Consumer Cases:

1. ***Pedicone v. Ajax Mortgage Loan Trust 2018-F, Mortgage-Backed Securities, Series 2018-F, By U.S. Bank National Association, As Indenture Trustee* (In re Pedicone), Case No. 21-10384 (BLS) (Michael Busenkell)**

Debtor commenced adversary proceeding asserting that property secured by a mortgage was worth substantially less than the mortgage amount.

The mortgage secured more than the Debtor's residence as the collateral securing the mortgage included both real and personal property. The Debtor argued that the Court could cram down the mortgage to the value of the property where the mortgagee's claim was secured by collateral beyond the debtor's residence under *Scarborough v. Chase Manhattan Mortg. Corp. (In re Scarborough)*, 461 F.3d 406, 409.

The mortgagor, on the other hand, argued that collateral beyond the principal residence was "incidental property" and that the Debtor's reliance on *Scarborough* was misplaced because the *Scarborough* case had been commenced prior to the effective date of the broader definition of "incidental property" under 11. U.S.C. §§ 101(13A) and 101(27B). As a result, the mortgage was secured by the Debtor's principal residence and could not be crammed down.

The Court agreed with the mortgagor/creditor. Specifically, Judge Shannon found that the changes to the definition of "debtor's principal residence" and "incidental property" in the Bankruptcy Code had not yet gone into effect and that *Scarborough*'s narrow definition of "incidental property" was not supported by the revised definition. As a result, The Court concluded that the mortgage was secured by the Debtor's principal residence and could not be crammed down because section 1322(b)(2) prohibits the modification of a mortgage secured only by a lien on the debtor's principal residence.

2. ***In re Revelle*, Case No. 17-11682 (BLS) (Michael Busenkell)**

Debtor objected to claim filed by Deutsche Bank National Trust Company, as certificate trustee on behalf of Bosco Credit II Trust Series 2010-1.

Debtor argued that Deutsche Bank's claim could be crammed down in a chapter 13 plan to the value of the secured portion of the claim notwithstanding the anti-modification provisions of 11 U.S.C. § 1322(b) because the mortgage fully matured a year into the Debtor's chapter 13 case. Deutsche Bank contended that (i) the Debtor's failure to object to the claim in the Debtor's prior bankruptcy or at the outset of its current bankruptcy estopped the Debtor from challenging the claim and (ii) in the alternative, that the Debtor's delay in its current case in objecting to the claim should be barred by laches.

The Court found that neither collateral estoppel or *res judicata* prevented the claim objection as the current cram down dispute was not an issue that was decided in the Debtor's prior bankruptcy or an issue that could have been brought in the prior bankruptcy (because the anti-modification provisions of 11 U.S.C. § 1322(b) would have precluded such relief)Likewise, the

Court found that laches did not preclude the Debtor's argument given that there was no showing of material prejudice to Deutsche Bank rejecting Deutsche Bank's contentions that (i) the passage of time impaired its ability to value the property as of the petition date; and (ii) it was prevented from collecting a debt because of the Debtor's assertion of rights under the Bankruptcy Code.

With respect to the legal issue of whether the anti-modification provisions of 11 U.S.C. § 1322(b) prevent cram down of Deutsche Bank's mortgage, Judge Shannon found that 11 U.S.C. § 1322(c)(2)'s "exception to the exception" permitted bifurcation under 11 U.S.C. § 1325(a)(5) and § 506(a) because the mortgage's maturity date fell "before the date on which the final payment of the plan is due."

3. *Strategic Funding Source, Inc. v. Veale* (In re Veale), No. 21-10418 (BLS), Adv. Pro. 21-50486 (BLS), 2021 Bankr. LEXIS 3271, 2021 WL 5614923 (Bankr. D. Del. Nov. 30, 2021) (Howard Robertson)

In the chapter 13 bankruptcy case of Michelle A. Veale (the "Debtor") Strategic Funding Source, Inc. ("SFS") filed an adversary complaint to determine dischargeability of the Debtor's personal guarantee of a business loan. SFS alleged that the Debtor misrepresented several facts at the time the loan was made, rendering the personal guarantee nondischargeable under Bankruptcy Code section 523(a). The Debtor filed a motion to dismiss the complaint that the Court granted in its entirety, holding that the personal guarantee of the business loan was dischargeable.

