

SURVEY OF RECENT DECISIONS
OF
THE HONORABLE PAUL J. KILBURG

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

October 7, 2008 – October 15, 2009

Prepared by

**Amy M. Kilpatrick
Law Clerk**

TABLE OF CONTENTS

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.

I.	IN GENERAL, 2001-2120	
	A. In General, 2001-2010	
	B. Constitutional and Statutory Provisions, 2011-2040	
	C. Jurisdiction, 2041-2080	
	D. Venue; Personal Jurisdiction, 2081-2100	
	E. Reference, 2101-2120	
II.	COURTS; PROCEEDINGS IN GENERAL, 2121-2200	
	A. In General, 2121-2150	
	B. Actions and Proceedings in General, 2151-2180.	1
	C. Costs and Fees, 2181-2200	
III.	THE CASE, 2201-2360	
	A. In General, 2201-2220	
	B. Debtors, 2221-2250	
	C. Voluntary Cases, 2251-2280	
	D. Involuntary Cases, 2281-2310	
	E. Joint Cases, 2311-2320	
	F. Schedules and Statement of Affairs, 2321-2330	
	G. Conversion, 2331-2340	
	H. Cases Ancillary to Foreign Proceedings, 2341-2360	
IV.	EFFECT OF BANKRUPTCY RELIEF; INJUNCTION & STAY, 2361-2490	
	A. In General, 2361-2390	
	B. Automatic Stay, 2391-2420.. . . .	1
	C. Relief from Stay, 2421-2460	
	D. Enforcement of Injunction or Stay, 2461-2480.. . . .	2
	E. Protection of Utility Service, 2481-2490	
V.	THE ESTATE, 2491-2760	
	A. In General, 2491-2510	
	B. Title and Rights of Trustee or Debtor in Possession, in General, 2511-2530	
	C. Property of Estate in General, 2531-2570.. . . .	3
	D. Liens and Transfers; Avoidability, 2571-2600.	3
	E. Preferences, 2601-2640.. . . .	4
	F. Fraudulent Transfers, 2641-2670.	4
	G. Set-off, 2671-2700	
	H. Avoidance Rights, 2701-2740.. . . .	5
	I. Reclamation, 2741-2760	

VI.	EXEMPTIONS, 2761-2820	5
VII.	CLAIMS, 2821-3000	
	A. In General, 2821-2850	
	B. Secured Claims, 2851-2870	
	C. Administrative Claims, 2871-2890.....	6
	D. Proof; Filing, 2891-2920	
	E. Determination, 2921-2950	
	F. Priorities, 2951-3000	
VIII.	TRUSTEES, 3001-3020	
IX.	ADMINISTRATION, 3021-3250	
	A. In General, 3021-3060	
	B. Possession, Use, Sale, or Lease of Assets, 3061-3100.	6
	C. Debtor's Contracts and Leases, 3101-3130.....	7
	D. Abandonment, 3131-3150	
	E. Compensation of Officers and Others, 3151-3250.	7
X.	DISCHARGE, 3251-3440	
	A. In General, 3251-3270	
	B. Dischargeable Debtors, 3271-3340.....	8
	C. Debts and Liabilities Discharged, 3341-3410.....	9
	D. Effect of Discharge, 3411-3440.	12
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	
	A. In General, 3501-3530	
	B. The Plan, 3531-3590	
	C. Conversion or Dismissal, 3591-3620.	13
	D. Administration, 3621-3650.....	14
	E. Railroad Reorganization, 3651-3660	
XV.	ARRANGEMENTS, 3661.100-3661.999	
	A. In General, 3661.100-3661.110	
	B. Real Property Arrangements, 3661.111-3661.999	
XVI.	COMPOSITIONS, 3662.100-3670	
XVII.	ADJUSTMENT OF DEBTS OF FAMILY FARMER, 3671-3700	
	A. In General, 3671-3680	
	B. The Plan, 3681-3700	
XVIII.	INDIVIDUAL DEBT ADJUSTMENT, 3701-3740	14
XIX.	REVIEW, 3741-3860	
	A. In General, 3741-3760	
	B. Review of Bankruptcy Court, 3761-3810	
	C. Review of Appellate Panel, 3811-3830	
	D. Review of District Court, 3831-3860	
XX.	OFFENSES, 3861-3863	

I. IN GENERAL, 2001-2120

II. COURTS; PROCEEDINGS IN GENERAL, 2121-2200

B. Actions and Proceedings in General, 2151-2180

Schnittjer v. Burke Construction Co. (In re Drahn), Ch.7, No. 08-01197, Adv. 08-09103 (Bankr. N.D. Iowa May 8, 2009) (denying motion to amend judgment)

Trustee moves to alter or amend judgment. She asserts the Court erred by recognizing Creditor's security interest in Debtor's mobile home. HELD: Trustee has not established that the order was legally or factually inaccurate. Motion denied.

