the debtor for damages under the lease and the guaranty, respectively. The district court awarded the landlord damages in excess of $2.2 million, plus interest and attorney fees. The Minnesota Court of Appeals affirmed.

The landlord and two other creditors also sued the debtor and his wife in state court, and the court found the debtor and his wife jointly and severally liable for fraudulent transfers totaling nearly $800,000, plus statutory interest, costs and disbursements.

The tenant filed a Chapter 11 petition and commenced an adversary proceeding to enjoin the landlord from attempting to enforce its judgment against the debtor. The court denied the tenant's request for a preliminary injunction and dismissed the adversary proceeding. On the motion of the United States Trustee, the tenant's bankruptcy case was dismissed.

In the meantime, the debtor filed his own Chapter 11 petition. Landlord filed a sizeable proof of claim in the case and the debtor objected on two grounds – that the amount sought based on the debtor's personal guaranty exceeded the allowable amount pursuant to 11 U.S.C. § 502(b)(6) and because the amount claimed based on the fraudulent transfers from the debtor to his wife were duplicative. The bankruptcy court sustained the claim objection and capped the landlord's claim. The debtor appealed.

Section 502(b)(6) caps a landlord's claim for rent and other damages "*resulting from the termination* of a lease of real property." This statutory cap is designed to compensate the landlord while not permitted a claim (based on a long-term lease) so large as to dominate the general unsecured class. The BAP looked to the test developed by the Ninth Circuit Court of Appeals for determining whether damages result from rejection of a lease and suggested an "equally simple test" for determining the claim amount in cases involving a pre- (as opposed to post) petition lease termination: assuming all other conditions remain constant, would the landlord have the same claim against the tenant if the lease had not been terminated?

In this case, the landlord's claim consisted of four components. The first was for unpaid rent, CAM and late fees through eviction (as those damages were determined by the district court) and interest thereon to the date of filing. Applying the test, the BAP concluded that the landlord would have the same claim against the tenant (and the debtor, through his guaranty) if the lease had not been terminated. Since those items accrued prior to termination of the lease, they cannot be said to have resulted *from termination* of the lease. The judgment interest was derivative of those amounts awarded, so that could not be said to have resulted from the termination of the lease, either. Therefore, the BAP concluded that portion of the landlord's claim was not subject to the Section 502(b)(6) cap.

The second part of the landlord's claim, the interest on future rents, constituted damages resulting from the termination of the lease, as the landlord would not have had the same claim against the tenant if the lease had not been terminated. If the lease had not been terminated, landlord would not have a claim for future rents, and without a claim for future rents, the landlord would not have a claim for interest. That component was subject to the Section 502(b)(6) cap.

Third, the landlord asserted a claim for attorney fees and costs to the petition date. Since the damages comprising the first element of the claim (unpaid rent, CAM and costs) accrued prior to lease termination, the attorneys fees and costs associated with those damages could not, the BAP determined, be said to have resulted from the termination of the lease and would not be subject to the 502(b)(6) cap. However, the BAP remanded to the bankruptcy court to determine whether the balance of the claim for attorney fees and costs would be subject to the Section 502(b)(6) cap.

The final component of the landlord's claim was based on the state court judgment for fraudulent transfers. The BAP concluded that was duplicative of the earlier state court judgment awarding damages for breach of the lease. The Minnesota Uniform Fraudulent Transfer Act does not create a new claim. It is not substantive in nature, but rather confers an alternate remedy for protecting preexisting creditor rights. The rights a creditor seeks to enforce must exist independently, as a fraudulent transfer is not a separate wrong.

BAP Orders That Debtor Must Exhaust Administrative Remedies Prior to Bringing Action for Damages under 26 U.S.C. § 7433

In *Broos v. United States* (*In re Broos*), No. 15-6013 (B.A.P. 8th Cir. July 16, 2015), the BAP addressed the issue of when and against whom a suit for damages under 26 U.S.C. § 7433 may be brought in the context of IRS employees issuing levies and filing Notices of Federal Tax Liens after the close of a debtor's Chapter 7 case. The BAP affirmed the bankruptcy court which held that (i) individual IRS employees are protected from liability if they are acting in their official capacities; and (ii) all administrative remedies described under 26 U.S.C. § 7433 must be exhausted prior to filing suit.

The debtors in *Broos* filed an adversary proceeding against various IRS employees seeking damages under 26 U.S.C. § 7433, for alleged violations of the bankruptcy discharge under 11 U.S.C. § 524. The United States filed a motion to dismiss because it believed that it, instead of the IRS employees, was the proper defendant. The BAP determined that substituting the United States as a party defendant was proper because the IRS employees were acting in their official capacities, which actions are protected by sovereign immunity. The BAP also agreed with the bankruptcy court's denial of the debtors' motion for default judgment against the IRS employees and the

United States because the IRS employees were not the correct defendants and the United States timely entered its appearance by virtue of its motion to dismiss.

Finally, the BAP affirmed the bankruptcy court's dismissal of the debtors' adversary complaint because the debtors failed to exhaust the administrative remedies described under 26 U.S.C. § 7433. The administrative procedure the debtors should have followed for their particular claims is set forth under 26 CFR 301.7430-1 and 301.7433-2(e), which includes first filing a claim with the IRS. Because the debtors' failed to do so, the BAP affirmed the bankruptcy court's dismissal of the debtors' claims.

Trustee Failed to Prove Insolvency When Debtor Had No Debt Includable in the Balance Sheet Insolvency Test and Paid His Debts as They Became Due

In *Running v. Dolan* (*In re Goodspeed*), Adv. No. 13-3239 (Bankr. D. Minn. Aug. 14, 2015), the bankruptcy court ruled that a debtor's transfer of cash proceeds from real estate equity loans and/or refinancings to the defendant for purposes of purchasing real property in Florida was not a fraudulent transfer because the bankruptcy trustee failed to prove at trial that the debtor was insolvent at the time of the transfer.