Background: In 2017, the Debtor executed a high interest loan agreement with SFS in her capacity as owner of a business and in her individual capacity, as guarantor. Upon finalizing the loan, the Debtor stated in a recorded phone call that she was not planning to file for bankruptcy and had no reason to believe that the business would need to file for bankruptcy in the foreseeable future. She also stated that she did not have a balance with any other merchant cash advance provider. After the loan was executed, the business made the first five weekly payments, then defaulted. The Debtor did not make any payments as personal guarantor and SFS filed suit and obtained a default judgment against her in Virginia state court. Almost three years later, on February 18, 2021, the Debtor filed for bankruptcy protection under Chapter 13 in the District of Delaware. SFS subsequently filed an adversary complaint alleging that Debtors' personal guarantee is nondischargeable.

Analysis: SFS alleges that the Debtor made several misrepresentation upon making the loan, therefore the guarantee is nondischargeable because the Debtor obtained the loan by (i) false pretenses, false representation or fraud, under section 523(a)(2)(A); (ii) a false statement in writing concerning the Debtor's financial condition, under section 523(a)(2)(B); (iii) actions substantially certain to cause willful and malicious injury to SFS and its property, under section 523(a)(6); and (iv) fraud or defalcation while acting as a fiduciary, embezzlement or larceny, under section 523(a)(4).

i. Section 523(a)(2)(A)

SFS alleged that the Debtor falsely represented her intent to guarantee the business loan and therefore, the guarantee is nondischargeable. The Court analyzed section 523(a)(2)(A), which provides that a debt is nondischargeable if "obtained by false pretenses, a false representation or actual fraud, other than a statement respecting the debtor's or an insider's financial condition." The Court determined that SFS failed to allege with particularity that the Debtor "knowingly made a false representation at the time she guaranteed the loan." The Court focused on the Debtor's intent at the time of her promise and determined that the complaint did not show at the time of her promise the Debtor intended not to perform (false as to her intent). Showing that the Debtor later decided not to perform is not proof that the Debtor intended not to perform at the time of making the loan.

ii. Section 523(a)(2)(B)

SFS argued that the guarantee is nondischargeable under section 523(a)(2)(B) because the Debtor stated on a recorded phone call that she had no reason to believe that she or her business would file for bankruptcy in the foreseeable future. The Court evaluated section 523(a)(2)(B), which states that a debt is nondischargeable if obtained by "use of a statement in writing -- (i) that is materially false; (ii) respecting the debtor's or insider's financial condition; (iii) on which" the creditor reasonably relied; and (iv) that the debtor made or "published with intent to deceive." The Court dismissed this claim because the recorded phone call was not a writing.

iii. Section 523(a)6)

SFS alleged that the personal guarantee is nondischargeable under section 523(a)(6) because the Debtor's failure to make payment under the loan was substantially certain to cause injury and was therefore willful and malicious. Section 523(a)(6) states that a debt is nondischargeable "for willful and malicious injury by the debtor to another entity or the property of another entity." The Court dismissed this claim because an intentional breach of contract is not willful and malicious conduct under this section unless the breach is "accompanied by conduct that would give rise to a tort action under state law."

iv. Section 523(a)(4)

SFS alleged that the personal guarantee is nondischargeable under section 523(a)(4) because the Debtor's business was insolvent at the time of making the loan which makes the Debtor a fiduciary of the creditor as the business's office and director. Secondly, SFS argued that the Debtor took the loan with no intent to repay, therefore the personal guarantee is nondischargeable due to embezzlement or larceny. The Court dismissed this claim because a simple contractual relationship, without more, does not create a fiduciary duty. Additionally, the fiduciary duty that an insolvent corporation owes to creditors cannot support a claim under section 523(a)(4) because it does not create an express or technical trust relationship. With respect to SFS's assertion that the Debtor committed embezzlement, the Court dismissed that argument stating that because this was a loan transaction, SFS did not entrust property to the Debtor. As for larceny, the Debtor did not take SFS's property without consent, so that argument also failed.

See also: *In re Robinson*, 20-50533 (BLS) (Nov. 19, 2021)

Chen v. Phat 623 B.R. 371 (E.D.P.A. 2021, Chan, B.J.)