Shodeen v. Bartlett (In re Bartlett), Ch. 7, No. 07-00939, Adv. 08-30037, 2009 WL 382511 (Bankr. S.D. Iowa Feb. 10, 2009) (default judgment entered against debtor as discovery sanction)

Plaintiff seeks to enforce the Court's order compelling Debtor to respond to requests for discovery. HELD: The Court notified Debtor that his failure to cooperate with discovery could result in default judgment being entered in the Order granting Plaintiff's motion to compel. Debtor has not changed his conduct in response to that order. Default judgment against Debtor is appropriate based on his willful, contumacious actions in refusing to respond to Plaintiff's requests for information and obey the Court's Order.

Case v. Case (In re Case), Ch. 7, No. 08-02219, Adv. 08-30115, 2009 WL 224689 (Bankr. S.D. Iowa Jan. 27, 2009) (plaintiff's service was improper because he made service himself; service is quashed and the summons will reissue)

Pro se Plaintiff requests default judgment against Debtor on dischargeability complaint. HELD: Service of Debtor in this proceeding was improper because Plaintiff made the service himself. Rather than grant default judgment which could be vulnerable to attack, or dismiss the case for insufficient service, the Court will quash the service and give Plaintiff an opportunity to effect proper service of the summons and complaint on Debtor.

III. THE CASE, 2201-2360

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

B. Automatic Stay, 2391-2420

In re Moore, No. 09-00274, 2009 WL 1490863 (Bankr. N.D. Iowa May 27, 2009) (refusing to delay the discharge, but extending the automatic stay until hearing on a motion for relief from stay)

Debtor seeks delay of discharge until her mortgage holder's motion for relief from stay is adjudicated. In response to the stay motion, Debtor questions whether she is in default or owes attorney fees and costs. HELD: No cause exists to delay entry of the discharge. The automatic stay, however, will be extended until the date set for hearing on the motion for relief from stay.

D. Enforcement of Injunction or Stay, 2461-2480

In re Mann, Ch. 7, No. 09-00507, 2009 WL 3007912 (Bankr. N.D. Iowa Sep. 21, 2009) (awarding damages for violations of automatic stay)

Debtors request an award of damages for violations of the automatic stay and discharge injunction. Postpetition, Beneficial filed a civil collection action and continued to send Debtors monthly statements. HELD: Beneficial had notice of Debtors' case but failed to respond to it or to the Motion to hold it in contempt. It is liable for attorney fees and \$5,000 actual damages.

In re Mau, Ch. 7, No. 09-00929, 2009 WL 3007913 (Bankr. N.D. Iowa Sep. 21, 2009) (awarding damages for violations of automatic stay)

Debtor requests an award of damages for violations of the automatic stay. Postpetition, Elan Financial sent Debtor four statements, three postcards and six letters requesting payment of prepetition debt. HELD: Elan Financial had notice of Debtors' case but failed to respond to it or to the Motion to hold it in contempt. It is liable for attorney fees and \$6,000 actual damages.

In re Fitzgerald, Ch. 7, No. 09-00371, 2009 WL 1809930 (Bankr. N.D. Iowa June 23, 2009) (granting sanctions for stay violation of repossessing vehicle)

Debtors request sanctions against creditor from whom they purchased a vehicle. The creditor repossessed the vehicle and its contents, including Debtor's tools, postpetition. The creditor did not respond or appear. HELD: Notice was mailed to the creditor. Sanctions are appropriate for willful violations of the automatic stay. Judgment is entered for actual and punitive damages in the total amount of \$6,000 and the creditor is ordered to turn over the vehicle and its contents to Debtors. Failure to do so will result in additional damages of \$7,500 for the tools.

