

SURVEY OF RECENT DECISIONS
OF
THE HONORABLE PAUL J. KILBURG

**U.S. Bankruptcy Court
Northern District of Iowa**

October 16, 2007 – October 7, 2008

Prepared by

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The case summaries are categorized to correlate with the Key Number Classification of West's Bankruptcy Digest. West's key numbers are included in the topic headings below. Summaries of prior decisions (April 23, 1993 to present) are available on our web site, www.ianb.uscourts.gov.

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I. IN GENERAL, 2001-2120

C. Jurisdiction, 2041-2080

Wayne Industrial Holdings v. Goro et al (In re Wayne Engineering Corp.), Ch. 7, No. 05-03394, Adv. 06-09177, 2008 WL 2356673 (Bankr. N.D. Iowa June 5, 2008) (the claims presented are non-core; the Court sua sponte finds permissive abstention is appropriate)

Defendants request that the Court determine whether all four Counts of Plaintiff's Third Amended Complaint are core or non-core claims. The motion asserts that the claims against them are state-law tort claims for conversion and interference with business relations and that no relief is sought for the bankruptcy estate or creditors. Plaintiff asserts that the Court already stated in the Order denying Defendants' Motion to Dismiss that this is a core proceeding. HELD: Upon further review of the record as a whole, the Court concludes all counts set out in Plaintiff's amended complaint are non-core matters. Permissive abstention is appropriate. A resolution of this proceeding will have no effect on the related bankruptcy case.

Wayne Industrial Holdings v. Goro et al (In re Wayne Engineering Corp.), Ch. 7, No. 05-03394, Adv. 06-09177, 2008 WL 2356673 (Bankr. N.D. Iowa April 17, 2008) (Court has subject matter jurisdiction over proceeding regarding sale of assets of the bankruptcy estate)

Defendants move to dismiss for lack of subject matter jurisdiction. The complaint asserts conversion and intentional interference claims arising from Defendant's actions after Plaintiff purchased assets from the bankruptcy estate. HELD: Accepting the allegations as true, the Court has either core jurisdiction to ensure that Debtor fully disclosed its assets or, in the alternative, "related to" jurisdiction to determine that the order approving the sale was properly enforced.

II. COURTS; PROCEEDINGS IN GENERAL, 2121-2200

B. Actions and Proceedings in General, 2151-2180

Mitchell v. Bigelow (In re Bigelow), Ch. 7, No. 05-04484, Adv. 07-09159, 2008 WL 191816 (Bankr. N.D. Iowa Jan. 22, 2008) (dismissal based on statute of limitations), aff'd, __ B.R. __, 2008 WL 4206947 (B.A.P. 8th Cir. Sep. 16, 2008)

Debtor moves to dismiss the complaint based on the statute of limitations. HELD: The complaint indicates the statute of limitations has expired. Debtor's Chapter 7 case and this adversary proceeding did not toll the statute of limitations. The motion to dismiss is granted.

Mitchell v. Mitchell (In re Mitchell), Ch. 7, No. 05-05637, Adv. 07-09160, 2008 WL 63260 (Bankr. N.D. Iowa Jan. 3, 2008) (dismissing claims of creditor who had timely notice of bankruptcy petition)

Plaintiffs filed a complaint seeking to except debts from discharge under § 523(a)(3) or (a)(6). They also request authorization to file actions in state court and orders tolling the statutes of limitations on their claims. Debtor moves to dismiss, asserting the dischargeability complaint was not timely filed. She also requests Rule 9011 sanctions. HELD: One of the Plaintiffs had notice of Debtor's bankruptcy case and cannot assert an exception to discharge. Viewing the facts in the light most favorable to the other Plaintiff, he did not have notice or actual knowledge and his claims can survive Debtor's Motion to Dismiss. The Court will not order sanctions.

III. THE CASE, 2201-2360

C. Voluntary Cases, 2251-2280

In re Budig, Ch. 7, No. 07-02042, 387 B.R. 12 (Bankr. N.D. Iowa May 1, 2008) (finding presumption of abuse exists and granting motion to dismiss under totality of the circumstances)

U.S. Trustee moves to dismiss debtors' Chapter 7 case for abuse. Debtors assert special circumstances exist. HELD: Debtors are subject to the Means Test. The presumption of abuse arises, based on U.S. Trustee's calculations. Dismissal for abuse is warranted under the totality of the circumstances of Debtors' financial situation.