The bankruptcy court's factual findings included that the debtor and the defendant, while married, jointly acquired various real estate. Over time the debtor borrowed or refinanced the jointly held real estate, which the defendant consented to but did not co-sign for, and used the resulting proceeds to pay off joint debts and purchase real estate in Florida, which was titled in the defendant's name only. The debtor and defendant subsequently filed for divorce, and thereafter the debtor filed for Chapter 7 bankruptcy protection. Several additional factual findings were left to be determined by the state district court hearing the dissolution case between the debtor and the defendant.

The bankruptcy court closely analyzed each element of the trustee's claims brought under Minn. Stat. §§ 513.45(a) and 513.44(a)(2), pursuant to 11 U.S.C. § 544(b). With respect to several elements of each claim, including finding a predicate creditor, that a transfer of property of the debtor was made, and that value was given in exchange for the transfer, the bankruptcy court either determined that the facts presented supported the respective element, assumed that the element had been met, or determined that the state district court hearing the dissolution case would determine the issue.

With respect to the element of insolvency however, the bankruptcy court determined that the debtor was solvent at the time of the alleged transfer. The court held that after reducing the value of the non-exempt real estate by the amount of debt secured by such property, which debt was the only debt of the debtor, and adding the value of other personal property, the debtor had a positive balance sheet. The evidence presented at trial showed that the debtor was paying his debts as they came due. Although the court undertook the academic exercise of analyzing several other issues relating to the trustee's fraudulent transfer claims, it held that the debtor's lack of insolvency prevented the trustee's recovery of the transferred proceeds.

Polaroid Investors' New York State Court Litigation Referred to Minnesota Bankruptcy Court

In *Ritchie Capital Management, LLC et al. vs. JPMorgan Chase & Co. et al.*, No 14-4786, (D. Minn. July 2, 2015) the district court granted the plaintiffs' motion seeking referral to the bankruptcy court pursuant to Local Rule 1070-1. In its decision, the district court also permitted the bankruptcy trustees for Polaroid Corporation, Petters Company, Inc. and Petters Capital, LLC to intervene in the litigation.

The plaintiffs were investors who transferred over $180 million to Polaroid. The plaintiffs alleged that the defendants aided and abetted Petters because their funds were used to refinance existing loans to Polaroid at a time they knew or should have known of the Ponzi scheme.

In granting the referral, the district court made several related holdings. First, it held jurisdiction exists under 28 U.S.C. § 1334 because this case is related to the Polaroid and Petters bankruptcy cases in Minnesota. Second, the district court held that "related to" jurisdiction permitted removal from the New York state court to federal court pursuant to 28 U.S.C. § 1452. Third, the referral from the district court to bankruptcy court in Minnesota is required by Local Rule 1070-1, which states "[a]ll bankruptcy cases and proceedings, including any claim or cause of action that is removed under 28 U.S.C. § 1452 . . . are referred to the bankruptcy judges . . ."

In Minnesota The 1,215-Day Period for Determining if 11 U.S.C. § 522(p)(1) Applies Begins to Run Upon Delivery of the Deed

In *Bruess v. Dietz (In re Bruess)* No. 15-6019 (B.A.P. 8th Cir. Oct. 29, 2015), the BAP held that in determining if the limitation on the amount of an exemption a debtor can take as limited by 11 U.S.C. § 522(p)(1) applies, the appropriate date from which the 1,215-day period begins to run for property exempted under Minnesota law begins upon delivery of the deed.

Per 11 U.S.C. § 522 a debtor that files for bankruptcy can exempt from property of the estate property that is listed under 11 U.S.C. § 522(d) or may elect to use the exemptions available under state law and other federal laws. However 11 U.S.C. 522(p)(1) provides that a "debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate $155,675 in . . . real or personal property that the debtor . . . uses as a residence."

The court noted that "Minnesota law is well-settled that the transfer of an interest in real property does not occur until the delivery of the deed . . . The two essential elements to delivery of a deed are (1) surrender of control by the grantor, and (2) an intent to convey the title."

The debtor sought to exempt inherited property in the amount of $562,760.33. The debtor claimed that because her father had executed a deed on April 5, 2010, and it was in the possession of his counsel as of that date, April 5, 2010, should be considered the date she acquired the property. The bankruptcy court however found that because the deed was not filed until January 14, 2013, within 1,215 days of the bankruptcy filing, the limitation set forth in 11 U.S.C. § 522(p)(1) should apply. The bankruptcy court found that until the debtor's father instructed his attorney to record the deed he "retained complete control over the fate of the deed, therefore delivery (and transfer of interest) did not take place until January 14, 2013, when he directed his attorney to record it."

The BAP affirmed the bankruptcy court's ruling, noting that the pleadings and testimony in the case supported the bankruptcy court's finding that although the deed was delivered to counsel, counsel was not instructed to record it until January 14, 2013. Further the debtor's father, rather than having the deed recorded upon execution, continued to consider whether to have it recorded for some time beyond execution supporting the contention that he did not relinquish control at the time of execution.

A Chapter 13 Debtor Cannot Pay Student Loans Directly Unless All Claims Are Paid in Full

In *Jordahl v. Burrell (In re Jordahl),* 539 B.R. 567 (B.A.P. 8th Cir. Nov. 2, 2015), the BAP affirmed the bankruptcy court's decisions that Chapter 13 debtors cannot pay student loans directly pursuant to § 1322(b)(5) as a long-term obligation unless doing so would also comply with §§ 1322(b)(1) and (b)(10), which respectively prohibit unfair discrimination in favor of a special class of creditor and prohibit payment of interest on non-dischargeable claims unless all allowed claims are paid in full.

The debtors originally proposed a plan that bifurcated the non-priority unsecured claims into two classes: (1) non-dischargeable student loan claims; and (2) all other unsecured non-priority claims. The non-dischargeable student loan claims were to be paid directly by the debtors per the contracts with the student loan creditors and were projected to be paid approximately 52 percent of the claims through the 60 months of the plan term. The other unsecured non-priority claims were to be paid a pro-rata share of the amounts paid to the chapter 13 trustee net of administrative expenses, secured claims, and priority claims, which was projected to be between 6 percent and 11.5 percent.