Pearce v. E.L.W. Corp. (In re Pearce), Ch. 7, No. 06-01367, Adv. 07-09153, 400 B.R. 126 (Bankr. N.D. Iowa Jan. 27, 2009) (creditor violated automatic stay by contacting officials to commence criminal charges against debtor)

Debtor asserts Creditor violated the automatic stay by contacting Wisconsin officials to commence criminal charges against him. Creditor asserts it did not violate the prohibitions of the

Bankruptcy Code because the commencement of a criminal proceeding is excepted from the stay. HELD: Debtor has established by a preponderance of the evidence that Creditor's employee acted with the intent to collect a dischargeable debt. This act violated the automatic stay. The acts of the employee are binding on Creditor. Sanctions are appropriate since the employee was aware of Debtor's filing when he contacted the police. Creditor is liable to Debtor for damages in the amount of \$7,344.62 plus attorney fees.

V. THE ESTATE, 2491-2760

C. Property of Estate in General, 2531-2570

In re Agriprocessors, Inc., Ch. 11, No. 08-02751, 2009 WL 290475 (Bankr. N.D. Iowa Feb. 4, 2009) (PASA claims shall be paid from funds Trustee holds in a statutory trust before the Bank's Bond Funds are liable; the Bank has no right of setoff against the Bond Funds)

Trustee filed a Motion to Pay USDA Approved PASA Claims. He asserts payment of these claims should initially be made from Bond Funds held by the Bank. Trustee also holds more than \$7 million in trust under PASA which is available to pay these claims. The Bank argues it is entitled to set off its claim of more than \$800,000 against the Bond Funds. It asserts Trustee must make payments from the Trust Funds rather than the Bond Funds. HELD: The Bank does not have a right of setoff against the Bond Funds. Trustee shall pay the PASA Claims from the Trust Funds it holds under 7 U.S.C. § 196(b). If those funds are exhausted, the remaining PASA Claims can be satisfied from the Bond Funds held by the Bank.

In re Smith, No. 05-05398, 2008 WL 4792455 (Bankr. N.D. Iowa Oct. 31, 2008) (real estate commissions earned prepetition are property of the estate), aff'd, No. 08-6050 (B.A.P. 8th Cir. Mar. 17, 2009)

Trustee seeks turnover of real estate commissions pursuant to § 541(a)(1) and § 542(a). She alleges Debtor earned these commissions prior to filing bankruptcy and they are property of the estate. HELD: Trustee has established by a preponderance of evidence that at the time Debtor filed his Chapter 7 petition he was entitled to \$41,040 in commissions for two of the properties. Those funds are property of the estate and subject to turnover. The third commission was earned post-petition and is not property of the bankruptcy estate.

D. Liens and Transfers; Avoidability, 2571-2600

Schnittjer v. Burke Construction Co. (In re Drahn), Ch.7, No. 08-01197, Adv. 08-09103, 405 B.R. 470 (Bankr. N.D. Iowa April 29, 2009) (installment sale contract for mobile home is not executory; bankruptcy estate's interest in sale proceeds is the value in excess of Creditor's security interest)

Postpetition, Debtor sold her mobile home without permission of the Court and gave the sale proceeds to Creditor. Trustee seeks to recover proceeds of the sale from Creditor. Creditor argues it was the owner of the property and therefore entitled to the proceeds, or in the alternative, the contract was executory and Trustee failed to timely assume it. HELD: As the installment sale contract for Debtor's mobile home was not executory, Trustee was not required to assume it under § 365. Even if it was executory, Trustee was not required to assume the contract when Debtor sold the property within nine days of filing her bankruptcy petition. Debtor's postpetition sale of the mobile home can be avoided under 11 U.S.C. § 549(a) but Trustee can only recover the value of the property in excess of Creditor's security interest. Under Iowa law, if a seller of a mobile home is listed as "owner" on the title, the seller is not the owner of the property but has a perfected security interest.