In re Binninger, Ch. 7, No. 07-00203, 2008 WL 3091584 (Bankr. N.D. Iowa Oct. 19, 2007) (dismissing case based on presumption of abuse)

U.S. Trustee asserts that Debtors' Chapter 7 petition should be dismissed for abuse under § 707(b)(1). Alternatively, U.S. Trustee argues that the petition should be dismissed under § 707(b)(3)(B) (totality of the circumstances). HELD: The presumption of abuse arises because Debtors' sixty-month disposable income exceeds \$10,000. The total disposable income could pay more than 70% of unsecured claims. Debtors have failed to rebut the presumption of abuse. U.S. Trustee's Motion to Dismiss is granted.

IV. EFFECT OF BANKRUPTCY RELIEF; INJUNCTION & STAY, 2361-2490

V. THE ESTATE, 2491-2760

C. Property of Estate in General, 2531-2570

Flynn v. Zeitler (In re Zeitler), No. 06-00034, Adv. 07-30007, 2008 WL 619333 (Bankr. S.D. Iowa Feb. 29, 2008) (spendthrift provision in Trust is invalid; Debtor's Trust is property of the estate)

Trustee seeks summary judgment alleging Debtor's trust is invalid as a spendthrift trust. He claims that Debtor is the de facto settlor of the trust and that, as beneficiary, Debtor exercises an

impermissible level of control over the corpus of the trust. Trustee asserts that no facts are in controversy and requests summary judgment. Debtor denies that he is the de facto settlor or that he exercises impermissible control over the trust. HELD: Debtor exercises extensive control over the corpus of the Trust which invalidates the spendthrift trust provision. Evidence of this control is manifest in the record based on the language in both the Trust Agreement and the Partnership Agreement. The property is not insulated from his creditors. This disqualifies the Trust from being a spendthrift trust. As there are no facts in dispute on this issue, this Court must conclude that the spendthrift provision in the Trust is invalid, and Debtor's interest in the Trust is not excluded from the bankruptcy estate under § 541(c)(2).

D. Liens and Transfers; Avoidability, 2571-2600

Schnittjer v. Linn Area Credit Union (In re Sickels), Ch. 7, No. 07-01569, Adv. 07-09190, 2008 WL 2745567 (Bankr. N.D. Iowa July 11, 2008) (after avoidance of lien, Trustee is not entitled to additional remedy of money judgment)

Both parties filed Motions for partial summary judgment. Trustee requests summary judgment on her case in chief, asserting she has met all elements of § 544(a)(3) and § 362(a)(5) regarding the Credit Union's lien on Debtors' real estate which it perfected postpetition. Both parties assert they are entitled to summary judgment on the issue of whether Trustee is entitled to a monetary judgment under § 550(a). HELD: Trustee is granted summary judgment on her case in chief, without resistance by the Credit Union. The Credit Union is entitled to summary judgment on the issue of whether Trustee is entitled to the additional remedy of a monetary judgment under § 550(a). The Credit Union's mortgage lien, avoided under § 544(a), is preserved for the benefit of the estate under § 551 and Trustee is not entitled to further recovery under § 550(a) in the form of a money judgment.

Hanrahan v. Univ. of Iowa Comm. Credit Union (In re Thomas), Ch. 7, No. 07-01253, Adv. 08-09006, 387 B.R. 4 (Bankr. N.D. Iowa April 24, 2008) (avoiding mortgage lien because mortgage contained wrong legal description)

Trustee's complaint seeks to avoid a mortgage lien. She moves for summary judgment, asserting the mortgage is invalid because it contains an incorrect legal description for the real estate. HELD: The legal description in the mortgage, describing the parcel adjoining Debtor's land rather than Debtor's land itself, prevented the recorded mortgage from providing constructive notice of an interest in Debtor's real estate under Iowa law. The mortgage interest is avoidable by Trustee in the exercise of her strong-arm powers as a hypothetical bona fide purchaser. The lien is avoided for the benefit of the bankruptcy estate.