The bankruptcy court sustained the trustee's objection that the separate classification of the student loan claims constituted unfair discrimination under § 1322(b)(1). The court did not at that time address the trustee's objection that the plan failed to meet the requirements of § 1322(b)(10) because the student loan debt payments included interest even though all other allowed claims were not to be paid in full.

The debtors subsequently proposed a modified plan that still bifurcated the non-priority unsecured claims into two classes: (1) a single non-dischargeable student loan that was co-signed by a grandmother; and (2) all other unsecured non-priority claims including the remaining student loan claims. The trustee renewed his objection that this failed to satisfy § 1322(b)(10) because this would result in the payment of interest on the non-dischargeable student loan even though all other allowed claims would not be paid in full. The bankruptcy court sustained the trustee's renewed objection.

The debtors subsequently proposed a second modified plan that was withdrawn after the trustee objected again. The debtors then proposed a third modified plan to which the trustee did not object. The debtors then objected to their own plan in order to establish a right to appeal the issue of whether they could pay the student loan directly pursuant to § 1322(b)(5) notwithstanding the requirements of §§ 1322(b)(1) and (b)(10).

On appeal, the BAP rejected the debtors' argument that they could pick and choose among the 11 subsections of 11 U.S.C. § 1322(b). Instead, they found that "when a Chapter 13 Debtor's treatment of a creditor under one subsection of § 1322(b) falls within the contours of another subsection of that statute, all standards of both subsections must be satisfied" based on a plain language reading of the statute. Therefore, the BAP agreed with the trustee that the debtors could pay the student loans directly pursuant to § 1322(b)(5), but only if doing so would also comply with the requirements of §§ 1322(b)(1) and (b)(10).

The BAP expressed approval of the bankruptcy court's use of the four-part test for unfair discrimination laid out in *In re Leser*, 939 F.2d 669 (8th Cir. 1991). The BAP then affirmed the bankruptcy court's findings of fact that the debtors' original plan did not satisfy the four-part test.

Finally, the BAP agreed with the bankruptcy court that "§ 1322(b)(10) applies to and bars the debtors' proposed treatment of their student loan debt" because the debtors admitted that part of each direct payment would include a portion for post-petition interest and the debtors did not provide for full payment of all allowed claims.

Secured Creditor Compelled Either to Foreclose or Accept a Quit-Claim Deed

In *In re Stewart*, 536 B.R. 273 (Bankr. D. Minn. Sept. 1, 2015), the bankruptcy court held that a provision in a confirmed Chapter 13 plan vesting real property in a mortgagee could require the mortgagee to either accept a quit-claim deed or foreclose by a date certain. In coming to this conclusion, Judge Ridgway explicitly adopted the reasoning of two cases that stand for the proposition that a chapter 13 with a vesting provision can be confirmed over the objection of a secured creditor: *In re Sagendorph, II*, 2015 WL 3867955 (Bankr. D. Mass. June 22, 2015) and *In re Zair*, 535 B.R. 15 (Bankr. E.D. N.Y. 2015).

The bankruptcy court agreed with the courts in *Sagendorph, II*, and *Zair* that the surrender provision of § 1325(a)(5)(C) and the vesting provision of § 1322(b)(9), while substantively distinct, can be used in tandem to vest property in a secured creditor over an objection. The bankruptcy court also relied on the res judicata effect of the confirmed plan and the fact that the mortgagee did not object to confirmation or the post-confirmation motion seeking to enforce the vesting provision.

By agreeing with the *Sagendorph, II*, and *Zair* line of cases, the bankruptcy court implicitly disagreed with a separate line of that would allow a debtor to vest property in a secured creditor only if the creditor agrees pursuant to § 1325(a)(5)(A), or is deemed to agree by failing to object: *In re Rose*, 512 B.R. 790 (Bankr. W.d. N.D. 2014); *In re Williams*, 542 B.R. 514 (Bankr. D. Kan. 2015); *Bank of New York Mellon v. Watt (In re Watt)*, 2015 WL 1879680 (D. Ore. April 22, 2015); *In re Weller*, 2016 WL 164645 (Bankr. D. Mass. Jan. 13, 2016); *In re Sherwood*, 2016 WL 355520 (Bankr. S.D. N.Y. Jan. 28, 2016).

Misrepresentations to the Bankruptcy Court by Counsel are Grounds for Sanctions, Including Suspension

In *Young v. Young (In re Young)* (Case No. 14-1665, 8th Cir. 2015) the Eighth Circuit Court of Appeals held that misrepresentations of fact and mischaracterization of the nature of the debt owed by her client were sufficient grounds to uphold the six-month suspension and fine of the attorney making such misrepresentations.

The debtor owed several months of alimony payments and had previously been found in contempt of court for failing to pay alimony. Counsel for the debtor represented that the debtor was current on his alimony payments and mischaracterized outstanding alimony debts as pre-petition rather than post-petition obligations. She also stated that the amount due for alimony was being paid directly by the debtor thus reducing the amount of debtor's disposable income off of which his plan payments would be based. These representations were not true.

Upon learning of the misrepresentations, the bankruptcy court entered an order to show cause asking counsel for the debtor to address four areas of concern: why she characterized alimony due post-petition as pre-petition, why the debtor's schedules included a monthly alimony expense payment when no such payments were being made, why she stated that the debtor would "continue" to make payments when no payments were being made, and why the third modified plan asserted that the debtor was current on post-petition domestic support obligations.

After a hearing on the order to show cause the bankruptcy court issued an order imposing sanctions against the debtor's attorney. The bankruptcy court found that: (i) debtor's counsel knowingly mischaracterized the nature of the debt at issue; (ii) her assertion that the debtor would continue to pay his current monthly alimony was crafted to mislead the court; and (iii) counsel's certification in filed documents that the debtor believed he was current on all domestic support obligations caused the bankruptcy court to enter an order confirming the plan. The bankruptcy court imposed a six month suspension from practice and a fine against the debtor's attorney. The BAP affirmed the sanctions and reversed certain other sanctions based on misrepresentations made at the hearing on the order to show cause due to insufficient notice. The Eighth Circuit concluded the bankruptcy court's findings were supported by ample evidence in the record.