Schnittjer v. Burke Construction Co. (In re Drahn), No. 08-01197, Adv. 08-09103, 2009 WL 150654 (Bankr. N.D. Iowa Jan. 21, 2009) (denying summary judgment in turnover action)

Trustee seeks summary judgment against Creditor for proceeds it received from Debtor's postpetition sale of her mobile home. Creditor seeks summary judgment that it held title to the mobile home, a security interest, or an executory contract for sale. HELD: On the record presented, the Court is unable to grant summary judgment to either party. Creditor asserts it has either a lien or an executory contract which makes it entitled to the proceeds of the sale of the mobile home. Trustee asserts Burke has an unperfected security interest. A more fully developed record would allow the Court to determine the extent of Creditor's interest in the mobile home and the effect of that interest on Trustee's ability to recover the proceeds of Debtor's postpetition sale.

E. Preferences, 2601-2640

Schnittjer v. Cresco Livestock Market, Inc. et al (In re Honey Creek Cattle Co.), Ch. 7, No. 08-01398, Adv. 09-09017 et al, 2009 WL 1730679 (Bankr. N.D. Iowa June 17, 2009)

Trustee's complaint seeks to recover a preferential transfer. She moves for partial summary judgment on the § 547(b) elements, asserting facts are not in dispute and she is entitled to judgment as a matter of law. Defendant argues there are genuine issues of fact regarding most of the elements of § 547(b). It asserts Trustee's motion is premature and ruling should be reserved until after the discovery deadline when all issues can be dealt with at once. HELD: The Court concludes that partial summary judgment is not appropriate at this time. Defendant has raised issues of fact regarding most of the elements of § 547(b). If the issues relate more to Defendant's defenses than to Trustee's case in chief, it is more appropriate to allow all the facts to be fully discovered and the issues fully developed before granting summary judgment on a piecemeal basis.

F. Fraudulent Transfers, 2641-2670

Hanrahan v. Herz (In re Herz), Ch. 7, No. 08-00412, Adv. 08-09062, 2009 WL 1107744, Adv. 08-09063, 2009 WL 1107743 (Bankr. N.D. Iowa April 23, 2009) (issues of fact preclude summary judgment on fraudulent transfer claims)

Trustee seeks to avoid Debtor's transfer of real property to Defendants, Debtor's brothers, asserting a fraudulent transfer claim. Defendants contend that Debtor was not insolvent at the time of the transfer and the transfer was for reasonably equivalent value. HELD: Summary judgment cannot be granted because issues of material fact exist as to whether Debtor was insolvent and whether the transfer was for reasonably equivalent value.

H. Avoidance Rights, 2701-2740

Schnittjer v. Dupaco Community Credit Union (In re Noonan), No. 08-01557, Adv. 08-09122, 2008 WL 4974835 (Bankr. N.D. Iowa Nov. 20, 2008) (action to avoid lien survives motion to dismiss)

Trustee's complaint seeks to avoid a lien on Debtors' boat, motor and trailer based on the absence of a signed security agreement. Credit Union moves to dismiss. It asserts its LOANLINER agreement combined with an unsigned document describing the collateral satisfy the requirement of a security agreement. HELD: In ruling on this motion, the Court must accept as true all the averments of Trustee's Complaint. Credit Union has not specifically denied any of the statements in the Complaint. It is not entitled to dismissal of the complaint at this stage of the proceedings. This is especially true if the parties' intent becomes an issue. The Court cannot currently state that Trustee is not entitled to offer evidence in support of the claims set out in the complaint.

VI. EXEMPTIONS, 2761-2820

In re Wait, Ch. 7, No. 08-01390, 2009 WL 2341325 (Bankr. N.D. Iowa Sep. 1, 2009) (approving Trustee's proposed boundaries of Debtor's homestead)

This Court entered an Order on July 29, 2009 directing Trustee and Debtor to file their proposals concerning the boundaries of Debtor's one-half acre homestead in order that the Court could select the one which is most realistic and appropriate. HELD: Debtor is entitled to a homestead of one-half acre and the selection of the homestead out of the larger parcel should not negatively impact the access to and value of the remaining property. Debtor has chosen a homestead which bisects the entire property from north to south with irregular borders making the remaining property is less valuable and less marketable. Trustee's proposal is more realistic and appropriate and is approved by the Court.

In re Wait, Ch. 7, No. 08-01390, 2009 WL 2341325 (Bankr. N.D. Iowa July 29, 2009) (denying approval of Debtor's selection of her homestead)

Trustee objects to Debtor's selection of her homestead, arguing Debtor is attempting to impermissibly gerrymander the property to drive down the value of the remainder of the real estate. Debtor asserts her proposal is appropriate to maintain her access in light of possible changes to local streets. HELD: Debtor's selection of her homestead restricts access and effectively landlocks the nonexempt property. The parties are granted time to submit proposals regarding the boundaries of Debtor's homestead.