E. Preferences, 2601-2640

Schnittjer v. Pippert (In re Carney), Ch. 7, No. 07-01097, Adv. 07-09156 (Bankr. N.D. Iowa Oct. 6, 2008) (payment to mechanic's lien claimant is not avoidable as a preference)

Trustee seeks to avoid a transfer of \$1,895.95, which Debtor paid to Defendant, as a preference under § 547(b). Defendant asserts the payment is not a preference because he is a secured creditor entitled to a mechanic's lien under Iowa law. Trustee denies Defendant is a secured creditor because he did not perfect his mechanic's lien. HELD: Based on the timing of the payment to Defendant, Defendant had a valid secured claim under Iowa's mechanic's lien statutes. Trustee has failed to prove the sixth element of preference avoidance, i.e. that Defendant is better off receiving the payment than he would have been if he had to assert his secured claim in a Chapter 7 liquidation. Trustee's complaint to recover preference is denied.

Schnittjer v. Pickens (In re Pickens), Ch. 7, No. 06-01120, Adv. 06-09166, 2008 WL 345147 (Bankr. N.D. Iowa Feb. 5, 2008) (adopting Garland rule to allow setoff of new value from amount of preferential transfer)

Defendant requests reconsideration of judgment. She argues the judgment should be reduced by the amount of new value she granted to Debtors. HELD: Defendant may set off subsequent new value she gave Debtors from the amount of their payments which were preferential.

Schnittjer v. Pickens (In re Pickens), Ch. 7, No. 06-01120, Adv. 06-09166, 2008 WL 63251 (Bankr. N.D. Iowa Jan. 3, 2008) (applying small commercial preference exception; refusing to allow Defendants to stack § 547(c) defenses)

Trustee seeks to avoid transfers Debtors made to Defendants under § 547(b). Pursuant to consent of the parties, the Court granted Trustee summary judgment on her case in chief. Defendants assert affirmative defenses under §§ 547(c)(1) (contemporaneous exchange for new value), (c)(2) (ordinary course of business), (c)(4) (subsequent advance of new value), and (c)(9) (small commercial preference). HELD: Defendants failed to prove the necessary elements of their contemporaneous exchange for new value, ordinary course of business, and subsequent advance defenses. Debtors' aggregate transfers to one of the Defendants total \$4,005 and are excepted from avoidance under § 547(c)(9). Debtors' aggregate transfers to the other Defendant total \$6,531 and are not excepted from avoidance under § 547(c)(9). The Court declines to reconsider its previous Order holding that Defendants may not "stack" § 547(c) defenses to bring the value of the transfers below the \$5,000 limit of § 547(c)(9).

Hanrahan v. Grundy County Farm Service Agency (In re Waltermann Implement, Inc.), Ch. 7, No. 05-07284, Adv. 07-09039, 2007 WL 4224041 (Bankr. N.D. Iowa Nov. 27, 2007)

Trustee seeks to avoid a transfer by Debtor to FSA as a preference pursuant to § 547(b). The parties stipulated that Trustee satisfied her burden of proof on all § 547(b) preference elements. The remaining issues for decision are FSA's § 547(c)(2) ordinary course of business defense and

its assertion of immunity from recovery under § 550(a)(1). HELD: Debtor's payment to FSA is not avoidable as a preferential transfer. Debtor incurred the underlying debt in the ordinary course of both parties' business or financial affairs. It made the payment according to contract terms in the ordinary course of business under § 547(c)(2)(A) and according to ordinary business terms under § 547(c)(2)(B).

F. Fraudulent Transfers, 2641-2670

Hanrahan v. U.S. Dep't of the Treasury (In re Walterman Implement, Inc.), Ch. 7, No. 05-07284, Adv. 07-09146, 2008 WL 4185986 (Bankr. N.D. Iowa Aug. 28, 2008) (denying summary judgment on the issue of Debtor's insolvency)

Trustee's complaint seeks to recover as a fraudulent transfer funds the Debtor corporation paid for the personal income taxes of Debtor's president and his wife. The United States requests summary judgment on the issue of whether Debtor was solvent at the time of the transfer. HELD: Summary judgment is denied. The issue is in dispute, regardless that a balance sheet and a tax return show Debtor was solvent at the time of the transfer. These are not conclusive on the issue, in light of proposed testimony of Trustee's expert witness.