The Debtor and Plaintiff were friends for 10 years and became close friends for 4 years. The Debtor had a gambling addiction and borrowed $120,000 from Mr. Chen between 2013 and 2016. The Debtor paid Chen $1700 per month for four years, all of which Chen called interest. Their financial transactions were entirely oral until 2017 when Chen insisted that the Debtor sign an installment note agreeing to pay $10,550 per month for 12 months.

The Debtor did not make payments. In early 2018, Chen entered a Confession of Judgement against the Debtor for $146,165. In June of 2018, the parties entered into a settlement agreement reducing the amount to $60,000. The agreement required an initial payment of $5,000 within 30 days and monthly payments of $500 with any balance all due and payable by October 1, 2027. The agreement was secured by a mortgage in the Debtor's residence.

Debtor tendered the $5,000 payment timely. However, the check was returned NSF twice. When the Debtor tendered the first $500 payment, it also came back NSF. No further payments were made.

The evidence at trial showed that at various points during the period after the payments were tendered there was a sufficient balance in the account to cover the payments. Chen was not lucky enough for the checks to have been tendered on a day when they would have cleared.

The Debtor filed Chapter 13 in February 2019. Chen filed an objection to discharge of the $60,000 settlement pursuant to Section 523(a)(2)(A) of the Code, claiming false pretenses and false representation. Chen contended that when the Debtor signed the $60,000 settlement agreement he never intended to perform based upon the repeated tender of payments returned for insufficient funds.

The Court disagreed and found the debt to be dischargeable. Initially finding the settlement agreement to constitute an extension of credit or a forbearance within the meaning of Section 523(a)(2), the Court focused upon intent, including whether the Debtor's conduct was reckless. The Court found that because there were sufficient funds in the account at times to cover the payments tendered in 2018: "…not only were there five days between July 5 and August 28 when the Second Check could have been honored, but *thirty-five* days when the Second Check could have been honored. If the Debtor had never intended to make payments under the Agreement, the Debtor would have never risked having sufficient funds in the Account to make any payments or he would have written the Checks from an account with a zero balance." The Court concluded with a cite from another gambling case where the discharge was objected to, *In re August*, 448 B.R. 331 (E.D.P.A. 2011): "So long as the debtor has an honest, even if

unreasonable belief, that he will get lucky at gambling and pay off his debts this Court is satisfied that the debtor has the requisite intent to pay."

In re Parvizi 2021 WL 1921121 (Bk. W.D.MA., Katz, B.J.)

The Debtor, 51 years old at the time of trial, sought discharge of student loans in the amount of $653,843.22 incurred between 1997 and 2012.

The Court traced the Debtor's education and student loans through the years. She obtained a B.A. in philosophy and biochemistry in 1990. She attended medical school from 1991 through 1995 but voluntarily left before receiving a degree. In 1997 she enrolled in a graduate program at Amherst and received a master's degree in public health in 1999.

After receiving her master's she worked for about a year and a half. She left a position at the UMass Medical Center because she testified "she was not committed to the organization's mission." She then decided she wanted to teach but until 2008 she helped her Dad, worked odd jobs and did some teaching. In 2007, her father gave her $100,000 to pay off her student loan debt which was then $123,000. She offered DOE $45,000 which was rejected. She never did use any of the funds to pay any portion of the loans.

In 2008 she returned to school and earned her M.D. in 2012. She began a residency program but left after less than a year, voluntarily resigning. She was never offered an interview for another residency program. The Court further noted: "As evidenced by her employment record since leaving her residency, the Debtor has not been focused on maximizing her income."

The parties stipulated that the Debtor would qualify for a Revised Pay as You Earn ("REPAYE") plan based upon a percentage of a debtor's income which, if the borrower participates for 20 years, the balance would be discharged. The Court found that the Debtor's income at the time of trial would result in payments of $80 per month. The Debtor rejected this proposal.

Massachusetts does not use the *Brunner* test which is the rule n Delaware. Instead, Massachusetts looks to the totality of circumstances in determining whether a student loan should be discharged as an undue hardship. Under a totality of circumstances approach, the Court finds the loan to not be dischargeable: "…the Debtor has not shown any effort to maximize her income based on her education and marketable skills."

The Court did encourage the Debtor to enter the REPAYE program and did order that if the Debtor completes the program, any remaining debt would be deemed discharged so the debtor would not incur a tax consequence for discharge of the debt.