VII. CLAIMS, 2821-3000

C. Administrative Claims, 2871-2890

In re Kwik Way Products, Inc., Ch. 11, No. 08-00362, 2009 WL 807639 (Bankr. N.D. Iowa March 23, 2009) (landlord is entitled to administrative claim for post-petition rent, less offsets)

Debtor was a month-to-month tenant in Creditor's building. It asserts Creditor is not entitled to an administrative expense priority and seeks to offset amounts from the claim for work it performed for Creditor. HELD: Postpetition rent under an unexpired lease of non-residential real property is entitled to administrative expense priority. Creditor is entitled to postpetition rent less amounts one of its partners agreed to offset for services performed by Debtor.

VIII. TRUSTEES, 3001-3020

IX. ADMINISTRATION, 3021-3250

B. Possession, Use, Sale, or Lease of Assets, 3061-3100

In re Tekippe, No. 08-01216, 2009 WL 73782 (Bankr. N.D. Iowa Jan. 5, 2009) (denying Debtors' objection to auction of a cause of action), appeal dismissed, No. 09-6002 (B.A.P. 8th Cir. Feb. 11, 2009)

Debtors object to Trustee's Motion to conduct an auction of Debtors' prepetition cause of action against the State of Iowa. They assert they should be allowed to purchase the asset, rather than allowing the State to submit a higher bid than it had previously submitted. HELD: No promises were made upon which a claim of promissory estoppel could be based. Trustee's conduct in attempting to maximize estate value is appropriate. The Court finds no basis for allowing Debtors to dictate the terms of disposition of this estate asset.

In re Houston, No. 07-01798, 2008 WL 5215190 (Bankr. N.D. Iowa Nov. 18, 2008) (order approving settlement and compromise will not be set aside)

Debtor moves to set aside a compromise with Ch. 7 Trustee regarding a fraudulent transfer action pending on appeal. He asserts U.S. Trustee violated the compromise by filing an action to

revoke his discharge. HELD: Debtor's arguments are based largely upon his assumption that the U.S. Trustee and the Chapter 7 Trustee are the same entity and that the U.S. Trustee's Office is therefore bound by an asserted agreement between Debtor and the Chapter 7 Trustee. This assumption is incorrect. U.S. Trustee's role in this case is factually and legally separate from Ch. 7 Trustee's. No grounds exist to set aside the order approving settlement and compromise.

C. Debtor's Contracts and Leases, 3101-3130

In re Wait, No. 08-01390, 2008 WL 5427634 (Bankr. N.D. Iowa Dec. 30, 2008) (a mortgage is not an executory contract; Iowa homestead statute limits Debtor to one-half acre)

Trustee objects to Debtor's homestead exemption to the extent it exceeds statutory limits. Debtor asserts her mortgage is an executory contract, deemed rejected, and Trustee should pay the encumbrance remaining on the property. HELD: A mortgage is not an executory contract. Debtor's homestead exemption is limited to one-half acre within city limits.

E. Compensation of Officers and Others, 3151-3250

In re Simons, Ch. 7, No. 09-01428, 2009WL 3055280 (Bankr. N.D. Iowa Sep. 21, 2009) (ordering return of compensation paid to bankruptcy petition preparer)

U.S. Trustee requests the Court examine the fees paid to Harvey Berman for preparation of Debtor's bankruptcy petition and the appropriateness of Mr. Berman's services to Debtor. HELD: Mr. Berman qualifies as a bankruptcy petition preparer under § 110. The bulk of Mr. Berman's actions on Debtor's behalf substantially exceed the role of petition preparer and are tantamount to the unauthorized practice of law. Mr. Berman is not entitled to fees for any services he provided Debtor that went beyond the services that § 110 allows. While the Bankruptcy Code only allows him provide typing services, he charged Debtor a substantial amount of money at the outset and proceeded to perform myriad irrelevant or inappropriate tasks. Any benefits that inured to Debtor on account of Mr. Berman's 11.65 hours of typing services have been offset by the numerous harms Mr. Berman brought to Debtor's case. By denying him any compensation, the Court intends to discourage Mr. Berman from any future attempts to "assist" debtors in bankruptcy petition preparation.