Schnittjer v. Nazbro, Inc. et al (In re Hung), Ch. 7, No. 07-01377, Adv. 07-09161, 387 B.R. 766 (Bankr. N.D. Iowa May 21, 2008) (denying summary judgment on issue of Debtor's insolvency at time of alleged fraudulent transfer)

Trustee seeks to set aside transfers on preference and fraudulent transfer theories, and Defendants assert "ordinary course of business" and "new value" defenses. Defendants move for summary judgment. HELD: Genuine issues of material fact, including questions as to Debtor's solvency/insolvency at time of alleged preferential or fraudulent transfers, preclude entry of summary judgment on Trustee's avoidance claims.

Shodeen v. Bartlett et al (In re Bartlett), Ch. 7, No. 07-00939, Adv. 08-30037, 2008 WL 2073950 (Bankr. S.D. Iowa May 13, 2008) (denying motion to dismiss based on statute of limitations)

Trustee seeks to avoid fraudulent transfers between the Defendants in early 2002. Defendants argue that Trustee's claim was extinguished on February 22, 2007 by the five-year statute of limitations. Trustee's complaint asserts that Trustee's claim was not discovered until March 16, 2007 during a witness exam. At the hearing, Defendants conceded that at least two transfers occurred in the last five years. HELD: Trustee has sufficiently placed the onset of the statute of limitations in dispute to avoid dismissal at this stage of the proceedings. Trustee's claims regarding the more recent transfers will continue to be litigated. In these circumstances, Trustee is entitled to develop the record on all her claims.

Schnittjer v. Houston (In re Houston), Ch. 7, No. 07-01798, Adv. 07-09196, 385 B.R. 268 (Bankr. N.D. Iowa Apr. 2, 2008) (avoiding constructively fraudulent transfer of real estate by Quit Claim Deed to Debtor's mother), appeal pending, No. 08-00054-EJM (N.D. Iowa)

Trustee seeks to avoid, as actually or constructively fraudulent, a transfer Debtor made within one year prior to the petition date of his interest under a contract for purchase of a one-half interest in 155 acres of real estate from his mother. Trustee moves for summary judgment. HELD: Genuine issues of material fact regarding debtor's intent preclude entry of summary judgment on Trustee's cause of action to avoid transfer as actually fraudulent. Debtor did not, however, receive reasonably equivalent value for the Quit Claim Deed transferring his real estate interest to his mother. Summary judgment is granted to Trustee, finding the transfer avoidable as constructively fraudulent.

H. Avoidance Rights, 2701-2740

Hanrahan v. Community Savings Bank (In re Ovel), Ch. 7, No. 06-01150, Adv. 08-09032, 2008 WL 2368285 (Bankr. N.D. Iowa June 10, 2008) (Bank which granted mortgage to initial transferee is immediate or mediate transferee; its "single satisfaction" defense raises factual issues regarding valuation); 2008 WL 3834480 (Bankr. N.D. Iowa July 18, 2008) (denying motion for further relief)

Trustee moves for partial summary judgment on the Bank's "single satisfaction" defense. She asks that the Bank's § 550(d) affirmative defense be stricken and further requests summary judgment holding that the Bank is an immediate or mediate transferee under § 550(a)(2). HELD: Trustee is correct that the Bank is an immediate or mediate transferee under § 550(a)(2) and is entitled to summary judgment to that extent. Trustee is not, however, entitled to summary judgment striking the Bank's "single satisfaction" defense. As the record stands, the value of the transfer of Debtor's property remains unresolved.