Debtor Must Make Full and Complete Disclosure to Receive a Discharge

In *Home Service Oil Company v. Cecil (In re Cecil)*, No. 15-6026 (B.A.P. 8th Cir. Dec. 28, 2015), the BAP considered whether the bankruptcy court made a clear error in denying the debtor's discharge for making a false oath under 11 U.S.C. § 727(a)(4)(A) due to several omissions in her petition

The debtor failed to list various items in her petition, including: (i) twelve checking, savings or other financial accounts that she legally owned or had signatory power; (ii) jewelry; (iii) firearms; (iv) interest in a business and its assets, which included a vehicle she was driving at the time of filing; (v) a security interest in a motor vehicle owned by her grandson; and (vi) $23,000 that she used to pay off her home mortgage within 90 days before filing.

The court explained that five elements must be established by the creditor under Section 727(a)(4)(A), as follows: (i) the debtor made a statement under oath; (ii) the statement was false; (iii) the debtor knew the statement was false; (iv) the debtor made the statement with fraudulent intent; and (v) the statement related materially to the debtor's bankruptcy case. The debtor only disputed the fourth element – whether the statement was made with fraudulent intent. The bankruptcy court found that fraudulent intent was established because the statements were made with reckless indifference to the truth.

The debtor acknowledged that she did a poor job filling out her schedules. She argued that a poor job is not sufficient to deny her discharge because she did not have the specific purpose of defrauding her creditors. She also argued that the omissions were not significant because the items omitted would not be part of her bankruptcy estate. The BAP disagreed with the debtor, explaining that the code requires "nothing less than a full and complete disclosure of any and all apparent interests of any kind." The BAP also explained that the petition and schedules "must be accurate and reliable, without the necessity of digging out and conducting independent examinations to get the facts."

A Public Assistance Benefit Received Prior to Filing Is Not Statutorily Exempt

In *Dittmaier v. Sosne (In re Dittmaier)*, No. 15-1340 (8th Cir. 2015), the Eighth Circuit interpreted a Missouri statute that exempts a person's "right to receive" a public assistance benefit. The debtor received her income tax refund, which included an earned income credit, five hours prior to filing her bankruptcy petition. The bankruptcy court held that the right to receive is extinguished when payments or benefits were received prior to filing. The district court and the Eight Circuit affirmed the bankruptcy court.

The Eighth Circuit applied Missouri's rules of statutory construction. In Missouri, the seminal rule of statutory construction is to ascertain the intent of the legislature from the language used and to consider words in their plain and ordinary meaning. The Eighth Circuit considered cases from the Missouri appeals court that interpreted an earlier version of the statute as not including funds already received. The court also found it significant that a different section of the same statute used the language "right to receive" or "property that is traceable to" a right to receive. The court explained that the legislature is presumed to act intentionally when it includes language in one section of a statute but omits it from another.

Upon Conversion, Funds on Hand Returned to Debtor Even When No Chapter 13 Plan Has Been Confirmed

In *In re Sowell*, No. 14-4130 (Bankr. D. Minn. Aug. 7, 2015), a debtor's chapter 13 case was converted to a case under chapter 7. Thereafter, the debtor's attorney filed his fee application and asked the chapter 13 trustee to disburse the funds on hand to the attorney rather than debtor. The bankruptcy court considered the fee application in light of *Harris v. Viegelahn*, 575 U.S. __, 135 S. Ct. 1829 (2015). Consistent with *Harris*, the court ordered that that funds on hand with the Chapter 13 trustee should be returned to the debtor.

Debtor's Attorney Sanctioned for "Deplorable" Representation

In *Needler v. Casamatta*, No. 14-6047 (B.A.P. 8th Cir. Aug. 12, 2015), the BAP upheld the imposition of sanctions on debtor's counsel for multiple reasons. The debtor's chapter 11 case was dismissed upon request from the debtor's principals. The U.S. Trustee then filed a motion to reopen the case along with a second motion seeking to disgorge fees, deny additional compensation, and impose other sanctions. Counsel for the debtor had failed to correct the debtor's name on record, failed to obtain authority for use of cash collateral, failed to retain a broker to sell the business, had no basis to file a motion to withdraw reference of the bankruptcy court, failed to file a disclosure statement, did not disclose the true source of his retainer, failed to execute a retainer agreement, and engaged in bad faith by seeking excessive fees. The bankruptcy court granted the motion for sanctions under Fed. R. Bankr. P. 9011 and 11 U.S.C. § 105(a) and the BAP affirmed finding the bankruptcy court acted fairly, reasonably, and without bias. The court held the attorney failed to provide any value to the debtor except the temporary benefit of the automatic stay.

On appeal, the debtor's attorney challenged the reopening of the chapter 11 case arguing that 11 U.S.C. § 350(b) requires notice and hearing. The BAP held that nothing in § 350 requires notice and hearing to reopen a case. The attorney also argued the case should not have been reopened because the case was not fully administered prior to dismissal. Again the BAP disagreed and held that such a case may be reopened under § 350 even if it had not been fully administered.

BAP Agrees that Credit Counseling Certificate Need Not be Signed Under Penalty of Perjury

In *Segraves v. Curtis (In re Segraves)*, No. 15-6021 (B.A.P. 8th Cir. Nov. 30, 2015) one of the debtor's creditors appealed an order from the bankruptcy court denying his "motion to dismiss petitioner's Chapter 13 bankruptcy petition for failure to comply with 11 U.S.C.S. § 109 (h)(3)(A); filed in bad faith to hinder, delay, and defraud creditors." The BAP affirmed the decision of the bankruptcy court.