In re Agriprocessors, Inc., Ch. 11, No. 08-02751, 2009 WL 2578950 (Bankr. N.D. Iowa Aug. 19, 2009) (considering fees and expenses requested by Trustee's financial and business operational advisors)

Trustee's Advisors request fees and expenses totaling \$409,470.29. The purchaser of Debtor's assets objects that the fees are exorbitant and have not been shown to benefit the estate. It also objects to fees requested by the controller which do not explain what services he provided. HELD: The Court will not approve fees for fee application preparation. All time entries by the

controller are identical and should be amended with more detailed descriptions of services provided. The remainder of the fees and expenses are approved.

In re Miell, Ch. 11, No. 09-01500 (Bankr. N.D. Iowa July 27, 2009) (denying motion to approve employment of various attorneys for Debtor), aff'd, No. C 09-112-MWB (N.D. Iowa Aug. 19, 2009)

Debtor asks the Court to fashion a mechanism for paying attorneys representing him in criminal, tax and civil matters. The U.S. Trustee asserts the bankruptcy estate should not bear the cost for Debtor to pay his personal attorneys. HELD: Only attorneys employed by the Trustee are entitled to compensation from the bankruptcy estate. If Debtor's attorneys are representing him in connection with the case, they are subject to the disclosure and review requirements of § 329. Trustee is entitled to an accounting and turnover of funds held in attorney's trust accounts.

In re Duffy, Ch. 13, No. 07-01665, 2009 WL 909256 (Bankr. N.D. Iowa March 30, 2009) (granting attorney's request for compensation in part)

Attorney requests compensation for services rendered post-confirmation. Trustee objects, asserting the hourly rate was excessive and certain charges were clerical in nature. HELD: Time billed to "prepare service of modified plan and notice" was purely clerical and not compensable. Reduced hourly rate as agreed by Attorney is not excessive.

In re H & W Express Co., No. 02-02017, 2008 WL 5244924 (Bankr. N.D. Iowa Nov. 18, 2008) (no cause exists to order disgorgement of fees)

U.S. Trustee requests examination of compensation paid to counsel for Debtor, based, in part, on concerns raised in a sentencing order in U.S. District Court in a case against a former principal of Debtor. HELD: The evidence presented is insufficient to warrant a modification of the original award of compensation. The number of hours Counsel expended and his hourly rate are reasonable under a lodestar analysis. Counsel's explanations concerning the source of the funds he received are un rebutted in the record.

X. DISCHARGE, 3251-3440

B. Dischargeable Debtors, 3271-3340

Fokkenna v. Chapman (In re Chapman), Ch. 7, No. 07-01485, Adv. 07-09193, 2009 WL 1951721 (Bankr. N.D. Iowa July 6, 2009) (dismissing complaint to deny discharge)

U.S. Trustee seeks denial of discharge for false oath and concealment of assets. He asserts Debtor failed to disclose assets, including income, jewelry and business interests, in her schedules or at the meeting of creditors. Debtor responds she intended to disclose all her assets and had no legal interest in a business run by her husband. HELD: It is axiomatic that a debtor

is strictly required to disclose all assets and interests in her schedules. Although Debtor failed to do so in this case, which constitutes a too casual approach to the requirements of the Code, it was not based on fraudulent intent. Denial of discharge for concealment of property or false oaths is not appropriate in these circumstances.

Fokkenna v. Ovel (In re Ovel), No. 06-01150, Adv. 07-09048, 2008 WL 5111340 (Bankr. N.D. Iowa Dec. 3, 2008) (denial of discharge for false oath and concealment of property)

U.S. Trustee seeks denial of discharge for false oath and concealment or transfer of assets. Debtor failed to disclose assets and recent payments to creditors in his schedules. He also transferred real estate and stock to his mother to the detriment of other creditors. Debtor responds he disclosed everything to his bankruptcy counsel and relied on counsel's expertise and advice. HELD: Debtor's schedules, made under oath, are false. Debtor knew he was not fully disclosing all of his assets, gifts and payments to creditors as required by the schedules. In light of all the circumstances, the Court concludes that Debtor prepared his bankruptcy petition and schedules with fraudulent intent. Thus, the Court will deny Debtor's discharge.