VI. EXEMPTIONS, 2761-2820

In re Meyer, Ch. 13, No. 08-00212, 2008 WL 2705182 (Bankr. N.D. Iowa July 1, 2008) (homestead is exempt as proceeds of an exempt personal injury payment and as a new homestead)

Creditors assert Debtors are not entitled to claim their homestead exempt. Debtors assert their real estate is exempt because they purchased it with proceeds of a personal injury settlement and it is necessary for their support. Alternatively, Debtors claim the home exempt as a new homestead to the value of their former homestead. HELD: Debtors' home is properly claimed exempt. It is exempt under Iowa Code sec. 627.6(16) as proceeds of a payment from personal injury to Debtor David Meyer. Alternatively, the Cedar Falls home is exempt under Iowa Code chapter 561. This is a new homestead exempt to the value of Debtors' old homestead. Debtors' purchase of the new home with the proceeds of the personal injury settlement and titling it solely in Debtor Barbara Meyer's name do not constitute fraud on the creditors of Debtor David Meyer.

In re Christianson, Ch. 7, No. 08-00078, 2008 WL 1902724 (Bankr. N.D. Iowa April 29, 2008 (granting Debtor relief from order improvidently entered; allowing exemption of two revolvers)

Trustee objected to Debtor's exemption of two revolvers. Debtor filed an untimely response and amended her Schedules to change her claim of exemption. The Court sustained Trustee's objection to exemption of the revolvers after Debtor filed her resistance and amended Schedules. Debtor asks that the order be set aside and her exemption allowed. HELD: The "mailbox rule" does not apply to give Debtor additional time to respond. Debtor's delay in filing her resistance was not due to excusable neglect. Debtor, however, is entitled to relief from the Order based on the Court's inadvertence or mistake. Debtor may claim the two revolvers exempt.

VII. CLAIMS, 2821-3000

VIII. TRUSTEES, 3001-3020

IX. ADMINISTRATION, 3021-3250

D. Abandonment, 3131-3150

In re Stetler, Ch. 7, No. 08-00406, 2008 WL 2746878 (Bankr. N.D. Iowa July 11, 2008) (Trustee is allowed additional time to try to market non-exempt 0.08-acre portion of homestead real estate)

Debtor requests an order compelling Trustee to abandon a partial interest in homestead real estate. Trustee asserts the bankruptcy estate's interest in the 0.08-acre nonexempt portion of Debtor's real estate has significant value. HELD: The parties dispute whether the 0.08 acre of Debtor's homestead real estate which is not exempt has value for the bankruptcy estate. The Court has discretion to order Trustee to abandon the property for Debtor's benefit or to allow her to market it for the benefit of the estate. The Court has substantial skepticism about whether this property interest is marketable or valuable to the estate. Trustee has requested additional time to explore attempts to market the property. A short delay in resolving this matter will not unduly prejudice Debtor or undermine her fresh start with the understanding that if Trustee is unable to demonstrate appreciable value, the property should be abandoned.

E. Compensation of Officers and Others, 3151-3250

In re Blanchard, Ch. 7, No. 08-00034, 2008 WL 1782367 (Bankr. N.D. Iowa April 14, 2008) (sanctions imposed against attorney for Debtors)

U.S. Trustee filed a Motion to examine fees paid to Debtor's counsel. The Court ordered counsel to file an itemized statement of fees. Counsel did not appear at scheduled hearings and did not file the itemization. HELD: Attorney committed contempt by violating Orders of this

Court. The Court imposes sanctions against counsel including a judgment of \$500 for Debtors and barring her from practicing in this court.

In re Gannon Center for Community Mental Health, Ch. 7, No. 06-01545, 2008 WL 276548 (Bankr. N.D. Iowa Jan. 29, 2008) (party with no claim against the estate has no standing to challenge allowance of fees)

Trustee filed an application for allowance of fees and expenses for attorney for Trustee. She seeks to strike an objection to the application filed by a former employee of Debtor. HELD: The objecting party has no standing to object to the application for compensation. She has not filed a claim and has no pecuniary interest in the bankruptcy estate.