The debtor filed a Chapter 13 petition on September 27, 2012. On the same date, she filed a certificate verifying she received the required credit counseling from a court-approved agency. The creditor argued the debtor herself was required to sign the statement of credit counseling under penalty of perjury. The bankruptcy court disagreed holding the Bankruptcy Code only requires the debtor to establish she received credit counseling in compliance with 11 U.S.C. § 109 (h)(1). The bankruptcy court found the certificate of counseling sufficient to meet the statutory requirements.

The BAP reviewed the bankruptcy court's decision for an abuse of discretion. The BAP held that the language of section 109(h) is plain and does not require a debtor to sign a credit counseling certification under penalty of perjury. The BAP thus concluded that the bankruptcy court did not fail to apply the proper legal standard and did it base its decision on clearly erroneous findings of fact.

Filing a Proof of Claim for a Time-Barred Debt, Standing Alone, is Not a Violation of the FDCPA

In *Gatewood v. CP Medical, LLC (In re Gatewood),* Case No. 15-6008 (B.A.P. 8th Cir. July 10, 2015), the BAP affirmed the decision of the bankruptcy court and held that the filing of an accurate proof of claim, standing alone, for a time-barred debt is not prohibited by the Fair Debt Collection Practices Act ("FDCPA").

The Chapter 13 debtors initiated an adversary proceeding against a creditor. The debtors alleged that the creditor violated the FDCPA by filing a proof of claim for a debt that was time-barred. They argued that the creditor engaged in "false, deceptive, misleading, unfair and unconscionable" debt collection practice in contravention of the FDCPA. The Creditor filed a motion for summary judgment and the bankruptcy court granted it. The debtors appealed.

The BAP identified two issues on appeal: (1) whether the filing of a proof of claim constitutes an attempt to collect upon a debt, and (2) whether the filing of a proof of claim on a time-barred debt is a debt collection action that is false, misleading, deceptive, unfair, or unconscionable under the FDCPA.

The BAP held that filing a proof of claim in a bankruptcy case is an act in connection with the collection of a debt. The court found it abundantly clear that filing a claim is the first step in collecting a debt in bankruptcy and it "invokes the litigation machinery."

The court acknowledged that case law addressing whether filing a proof of claim for a time-barred debt is false, misleading, deceptive, unfair, or unconscionable under the FDCPA is unsettled. The court agreed with the Second Circuit and reasoned that filing a proof of claim for a time-barred debt does not give rise to an FDCPA violation because "there is no need to protect debtors who are already under the protection of the bankruptcy court, and there is no need to supplement the remedies afforded by bankruptcy itself." *Simmons v. Roundup Funding, LLC*, 622 F.3d 93, 96 (2d Cir. 2010). Debtors enjoy protection under the Bankruptcy Code, often including the assistance of an attorney and a trustee and a claims resolution process. For these reasons, the BAP held that filing an accurate proof of claim containing all of the required information, standing alone, is not a prohibited debt collection practice.

Default Interest Provision in Loan Agreement Is a Valid Liquidated Damages Provision under Minnesota Law and May Be the Basis for a Claim

In a decision involving six consolidated bankruptcy cases, identified as *In re Bowles Sub Parcel A, LLC* (8th Cir. 2015), the Eighth Circuit affirmed the bankruptcy court's holding that default interest provisions are enforceable as liquidated damages. The debtors, six limited liability companies, were obligated on three commercial loans. Each contained a default-interest clause providing that, upon default, an interest rate nearly double that of the stated note rates would apply to remaining principal balance.

The lender filed a proof of claim for default interest totaling $1,516,739.80; the debtors objected. The bankruptcy court allowed the claim. The debtors appealed to the district court, who affirmed, and then the debtors appealed to the Eighth Circuit.

The debtors argued that the default-interest charges were unenforceable: first, because the charges duplicated costs already paid by the debtor, and second, because the lender must prove actual damages, or in the alternative, actual damages caused by default on a promissory note are always ascertainable, and therefore liquidated damages could not be allowed.

The Eighth Circuit rejected the debtor's argument that the lender must prove actual damages in order to recover. Under Minnesota law, liquidated damages are presumed valid, and can be enforced without proving actual damages if: "(1) "the amount so fixed is a reasonable forecast of just compensation for the harm that is caused by the breach;" and (2) "the harm that is caused by the breach is one that is incapable or very difficult of accurate estimation." Here, the parties explicitly agreed in the promissory notes "that it would be extremely difficult or impracticable to determine the Lender's actual damages resulting from . . . default". The court also rejected the debtor's argument that the actual damages for breach of a promissory note are always ascertainable. Specifically, default on these loans contains unique costs, such as the increased risk of lending to a defaulting borrower, and are difficult to quantify.

BAP Rules Bankruptcy Court Judgment is Final and Need Not be Amended if Debtor Experiences a Subsequent Change of Circumstances

In *In re Conway*, 542 B.R. 855, 858 (B.A.P. 8th Cir. Dec. 21, 2015), the debtor received a partial discharge of her student loan debt under 11 U.S.C. § 523(a)(8). After entry of judgment, she brought a motion requesting the bankruptcy court to make additional findings and amend its judgment. Due to increased expenses and decreased income that occurred after the time period originally reviewed by the court, the debtor argued her remaining loans were now unaffordable. The bankruptcy court denied the motion and the debtor appealed.

On appeal, the BAP likened the bankruptcy court's post-discharge undue hardship determination to a game of "Whack-A-Mole," since a debtor's income and expenses seldom remain static. Specifically, the appellate panel reasoned that "[t]he courts are not equipped to revisit a nondischargeability determination every time a debtor's circumstances change; to do so would wreak havoc with the concept of the finality of a court order."

Instead, the BAP ruled, the bankruptcy court must use its discretion, taking into account the most reliable information available at the time. Here, at trial, the court had determined the debtor's disposable income by reviewing her income and expense records over the most recent one-year period. The BAP found that the time period was reasonable under the circumstances, and affirmed the bankruptcy court's decision in its entirety.