If this case were in Delaware, it would be controlled by the *Brunner* standard which requires findings that (1) the debtor cannot maintain a minimal standard of living through the repayment period; (2) that the situation is likely to continue for a significant portion of the repayment period, and; (3) the debtor has made good faith efforts to repay. *Brunner v. N.Y. State Higher Education Services Corp,* 831 F.2d 395 (2d Cir. 1987). The Third Circuit has adopted this standard. See, *In re Faish*, 72 F.3d 298 (3d Cir. 1995). Under this test, the loan debt would also be held not dischargeable as the Debtor has not made a good faith effort to repay.

SEE ALSO: *In re Wolfson*, 19-50717 (LSS) (Jan. 14, 2022)

In re Chew, No. 20-12591 (Bankr.E.D. Pa. 2021)(per Frank, J.)

Since In re Rodriguez, 639 F.3d 136 (3rd Cir. 2010), it is understood in the Third Circuit, that escrow deficiencies and escrow shortages that exist as of the commencement of a chapter 13 case are allowable prepetition claims that should be included in a mortgage lender's proof of claim. The practical effect is that, in such cases, debtors would have up to 36-60 months to repay the shortages rather than a 12 months. In this case, the Debtor filed a claim objection because she did not understand how the escrow shortage component of the proof of claim was calculated. The Court provided a helpful explanation on how a lender should properly calculate escrow shortages, which allows a creditor to establish a minimum escrow cushion in compliance with RESPA and Regulation X. The Court found that the mortgage company's claim was correct and overruled the objection.

U.S.B.J. Christopher S. Sontchi Consumer Opinions

1. ***In re Scioli*, 12-10572 CSS (Bankr. D. Del. Jan. 28, 2013)**

Debtor filed chapter 7 but his spouse did not. Debtor scheduled three vehicles as jointly held property on Schedule B and also listed the automobiles as exempt on Schedule C.
Chapter 7 trustee objected to the debtor's claimed exemption in the three automobiles. The trustee contended that the claimed exemption was not available because the vehicles were titled solely in the Debtor's name and had not been paid for by a joint checking account held by the Debtor and his spouse. The Debtor countered that the name on the titles was not determinative and that the vehicles were purchased with marital funds during marriage and, thus, were owned by the Debtor and his wife as tenants by the entirety
Noting that interests in property are determined by state law in the absence of controlling federal law, the Court reviewed numerous Delaware cases addressing tenancy by entirety property. After distilling precedent from the Delaware Chancery Court, the Delaware Superior Court and the Delaware Supreme Court, Judge Sontchi concluded that (i) property held by husband and wife is presumed to be held as tenants by the entirety; (ii) the intent to create entireties property must be measured at the time of the property's acquisition; (iii) the designation of ownership on a legal document, while not dispositive, is "strong evidence as to the nature of the ownership interest"; and (iv) the presumption that property is entirety property is directly related to the extent that the property is "intimately associated" with the marital relationship (i.e. linens and furniture versus commercial property).
Judge Sontchi found that the Trustee met his initial burden of producing evidence to rebut the presumptively valid exemption by the Debtor. As a result, Court found that the automobiles were held solely by the debtor and could not be exempted as tenants by the entirety property.

2. ***In re Willis*, No. 07-10046 (CSS) (Dec. 18, 2012) (Letter Op.) (Howard Robertson)**

The chapter 7 bankruptcy of Clarencinia D. Willis (the "Debtor") was reopened to revise Debtor's schedules to include an employment discrimination claim as an exempted asset under

10 Del. C. § 4914(b) (wildcard exemption) with a current value of $10. The Chapter 7 Trustee filed an objection to the Debtor's asserted exemption. The Court held that the Debtor's employment discrimination claim is exempt in the amount of $10, but any appreciation of value of the claim in excess of $10 is property of the estate. The Court further held that the proper value of an exempted asset is the fair market value of the claim as of the bankruptcy filing.

The Court also evaluated whether (i) the Debtor should be able to amend her schedule to increase the amount of the exemption to the maximum amount of $25,000 as allowed by 10 Del. C. § 4914(b); and (ii) whether the Debtor or the Trustee should control the employment discrimination claim. As to the first issue, the Court only afforded the Debtor the opportunity to amend her exempted claim amount because the Trustee agreed to allow the Debtor to increase the exempted amount to the maximum amount allowed by law. As to the second issue, the Court determined that the Trustee should control the employment discrimination claim. The Court reasoned that the Debtor only has incentive to seek recovery in the amount of the exemption claimed, but the Trustee has incentive to seek recovery for the full amount of the claim to maximize recovery. Therefore, the Trustee is better positioned to pursue the employment discrimination claim.