X. DISCHARGE, 3251-3440

B. Dischargeable Debtors, 3271-3340

Fokkena v. Blackburn (In re Blackburn), Ch. 7, No. 05-07136, Adv. 06-09069, 385 B.R. 660 (Bankr. N.D. Iowa April 3, 2008) (discharge denied for failure to disclose assets and previous bankruptcy cases), appeal dismissed, No. C08-0057 EJM (N.D. Iowa Sep. 24, 2008)

U.S. Trustee requests denial of discharge asserting Debtors 1) failed to disclose their interest in real estate, family trusts, and a 1994 Volvo; 2) made a false oath or account when verifying their bankruptcy schedules and confirming their accuracy at the meeting of creditors; 3) failed to disclose that they had filed two Chapter 13 cases in the Southern District of Iowa in the last six years; 4) improperly marked the box on the petition stating that venue was proper in the Northern District of Iowa; and 5) concealed, destroyed, mutilated, falsified, or failed to keep or preserve recorded information from which the debtors' financial condition or business transactions might be ascertained. HELD: U.S. Trustee has established by a preponderance of evidence that Debtors concealed their interest in the Anderson Trust, the Blackburn Family Trust, the Blackburn Family Trust account, the Arizona real estate, and the 1994 Volvo, by omitting these items from their bankruptcy petition and schedules. Debtors knowingly made a false oath by omitting these items from their schedules, by failing to disclose their previous Chapter 13 filings, and by marking the box stating that the Northern District of Iowa was the proper venue. The bankruptcy process requires complete disclosure. Debtors who violate this precept forfeit their opportunity to discharge their debts.

C. Debts and Liabilities Discharged, 3341-3410

Olsen v. Paulsen (In re Paulsen), Ch. 7, No. 07-04414, Adv. 08-30044, 2008 WL 4442520 (Bankr. S.D. Iowa Oct. 1, 2008) (motion to dismiss denied; plaintiff may amend the complaint to rectify deficiencies)

Debtor asserts Plaintiff's amended complaint fails to state a claim upon which relief can be granted. He argues the Court does not have jurisdiction over the matters asserted in the complaint. HELD: The original and amended complaints are sufficient to put Debtor on notice of Plaintiff's claim of nondischargeability. Rather than granting Debtor's Motion to Dismiss for failure to state a claim, the Court believes justice would be better served by giving Plaintiff one more chance to rectify the deficiencies in the original and amended complaints.

BankOrion v. Mitchell (In re Mitchell), Ch. 7, No. 07-02379, Adv. 07-30140, 2008 WL 3992240 (Bankr. S.D. Iowa Aug. 21, 2008) (debt is excepted from discharge for willful and malicious injury)

BankOrion seeks to except debt from discharge for embezzlement or willful and malicious injury. It asserts Debtor violated its rights to collateral by disposing of insurance proceeds. Debtor asserts his discharge is enforceable against BankOrion. HELD: Debt is not excepted from discharge for embezzlement § 523(a)(4) because Debtor cannot embezzle from himself. By failing to turn over insurance proceeds, however, Debtor committed willful and malicious injury, excepting debt from discharge under § 523(a)(6).

DeBrower v. Pennsylvania Higher Ed. Assistance Agency (In re DeBrower), Ch. 7, No. 06-01241, Adv. 07-09002, 387 B.R. 587 (Bankr. N.D. Iowa May 9, 2008) (student loan debt is nondischargeable)

Debtor seeks to except student loan debt of approximately \$48,000 from discharge for undue hardship. HELD: Debtor, whose financial circumstances are not truly severe or even uniquely difficult, is not entitled to an "undue hardship" discharge of her student loans. Debtor's previous medical problems do not prevent her from working.

In re Wagner, Ch. 7, No. 01, 01490, 2008 WL 1968803 (Bankr. N.D. Iowa May 6, 2008) (omitted claim is included in discharge unless creditor files successful complaint under § 523(a)(2), (4) or (6))

Debtor reopened his case to request an order finding the discharge is effective against a creditor. HELD: All debts are included in the discharge in Debtor's "no asset" case. The Court grants the creditor reasonable time to file a dischargeability complaint if he believes his claims should be excepted from discharge under § 523(a)(2), (4) or (6).

Lee v. Spellings (In re Lee), Ch. 7, No. 01-00456, Adv. 07-09031, 387 B.R. 1 (Bankr. N.D. Iowa April 16, 2008) (student loan debt is nondischargeable)

Debtor asserts his student loan debt of \$145,567.36 is dischargeable for undue hardship. HELD: Debtor failed to prove by a preponderance of the evidence that excepting his student loans from discharge would impose an undue hardship on him. His current income is stable and he is not suffering truly severe or uniquely difficult financial circumstances.