Trio of Interrelated Cases Demonstrates How the Bankruptcy Court and District Court were Manipulated Via Procedural Confusion to Procure a Massive Delay

Orders in three interrelated cases – *Nhut Le and Chai M. Le v. Wells Fargo Bank et al.*, No. 13-1920 (D. Minn. March 17, 2014), *Nhut L and Chai. M. Le v. Wells Fargo Bank, N.A*, No. 15-1512 (D. Minn. May 21, 2015), and *Chai M. Le and Nhut H. Le v. Wells Fargo Bank, N.A. et al.*, Adv. No. 15-3037 (Sept. 18, 2015) – illustrate the manipulation of the court system by two debtors which allowed them to remain in their residence for years without ever making a payment to their lender.

Factual Background

On October 7, 2011, the debtors purchased a home in Maplewood. They obtained the financing from the bank in the approximate amount of $150,000, and granted to the bank a mortgage to secure the loan. After moving into the house, the debtors never made a single payment. In June of 2012, the bank commenced a foreclosure by advertisement. The Sheriff's sale was held on October 2, 2012. The debtors failed to redeem. The redemption period expired on April 2, 2013, thereby terminating any remaining rights of the debtors in the real property, and vesting title in the bank. Nevertheless, the debtors continued to reside in the premises. The bank commenced an eviction in state court on April 23, 2013. The eviction action was stayed pending the filing of a bankruptcy case.

Procedural Background

The debtors filed a Chapter 13 petition on May 7, 2013. A few days later, the debtors filed a voluminous adversary complaint alleging multiple claims against the bank and foreclosure counsel, many of which were grounded in fraud and conspiracy (the "3108 Adversary"). About a month later, the debtors filed a "notice of removal", removing the state court eviction matter to the bankruptcy court as a second adversary (the "3135 Adversary").

In July 2013, the debtors commenced another action in district court (the "1920 Case") which mirrored the 3108 Adversary. On July 30, 2013, the debtors filed a "notice of removal" in the 3108 Adversary, purporting to remove it to the district court (the "2050 Case"). The next day, the debtors filed another "notice of removal" in the bankruptcy case, which erroneously purported to transfer the entire bankruptcy case to the district court (the "2064 Case"). On August 14, 2013, the debtors filed yet another "notice of removal" of the 3135 Adversary which resulted in an additional case before the district court (the "2199 Case").

On October 17, 2013, the district court judge consolidated all four federal cases (the "Consolidated Case").

The Bank's Motions

As a result of the federal cases initiated by the debtors within approximately 100 days, the bank and its counsel had numerous procedural steps to take. First, because there was no decision (or motion) withdrawing the reference from the lead bankruptcy case (the 2064 Case), the bank moved to sever it from the Consolidated Case and "remand" it back to the bankruptcy court.

The initial eviction matter (the 2199 Case) was also problematic because it was a purely state-court matter that had already been commenced in state court, and the federal court had no jurisdiction over it. The bank moved to sever it from the Consolidated Case, withdraw the reference on the basis of the non-core nature of the claims so it could be addressed by the district court, and then remand the case back to state court on the basis of abstention under 28 U.S.C. § 1334(c)(2).

Finally, the bank and its counsel moved the court to withdraw the reference to the 2050 Case so that it could be handled in concert with the 1920 Case, and it simultaneously moved to dismiss those two cases on the merits (in their consolidated format) under Fed. R. Civ. P. 12(b)(6).

The Magistrate's Recommendation

The magistrate judge agreed with the the bank and its counsel on all counts finding: (1) the non-core nature of the 2050 Case militated in favor of withdrawal of the reference, (2) that both parties sought to have the 2064 Case (the lead bankruptcy case) continue before the bankruptcy court, and thus, the 2064 Case should be severed from the Consolidated Case and "returned" to the bankruptcy court, and (3) that the 2199 Case (the eviction) presented non-core state-law issues, as to which the federal court did not have jurisdiction, and, as a result, the reference of the 2199 Case to the bankruptcy court should be withdrawn. Accordingly, the magistrate severed it from the Consolidated Case, and then remanded back to the state court for final adjudication under state law.

Finally, after a thorough, claim-by-claim analysis of the claims raised by the debtors, the magistrate determined that all of the debtors' claims in the Consolidated Case (now comprised of just the 2050 Case and the 1920 Case) lacked merit and recommended dismissal with prejudice. The debtors did not object to the magistrate's recommendation.

District Judge's Order and Plan Confirmation

Having received no objections, the district court entered an order dismissing the debtors' claims with prejudice, and otherwise adopting the magistrate's report and recommendation. The debtors appealed to the Eighth Circuit, but the appeals court affirmed.

Subsequent to the issuance of the district court's order, the debtors' Chapter 13 plan was confirmed by the bankruptcy court.

The Second Removal Attempt

Upon the eviction proceeding being remanded to state court and confirmation of the Chapter 13 plan, the bank moved for relief from the automatic stay to proceed with the eviction. In response, the debtors – once again – filed a "notice of removal" in an attempt to further delay the eviction process. The bankruptcy court refused to recognize the procedurally improper and deficient removal notice, advising the debtors that 28 U.S.C. § 1452(a) simply did not apply to the case as argued by the debtors and it and entered an order lifting the stay.

Upon reviewing the bankruptcy court's order, the magistrate entered a *sua sponte* recommendation that the "removed" case be dismissed with prejudice. No objections to the recommendation were filed, and the district court adopted it in an order dismissing the bankruptcy removal.

The Adversary Proceeding Remix

Thereafter, debtors again sought to invoke the jurisdiction of the bankruptcy court and commenced another adversary proceeding against the bank and its foreclosure counsel on nearly identical bases as the 1920 Case they filed nearly two years prior. However, because any claims held by the debtors revested in the debtors upon confirmation of their Chapter 13 plan, and because, at the time of the filing of the original Chapter 13 case, the debtors had no remaining property interest in the real property that was the subject of their purported claims, the bankruptcy court entered an order dismissing the adversary case for lack of jurisdiction.