C. Debts and Liabilities Discharged, 3341-3410

First National Bank v. Burrell (In re Burrell), Ch. 7, No. 08-02771, Adv. 09-09064 (Bankr. N.D. Iowa Oct. 1, 2009)

Plaintiff moves for summary judgment, asserting Debtor and Defendant's Joint Stipulation in their dissolution action granted Defendant a lien in the nature of alimony. Defendant resists, asserting there is a genuine issue of material fact as to whether her lien secures a debt for alimony or for a property settlement. HELD: Genuine issues of material fact preclude summary judgment. The Court cannot adjudicate the lien rights between the parties with finality and consistency without knowing whether the underlying debt is alimony or a property settlement.

Tinder v. Educational Credit Management Corp. (In re Tinder), Ch. 7, No. 05-01190, Adv. 06-09106, 2009 WL 1035255 (Bankr. N.D. Iowa April 14, 2009) (denying request for undue hardship discharge of student loan debt)

Debtor wishes to discharge loans he incurred in pursuit of his chiropractic degree. HELD: Debtor did not establish that he suffers an undue hardship. He did not make a substantial effort to repay his loans and had sufficient excess income to pay some of his educational loan. The fact that Debtor was near retirement is a burden, but it is not "undue".

Locksperts, Inc. v. Heath (In re Heath), Ch. 7, No. 08-01919, Adv. 08-09160, 2009 WL 1065301 (Bankr. N.D. Iowa April 13, 2009) (granting partial summary judgment excepting debt, arising from theft, from discharge)

Plaintiff holds a state court judgment based in part on Debtor's concession that part of the debt arising from theft was fraudulently acquired. It requests exception from discharge for fraud. HELD: As conceded by Debtors, part of the state court judgment is excepted from one of the Debtors' discharge. Summary judgment is not appropriate regarding the remainder of the debt or on issues regarding the knowledge of the other Debtor.

Mitchell v. Bigelow (In re Mitchell), Ch. 7, No. 05-05637, Adv. 07-09160, 403 B.R. 795 (Bankr. N.D. Iowa March 30, 2009) (finding potential claimant, a minor, had notice through notice to his father; Debtor was not aware of potential claim), appeal pending, No. 09-6017, B.A.P. 8th Cir.

Plaintiff, who was a minor at the time of the Debtor's bankruptcy filing, asserts his claim is excepted from discharge because Debtor failed to list him as a creditor in her bankruptcy petition or give him notice of the case. HELD: Debtor had no duty to provide notice to Plaintiff because she did not have a reasonable basis to believe Plaintiff was a potential claimant. Also, Plaintiff's father's knowledge of Debtor's bankruptcy can be imputed to his minor child.

Lamb v. Kirk (In re Kirk), Ch. 7, No. 08-00634, Adv. 08-30035, 2009 WL 700192 (Bankr. N.D. Iowa March, 13, 2009) (finding lack of worker's compensation insurance is not willful injury)

Plaintiff was injured while working as an employee for Debtor as part of a school-to-work program. He alleges his claim for medical costs is excepted from discharge because Debtor's failure to maintain worker's compensation insurance was a willful and malicious injury to Plaintiff. Plaintiff contends Debtor knew he was supposed to carry insurance because he had previously carried insurance for other employees. HELD: Debtor's failure to obtain worker's compensation insurance was not willful. Plaintiff failed to demonstrate that Debtor knew he was required to carry insurance for school-to-work employees. Even if Debtor knew he was required to provide worker's compensation insurance, it does not follow that Debtor knew Plaintiff would be injured at work. Plaintiff did not provide any evidence that Debtor knew Plaintiff's injury was substantially certain to occur.

Jackson v. Bryant (In re Bryant), Ch. 7, No. 05-01016, Adv. 08-09023, 2009 WL 290478 (Bankr. N.D. Iowa Feb. 3, 2009) (discharge of dissolution debt under pre-BAPCPA law)

Under pre-BAPCPA law, Plaintiff alleges that debt owed by Debtor is not dischargeable. Debtor asserts that the debt is dischargeable under at least one of the prongs of § 523(a)(15) which permit discharge of dissolution debt. HELD: The debt owed by Debtor to Wells Fargo falls within the scope of § 523(a)(15) and is excepted from discharge. Debtor has failed to prove that he is incapable of paying this debt or that the burden on Plaintiff from discharging the debt is outweighed by Debtor's need for a fresh start.