Chao v. Gott (In re Gott), Ch. 7, No. 06-01453, Adv. 06-30223, 387 B.R. 17 (Bankr. S.D. Iowa April 14, 2008) (debt excepted from discharge for defalcation as a fiduciary; Debtor failed to remit employee withholdings to retirement accounts)

The U.S. Secretary of Labor seeks to except from discharge debt for unremitted contributions to employee retirement plan account on grounds that Debtor committed defalcation while acting in fiduciary capacity. HELD: Debtor acted as fiduciary under ERISA with regard to funds withheld from his employees' paychecks to be paid to retirement plan. He was also a fiduciary within the meaning of the discharge exception for fiduciary defalcation in § 523(a)(4). Debtor committed defalcation while acting in fiduciary capacity when he failed to ensure that funds withdrawn from his employees' paychecks were remitted to retirement plan's administrator.

Tyer v. SLM Corp. (In re Tyer), Ch. 7, No. 06-01507, Adv. 07-09052, 384 B.R. 230 (Bankr. N.D. Iowa Mar. 24, 2008) (student loan debt is nondischargeable)

Debtor seeks to discharge more than \$120,000 in student loan debt that she incurred to finance her graduate studies. HELD: Debtor failed to prove by a preponderance of the evidence that excepting her student loan debt from discharge would impose an “undue hardship” on her. Debtor is not suffering truly severe or uniquely difficult financial circumstances, as those terms are legally defined, which would entitle her to an undue hardship discharge of her student loans.

Johnston v. Fifth Third Bankcorp. (In re Johnston), Ch. 7, No. 05-05136, Adv. 06-09110, 2008 WL 687002 (Bankr. N.D. Iowa Mar. 11, 2008) (student loan debt discharged for undue hardship)

Debtor seeks an undue hardship discharge of her student loan under § 523(a)(8). ECMC asserts Debtor is able to pay the student loan without undue hardship. HELD: Debtor is currently suffering severe financial circumstances and will continue to do so into the indefinite future in light of her chronic illness. A fair evaluation of this record reveals a very candid debtor who has no reasonable possibility of paying any meaningful amount toward these student loans. She has met her burden by establishing that excepting the student loan debt to ECMC from discharge will impose an undue hardship on her.

Gitsch v. Iowa Student Loan Liquidity Corp. (In re Gitsch), Ch. 7, No. 07-00124, Adv. 07-09070, 384 B.R. 555 (Bankr. N.D. Iowa Feb. 25, 2008) (student loan debt is nondischargeable)

Debtor seeks undue hardship discharge of his student loan debt. HELD: Potential tax burden of discharge of student loans upon completion of 25-year income contingent repayment plan is not sufficient cause for granting an “undue hardship” discharge of student loan debt to a 48-year-old

Debtor. He is in good health and does not have any dependents, and his current monthly income is roughly \$300 in excess of his reasonable monthly expenses.

Bank of America v. Cramer (In re Cramer), Ch. 7, No. 07-01317, Adv. 07-09155, 2008 WL 564627 (Bankr. N.D. Iowa Feb. 25, 2008) (Bank not entitled to summary judgment excepting Debtor's cash advance from discharge)

Plaintiff seeks summary judgment on credit card dischargeability complaint. It asserts debt for cash advances and luxury goods are exempted from discharge. HELD: The affidavit and credit card statements are insufficient to prove exception from discharge. The cash advance is not identified as a purchase of luxury goods. It occurred more than 70 days prepetition.

XI. LIQUIDATION, DISTRIBUTION, AND CLOSING, 3441-3460

XII. BROKER LIQUIDATION, 3461-3480

XIII. ADJUSTMENT OF DEBTS OF A MUNICIPALITY, 3481-3500

XIV. REORGANIZATION, 3501-3660

XV. ARRANGEMENTS, 3661.100-3661.999

XVI. COMPOSITIONS, 3662.100-3670

XVII. ADJUSTMENT OF DEBTS OF FAMILY FARMER, 3671-3700

A. In General, 3671-3680

In re Vantiger-Witte, Ch. 12, No. 05-02931, 2008 WL 3287105 (Bankr. N.D. Iowa Nov. 6, 2007) (allowing conversion from Ch. 12 to Ch. 13)

Debtor moves to convert to Chapter 13. Trustee objects there is no statutory authority to convert from Chapter 12 to 13. Trustee and FSA also raise issues of good faith and prejudice to creditors. HELD: Debtor is not prohibited from converting to Ch. 13 based solely on the language of § 1208(a). A majority of cases allow such a conversion. Issues of good faith and prejudice to creditors can be addressed at the time of confirmation of a plan.