In December of 2015, the debtors moved the bankruptcy court for a voluntary dismissal, or in the alternative, for a "hardship discharge" under 11 U.S.C. § 1328(b). The bankruptcy court denied the debtors' request for a hardship discharge, roundly rebuked them for the huge burden their spurious challenges placed on two units of the federal court system, and granted their initial request to dismiss their bankruptcy case.

Bankruptcy Court Abstains from Hearing Defamation and Related Tort Claims in Favor of State Court Determination and Prior to Nondischargeability Action

In *Loos v. Koperski*, Adv. No. 15-3033 (Bankr. D. Minn. Nov. 5, 2015), the plaintiff filed a nondischargeability complaint alleging that the debtor (the plaintiff's ex-wife) defamed him, committed libel, and invaded his privacy through publication of a novel titled *The Narcissist's Wife* and posting of untrue statements on Facebook.

At an early scheduling conference, the bankruptcy court raised two issues *sua sponte:* (i) whether it should abstain from hearing and determining the tort-based claims in favor of returning such claims to the state court, and (ii) assuming abstention, whether it should rule on dischargeability prior to the state court's determination of liability and damages.

As to abstention, the bankruptcy court determined that abstention was appropriate for the tort claims. *See* 28 U.S.C. § 1334(c)(1). Ruling that the tort claims were better suited for state court determination, the bankruptcy court posited three reasons: first, it cited the "social and cultural norms of the relevant community" as important to evaluating liability and damages based on the "peculiarly personal, intangible orientation" of the defamation claims. Assessing liability and damages for such defamation claims would benefit from a locally-based fact-finder.

Second, the bankruptcy court identified the dearth of case law surrounding "21st-century" electronic media as it relates to defamation claims. The bankruptcy court raised concerns that technological developments and their impact on the law had yet to be addressed by case law, and it therefore felt was it more appropriate for the state court to apply "traditional local principles" against "rapidly-evolving" technology and other changing conditions.

Third, the bankruptcy court recognized its own limitations in determining tort damages: "it is not naturally within the career exposure, skill-set, or comfort range for a member of this bench" to determine an appropriate compensation award on a personal injury tort claim. The traditional forum – the state court – is entitled to deference when it comes to such matters.

Having made the abstention determination, the bankruptcy court then moved to which case – the nondischargeability action or state court tort action – would proceed first. Despite agreement of the parties that there should be one trial before the bankruptcy court as a matter of "judicial economy," the bankruptcy court held that the state court tort action would occur prior to a determination of dischargeability.

In its decision, the bankruptcy court reasoned that not only would damages be contested, but liability (i.e., whether the debtor even defamed the Plaintiff or invaded his privacy) would also be "sharply contested." Based on the factual complexity of the case, the bankruptcy court held that the factual issues should be decided first by the state court. Then, if the Plaintiff prevailed, the bankruptcy court would subsequently determine dischargeability.

Eighth Circuit Addresses "Party Aggrieved" Standing, Scope of the Bankruptcy Court's "Related to" Jurisdiction, and Punitive Damages Requirements

In *Cutcliff v. Reuter*, No. 14-1429 (8th Cir. 2015), the Eighth Circuit addressed standing issues, a bankruptcy court's "related to" jurisdiction, and standards for awarding punitive damages.

In a separate and previous case, a bankruptcy court ruled that the debtor's interest in a trust (including his powers as co-trustee) was property of his bankruptcy estate.

Later, a group of plaintiffs whose investments were misappropriated through a scheme that involved the debtor and who obtained a default judgment against Vertical Group, LLC, of which the debtor was a member, brought an action in district court seeking actual and punitive damages against the debtor in connection with the default judgment.

As a consequence of the plaintiffs' clear intentions to pursue trust assets (the debtor's spouse was co-trustee), the district court referred the matter to the bankruptcy court. The bankruptcy court held a trial and made recommendations to the district court, who followed the recommendations and ultimately awarded the plaintiffs actual and punitive damages.

The debtor and his spouse each appealed. The Eighth Circuit dismissed the debtor's appeal and affirmed as to the appeal of the debtor's spouse, addressing standing issues, the "related to" doctrine of jurisdiction, and procedures concerning punitive damages in its decision.

As to standing, the Eighth Circuit reiterated the “party aggrieved” rule, holding the debtor's spouse had standing to appeal due to her interests in the trust and the plaintiffs' stated purpose of using the judgment to reach trust assets. The debtor, however, lacked standing as his interests in the trust belonged to his bankruptcy estate, not him. The appeals court also determined the debtor had no standing merely by virtue of his status as a member of Vertical Group, LLC.

As to the debtor's spouse's argument that the district court erred by referring the matter to the bankruptcy court, the Eighth Circuit affirmed, reasoning that district courts may refer proceedings that are “related to a case under title 11” of the US Code to bankruptcy courts, which may then enter proposed findings and conclusions for the district court’s consideration. *See* 28 U.S.C. § 157.

The appeals court determined that the scope of “related to” jurisdiction is broad, and that a proceeding is “related to a bankruptcy case if the outcome of that proceeding could conceivably have any effect on the estate being administered in the bankruptcy.” It further noted that this “broad test is met if the proceeding could alter the debtor’s rights, liabilities, options, or freedom of action and which in any way impacts upon the handling and administration of the bankruptcy estate,” and that “[e]ven a proceeding which portends a mere contingent or tangential effect on a debtor’s estate meets this broad jurisdictional test.” Because the plaintiffs intended to use the judgment to access a trust in which the debtor's bankruptcy estate had rights, the Eighth Circuit found that the conceivable-effects test was met.

Finally, the appeals court found an exception to the rule that an evidentiary hearing is generally necessary before awarding punitive damages (*See* Fed. R. Civ. P. 55(b)(2)) because the bankruptcy court had a longstanding familiarity with the matter, since it had already conducted a trial concerning the debtor's liability to the plaintiffs.

Bankruptcy Court Rules Lien Stripping Unavailable if Non-Debtor's Obligations Remain Ongoing

In *In re Brown*, Bky. No. 14-35096 (Bankr. D. Minn. Sept. 11, 2015), the bankruptcy court held that a Chapter 13 debtor cannot strip a junior lien from a homestead when the lien secured not only the debtor’s obligations to a lender, but also the obligations of a third party non-debtor.