3. *In re Willis*, No. 07-10046 (CSS), 2013 Bankr. LEXIS 5161 (Bankr. D. Del. Nov. 7, 2013)

In the re-opened chapter 7 bankruptcy case of Clarencinia D. Willis (the "Debtor") Judge Sontchi issued a Memorandum Order Denying, in part, and Continuing, in part, Debtor's Objections to Proofs of Claim Nos. 1-7. The Debtor's objection to several claims were either denied or continued for evidentiary hearings because the Debtor failed to meet her burden of negating the amount or priority of the sworn facts set forth in each proof of claim. For those claim objections that were continued for an evidentiary hearing, those were only continued for the limited basis of determining ownership of the claim.

In 2007 the Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code. The case was closed shortly after upon the Trustee filing a report of no distribution. In 2011, the Trustee filed a motion to reopen the case based on newly discovered assets. In the reopened case, eight proofs of claim were filed. The Debtor objected to the first seven seeking to disallow each for lack of prima facie validity. At bottom, the basis for Debtor's objection was that the proofs of claim were not executed and filed by the original claimant, but an agent, transferee or assignee of the claimant.

The Court evaluated Federal Rule of Bankruptcy Procedure ("Rule") 3001 to determine Debtor's objection as to ownership, amount and priority of each claim. Specifically, the court analyzed the requirements of Rule 3001(e). The Court held that Rule 3001(e)(3) establishes who is entitled to file a proof of claim and not what evidence is necessary to provide its ownership. The Court determined that even when a claim is transferred before the filing of the proof of claim, assignment documents must be provided to confirm that transfer has taken place. On this issue, the Court continued several of the claim objections pending an evidentiary ruling as to ownership. With respect to amount and priority of each claim, the Court held that the Debtor did

not produce sufficient evidence to negate the prima facie validity afforded to proofs of claim by Rule 3001(f).

4. *In re Miller*, 10-12134 CSS (Bankr. D. Del. Jan. 5, 2011) (Toyia Haines)

The plaintiff creditor, which held a security interest in a Chapter 7 debtor's vehicle, filed a Motion for Relief from Stay.

Because debtor had failed to reaffirm or redeem in both her Statement of Intention, and her duty to enter into an agreement to perform, even though she stated and she did remain current, the debtor had failed to comply with 11 U.S.C.S. §§ 521(a)(2)(C) and 362(h), and thus the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), provided that these failures required termination of the automatic stay.

5. *In re Hart*, 08-12107 CSS (Bankr. D. Del. Mar. 10, 2009) (Toyia Haines)

Chapter 7 Debtors sought to reaffirm their real property debt by executing a Reaffirmation Agreement with their mortgage lender. The loan secured by a lien on their farm and equipment, was not feasible due to debtors' monthly expense negative balance of $3001. The presumption of undue hardship arose and could not be rebutted by debtors' promise to (1) take in renters; and (2) improve revenue through their chicken farm business plan.

The Court determined that real property reaffirmations, were not necessary, and this loan could "pass through" the bankruptcy case unaffected, further the Court disapproved the agreement as not being in the best interest of debtors. [(BAPCPA) 11 U.S.C.A. §§ 362(h)(1), 521(a)(6).]

6. *In re Akulova,* 07-11654 CSS (Bankr. D. Del. Jul. 21, 2009)

Issue

- May the Chapter 7 debtor amend her schedules to substitute a personal injury claim for a different claim previously identified as exempt and abandoned by the trustee? (No)

Facts

- Debtor (Ms. Kira Akulova) was injured in an auto accident in 2005. Shortly after she retained PI counsel and filed suit.
- Debtor voluntarily filed for Chapter 7 on November 6, 2007, and the same date she filed her schedules. Debtor did not list her PI claim as an asset of her estate under schedule B or C, claims she simply forgot about her claim at the time she filed.
- In January 2008, debtor filed amended schedules. She again did not include the PI claim. Debtor first made the Court and Trustee aware of the PI claim when the trustee sent her a questionnaire, prior to the 341 meeting, asking if she was currently suing anyone.
- July 2008, the debtor's PI counsel was retained on behalf of the estate, at request of the trustee. The PI claim was settled for payment of $9,000. Debtor learned of settlement on February 9, 2009.