XVIII. INDIVIDUAL DEBT ADJUSTMENT, 3701-3740

In re Vantiger-Witte, Ch. 13, No. 05-02931 (Bankr. N.D. Iowa Sep. 29, 2008) (confirmation denied and case dismissed for bad faith)

The Farm Service Agency objects to confirmation of Debtor's Chapter 13 plan, arguing the plan and this case were not filed in good faith. It asserts Debtor has failed to account for cattle and other property which were collateral for its loans. Debtor asserts she filed her bankruptcy case and Chapter 13 plan in good faith. HELD: The Court is not convinced that Debtor filed her case, converted to Chapter 13 and filed her Chapter 13 plan in good faith. Debtor's inability to explain the depletion of FSA's collateral during the pendency of the Chapter 12 case is troublesome. The Court is convinced that Debtor has unfairly manipulated the Bankruptcy Code. Her motivation in this case has clearly been to rid herself of her farming operation by paying the least amount to her creditors. Based on the totality of the circumstances, the Court concludes that Debtor's plan violates § 1325(a)(3) and this case should be dismissed pursuant to § 1307(c).

In re Aldrich, Ch. 13, No. 08-00520, 2008 WL 4185989; In re Votroubek, Ch. 13, No. 08-00743, 2008 WL 4185989 (Bankr. N.D. Iowa Sep. 4, 2008) (denying confirmation of plans with improper provisions regarding secured creditor's assessment and disclosure of postconfirmation fees and charges)

The Bank objects to confirmation of Debtors' plans. It argues that plan provisions governing its postconfirmation charges and fees improperly modify its rights as the holder of a security interest in Debtors' residence. Debtors assert the plan provisions are necessary to monitor and regulate the charges imposed by the Bank after confirmation. HELD: The proposed plans include provisions which improperly attempt to modify the parties' credit agreements. Other provisions are unnecessary until an actual controversy arises. The Court sets out language which would be acceptable to address Debtors' need for notice of postconfirmation charges.

In re Eilderts, Ch. 13, No. 06-01570, 389 B.R. 682 (Bankr. N.D. Iowa June 5, 2008) (case dismissed for violation of court order requiring Debtors to submit disposable income to plan)

Debtors request permission to retain their \$1,800 Economic Stimulus Rebate payment to purchase a vehicle to replace their old car. Trustee objects. At the hearing, counsel for Debtors informed the Court that Debtors had admitted they already spent the rebate funds for purposes other than to buy a vehicle. HELD: Debtors intentionally violated the Court's confirmation order by spending their Economic Stimulus Rebate payment without court authorization, warranting sua sponte dismissal of this case.

In re Miller, Ch. 13, No. 05-00335, 2008 WL 2323901 (Bankr. N.D. Iowa June 5, 2008) (confirmation denied for amended plan proposing to suspend payments for eight months)

Debtor filed an Amendment to her Plan, seeking to suspend payments for eight months while she finishes her college degree. HELD: The feasibility of the plan is in question. Eight months is too long to keep creditors on hold without any payments. Confirmation is denied.

XIX. REVIEW, 3741-3860

B. Review of Bankruptcy Court, 3761-3810

Flynn v. Zietler (In re Zietler), Ch. 7, No. 06-00034, Adv. 07-30007, 2008 WL 1818442 (Bankr. S.D. Iowa April 1, 2008) (denying motion for extension of time to file appeal), appeal dismissed, No. 08-6015 (B.A.P. 8th Cir. May 23, 2008)

After the deadline to file an appeal, Debtor moves for an extension of time. HELD: Counsel's inadvertence in calendaring the appeal deadline does not constitute excusable neglect. Motion denied.

XX. OFFENSES, 3861-3863