The debtor and her husband held title to certain real property as joint tenants. They each granted a mortgage to the lender to secure loan obligations for which they were both responsible.

The debtor and her husband later divorced and her former spouse conveyed his interest in the property to the debtor via quit claim deed. However, he remained obligated for the debt to the lender and the mortgage was not released.

The debtor subsequently filed a Chapter 13 petition. In connection with the administration of her case, the debtor brought a motion seeking to strip the lender's junior lien from the property.

The bankruptcy court denied the motion, reasoning that the lien stripping remedy is intended to give final effect to the treatment of *claims* under a Chapter 13 plan, and that a lender's rights and collateral are subject to determination under the bankruptcy code only to the extent they are consistent with a claim in the bankruptcy case.

Here, the bankruptcy court explained, the lender's rights as against the ex-spouse stood on their own separate and apart from the bankruptcy case Therefore, the debtor could not obtain, using her bankruptcy case, a release as to the still-existing lien previously granted by her ex-spouse.

BAP Dismisses Appeal for Lack of Jurisdiction Because Debtor was not Aggrieved by Bankruptcy Court Order

In *Robb v. Harder (In re Robb),* No. 15-6003 (B.A.P. 8th Cir. July 16, 2015), the BAP dismissed the debtor's challenge to compensation sought by the trustee, holding that it lacked jurisdiction since the debtor was not aggrieved under the bankruptcy code.

The debtor filed a Chapter 7 petition. After discovering a defect in the deed of trust securing the debtor's residence, the trustee filed a motion to convert the case to one under Chapter 13. The bankruptcy court granted the trustee's motion.

Later, the trustee filed a $450 proof of claim as an unsecured non-priority creditor for the "time spent … examining documents regarding avoidance of lien, preparing objection to homestead exemption, and filing an objection to conversion to Chapter 13 case." The debtor objected, arguing the trustee distributed no money prior to the conversion and therefore should be denied compensation under Section 326 of the bankruptcy code.

The bankruptcy court overruled the debtor's objection and allowed the claim. The debtor appealed.

The BAP affirmed, holding that while the trustee's proof of claim would diminish the pro rata distribution to other unsecured non-priority claims, it would not impact the debtor's obligations under the Chapter 13 plan. Therefore, the bankruptcy court's order did not diminish her property, increase her burden, or impair her rights. As a consequence, the debtor was not aggrieved and the BAP lacked jurisdiction to consider the appeal.

Bankruptcy Court Determines Post-Confirmation Jurisdiction is Limited in Remanding Attorney Lien Dispute

In *Faricy Law Firm, P.A. v. A.P.I., Inc. Asbestos Settlement Trust (In re A.P.I., Inc.),* 537 B.R. 902 (Bankr. D. Minn. Sept. 9 2015), the bankruptcy court addressed the scope of post-confirmation jurisdiction, construing it narrowly.

The debtor, a wholesaler and installer of asbestos products facing crippling asbestos claims, confirmed a Chapter 11 plan in 2005 that created a trust for the benefit of personal injury claimants. Faricy Law Firm claimed that it served as counsel for the debtor and the trust in various insurance coverage litigation matters lasting more than a decade.

Just months before settling a coverage dispute, the trust terminated the firm's representation. The firm subsequently petitioned in state court to assert an attorney's lien over the proceeds recovered from the settlement.

In light of the Chapter 11 plan language that the bankruptcy court retained jurisdiction "to the extent authorized by 28 U.S.C. §§ 157 and 1334(b)," the trust reopened the bankruptcy case and removed the lien petition to the bankruptcy court. The trust claimed that bankruptcy court jurisdiction was appropriate because the firm's lien claim involved the interpretation, implementation, and administration of a confirmed plan and confirmation order.

The firm moved to remand. The bankruptcy court granted the motion, finding the debtor's arguments unpersuasive. The bankruptcy court reasoned that because the estate no longer existed, it lacked jurisdiction. The decision only obliquely addressed the issue of whether a court retains the jurisdiction to interpret and enforce its own orders, recasting and dispensing of this argument as merely an "underlying assumption of greatest-competence" in favor of the issuing court that cannot be squared with a straightforward application of bankruptcy jurisdiction, at least in this instance.

The decision suggested, however, that even if the bankruptcy court had jurisdiction, it would have abstained from exercising jurisdiction because the plan had been confirmed for nearly a decade.

Post Discharge Reaffirmation of Prepetition Obligation is Unenforceable Despite Lender's Post-Discharge Forbearance

Consistent with decisions from the Fifth and Ninth Circuits, in *Venture Bank v. Lapides*, 800 F.3d 442 (8th Cir. 2015), the Eighth Circuit Court of Appeals ruled that a secured creditor's post-discharge forbearance is, by itself, insufficient to enforce a reaffirmation agreement that does not comply with bankruptcy code requirements.

The debtor granted a third-position mortgage to the bank. After filing a petition under Chapter 7, the debtor entered into a series of change in terms agreements with the bank in an attempt to rebuild his credit and induce the bank to refinance all of his mortgage debt. However, the change in terms agreements – some of which were signed post-discharge – failed to comply with the requirements of 11 U.S.C. § 524(c).

Eventually the debtor ceased making payments and the bank commenced an action. The debtor removed the suit to the bankruptcy court, where he claimed discharge injunction violations and sought damages. The bankruptcy court held the change in terms agreements were unenforceable and that the bank violated the debtor's discharge injunction.

The bank appealed and the district court affirmed. The bank appealed again. The Eighth Circuit also affirmed, holding and clarifying that a reaffirmation agreement is valid only if it is enforceable under state law *and* also meets the requirements of Section 524(c), which the agreements failed to do. The Eighth Circuit also determined that the debtor's payments were not voluntary, despite deposition testimony to the contrary, as a consequence of pressure exerted by the bank. Accordingly, the Eighth Circuit held that the bank's efforts to collect the payments violated the discharge injunction.