- February 10, 2009, Debtor filed a second amended schedule C which included the net proceeds of the PI claim.
- Trustee objects to the Debtor's amendment of her schedules to include the proceeds of her PI claim as an exempt asset.

Legal Analysis

- Amendment of a Debtor's Schedule
    - Bankruptcy Rules allow a debtor to exempt property having aggregate FMV of not more than $25,000.
    - A debtor may, any time before case is closed, amend a voluntary petition, list, schedule or statement (court permission and a hearing is not required)
        - This gives debtors the best opportunity to make a fresh start
    - Debtor may also amend the schedules to add property that is exempt from distribution, however, the debtor's proffered amendment to the schedule of property claimed as exempt is not to be allowed automatically
    - An amendment to the schedule of exemptions may be denied if the debtor acts in bad faith or if there is prejudice to a creditor
        - The prejudice to the creditor must outweigh any prejudice to the debtor
        - Debtor's ability to amend for purpose of correcting mistakes/omissions if limited to situations involving inadvertence and does not extend to undoing concealment of known information

- Ms. Akulova may not amend her schedule because she acted in bad faith
    - She had prior knowledge of her PI claim and chose not to include the claim in her initial and revised schedules. Even giving debtor the benefit of the doubt that she forgot about it, once debtor did become aware of it she waited 11 months to include the claim as an exempt asset
    - Debtor also allowed trustee to retain counsel and pursue and liquidate the claim. It was only after the trustee was successful and debtor was aware of the liquidation that she sought to retain the proceeds as exempt. It is inequitable to allow a debtor to induce a trustee to act on what the trustee believes to be the creditors' behalf while the debtor retains an option (for which no consideration has been paid) to exempt the fruits of the trustee's labor if, and only if, the trustee is successful.
    - Debtor exacerbated her bad faith by trying to substitute proceeds of the PI claim for property that was previously abandoned by the trustee

7. *Moran v. Crowe* (In re Moran), 09-50040 CSS (Bankr. D. Del. Sep. 11, 2009)

Issue

- Should the Court grant Debtor's motion to dismiss the amended complaint of the Crowes (Discharge Plaintiffs) to have debt declared non-discharged in accordance with § 523(a) of the Code? (No, the Court should deny the Debtor's motion to dismiss)

Facts

- The Crowes entered into a contract with Debtor to provide labor and materials for the improvement of the Crowe's home. Contact price was $83,365. Crowes paid the Debtor $68,000 on account of the Contract price, leaving a $15,365 balance
- Debtor commenced performance of contract on February 5, 2008. Performance was sporadic and inconsistent. By June 2008, the Debtor abandoned the project or failed to return to the property. The Crowes terminated the contract and sued Debtor for breach of contract and breach of trust. Oct. 20, 2008, Crowes obtained a default judgment against Debtor for $59,625
- Nov 9, 2008, Debtor filed voluntary chapter 7 petition. Crowes filed a complaint seeking to have the debt the Debtor owes them as non-discharged pursuant to § 523(a). Crowes alleged breach of contract and trust, fraud, and breach of fiduciary duties. Crowes also claimed res judicata and collateral estoppel barred Debtor from disputing the breach of FD and obtained funds through fraud

Legal Analysis

- Res Judicata does not prevent the Crowes from objecting to the discharge of the debt the debtor owes them
    - Res judicata is an affirmative defense that forecloses a party from bringing a second suit based on the same cause of action after a judgment has been entered in a prior suit involving the same parties.
        - The procedural bar extends to all issues which might have been raised and decided in the first suit as well as to all issues actually decided
    - The Court cannot find the Crowes neglected or failed to assert claims which in fairness should have been asserted in the first action because state courts cannot determine whether debts specified in § 523(a)(2), (4) are non-dischargeable in bankruptcy
        - SC and 3rd Circuit have found Congress intended to leave certain discharge questions in exclusive jurisdiction of the bankruptcy courts.

- Collateral Estoppel does not preclude the Crowes from litigating the issues of fraud and breach of fiduciary duty in this adversary proceeding
    - Once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.
        - The burden is on a defendant to demonstrate that the issue in relitigation was actually decided in the first proceeding
    - Where a party seeks to rely on a state court judgment to preclude relitigation of the same issues in federal court, a federal court must look to the state law and its assessment of the collateral estoppel doctrine to determine the extent to which the state would give its own judgment collateral estoppel effect

        - Crowes obtain judgment in Delaware state court so Bank. Ct. will apply Delaware law
    - Collateral estoppel does not bar the Crowes from litigating the issues of fraud and breach of fiduciary duty. The default judgment was based on breach of contract and breach of trust. The bankruptcy complaint is based on Crowe's objection to the Debtor's right to discharge from his debt to them.
        - Therefore, the Crowes have initiated an adversary proceeding based upon a different cause of action from that in the Superior Court of Delaware

- The Court will deny the debtor's motion to dismiss the Crowes claim for relief under 11 U.S.C. § 523(a)(2)
    - § 523(a)(2) provides certain exceptions to discharge of claims including those incurred by the debtor under false pretenses or through fraud. Creditor has burden of proving debt is non-dischargeable
    - The Crowes have stated a valid claim for relief under § 523(a)(2). The Bankruptcy complaint satisfies the elements of misrepresentation or perpetuated fraud and knowledge that the representations were false
        - Debtor used funds for personal reasons and not to pay for labor or materials and the debtor knew they were false when he made them to the Crowes
        - Crowes were aware of three sub-contractors the Debtor failed to pay after claiming he did
        - Debtor claimed to have gotten materials from multiple vendors but no such materials were purchased

- The Court will deny the debtor's motion to dismiss the Crowe's claim for relief under 11 U.S.C. § 523(a)(4)
    - § 523(a)(4) provides another exception to discharge for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny
    - The Crowes and Debtor entered into a contract for the debtor to provide labor and materials for home improvements. The complaint alleges the Crowes paid the Debtor $68,000 on account of the contract price. Plus it alleges that Title 6, Chapter 35 was violated because all money paid to Debtor were paid in trust to be used for payment of cost of labor and materials and a fiduciary relationship was created which was to ensure that all money paid to Debtor would be used only for paying for labor and materials
    - Debtor breached their fiduciary duties when it used the funds to pay himself personally and not for labor or materials

- Should the Debtor be awarded attorneys' fees and costs because the filing of the bankruptcy complaint was not substantially justified

- § 523(d) the court can grant attorneys' fees and costs to a debtor if they find that the creditors complaint seeking determination of dischargeability is not substantially justified
    - Goal of this section is to discourage creditors from initiating false financial statement exception to discharge actions
- Debtor must prove creditor brought a dischargeability complaint w/ respect to a consumer debt and that the debt was discharged, the creditor can defeat a motion by establishing that its non-dischargeability action had reasonable basis in law and fact or there were special circumstances
- The Court will deny Debtor's request because assuming Crowes' allegations are true, their objection is meritorious so § 523(d)'s requirements are not met

8. *In re Baker*, 08-10077 CSS (Bankr. D. Del. Jun. 10, 2008), aff'd (D. Del. 2009) (Toyia Haines)

Chapter 7 debtors filed a Motion to Reopen and a Rule to Show Cause for Willful Violation of a Court Order for Wrongful Repossession of a Motor Vehicle. After the parties executed a timely reaffirmation agreement, the debtors' alleged the creditor wrongfully repossessed. While the Court had not approved the reaffirmation agreement as it constituted an undue hardship, debtors' motions were granted as there was no legal basis for repossession under Delaware law.

Chapter 7 debtors filed a Statement of Intention to retain the vehicle and make regular payments but did not choose one of the three statutory options –surrender, redemption, or reaffirmation. Even though the parties had timely entered into a reaffirmation agreement, this Court refused to approve the Reaffirmation Agreement because it would constitute an undue hardship on the Debtors—making the reaffirmation agreement unenforceable.

Guided by the Third Circuit's opinion in Price, the Court found that a default based upon the debtors' filing of bankruptcy is an unenforceable ipso facto clause because the debtors timely entered into a reaffirmation agreement—regardless of whether the agreement was approved by the Court. The Court held the creditor in civil contempt; ordered the return of the vehicle; and awarded compensatory damages to the debtors because the creditor repossessed the vehicle in violation of the discharge injunction. Finally, the request for punitive damages was denied without prejudice.

Please also read the DSBA Journal February 2022 edition for a special article on all Judge Sontchi's Consumer Opinions.