Frances E. Bain Estate v. Hammen (In re Hammen), Ch. 7, No. 07-03523, Adv. 07-30156, 399 B.R. 867 (Bankr. N.D. Iowa Jan. 23, 2009) (Plaintiff's claims for years of trespass from Debtor's pond construction are included in the discharge, except for a claim of continuing

trespass arising from debris remaining on Plaintiff's land postpetition; judgment is entered for \$2,100)

Executors of landowner's probate estate brought action against Debtors, the owners of a neighboring parcel, for a determination of Debtors' liability for encroaching on decedent's land in connection with their construction of a pond and to except any resulting debt from discharge. Debtors assert that they had been granted easement for pond, either expressly or by estoppel, and that any suit to impose liability on them for their alleged trespass was barred on limitations grounds. HELD: Debtors committed several acts of trespass upon the property of Mrs. Bain based upon their failure to obtain legally recognizable consent from Mrs. Bain for the pond and dam project. The dealings between Debtors and Mrs. Bain did not rise to a level sufficient to establish either an express easement or an easement by estoppel. The Court finds, however, that the signature on the Group Planning Request is that of Mrs. Bain. Various acts of trespass occurred in the construction of the pond and dam. Through the interplay of Iowa law and Bankruptcy law, however, most of Plaintiff's claims are barred by the Iowa Statute of Limitations or the entry of the Chapter 7 discharge. Plaintiff's only viable claims arise from two acts of continuing trespass relating to: 1) the deposit of fence material and other debris on the Bain property when the pond and dam were constructed, and 2) the placement of concrete and bricks at the base of the dam a year or two after the construction of the dam. These are continuing trespasses with the extent of damages limited to that which occurred after the filing of Debtors' Chapter 7 petition on October 16, 2007. The entry of judgment of \$2,100 as damages for these acts satisfies all legally cognizable claims for all of the acts set forth in this record in the past and future.

Farmers Savings Bank v. Kucera (In re Kucera), No. 08-01612, Adv. 08-09136, 2009 WL 150860 (Bankr. N.D. Iowa Jan. 16, 2009) (weekend deadline to file complaints is extended by Rule to the following business day)

The Bank filed a Complaint to Determine Dischargeability of Debt under § 523(a)(2). Debtors assert the complaint was filed one day late. The deadline to file dischargeability complaints expired on October 26, 2008, a Sunday. The Bank filed the Complaint on Monday, October 27, 2008. It argues that Rule 9006(a) extends the deadline to the next business day when it falls on a weekend. HELD: Rule 9006(a) applies to the deadline set out in Rule 4007(c) for filing complaints to determine dischargeability of debts. The deadline in this case, falling on a Sunday, is thus extended to the following day, Monday, October 27, 2008. This is the date on which Plaintiff filed its dischargeability complaint. It is timely filed. Debtors' Motion to Dismiss must be denied.

Chase Bank USA, N.A. v. Swanson (In re Swanson), No. 07-03617, Adv. 08-30016, 398 B.R. 328 (Bankr. S.D. Iowa Nov. 13, 2008) (dischargeability of credit card debt)

The Bank alleges that its claim is excepted from discharge pursuant to § 523(a)(2)(A) and (C). Debtor denies that the debt is nondischargeable. HELD: Debtor purchased luxury goods within

90 days prepetition. Also, she acted fraudulently in making charges on her account during a 12-day period. The Bank failed to prove fraud as to a specific cash advance. Part of the debt is excepted from discharge under § 523(a)(2).

Stastny v. Sedivec (In re Sedivec), No. 08-00153, Adv. 08-09048, 396 B.R. 31 (Bankr. N.D. Iowa Oct. 22, 2008) (plaintiff failed to prove debtor made a false representation or that she justifiably relied on any promise he made)

Debtor's former girlfriend brought adversary proceeding to except debt from discharge. She asserts Debtor made a false representation by promising that, in exchange for the \$5,000 she gave him as down payment on a home where they would live, she would have ownership interest in home. HELD: Plaintiff failed to establish by a preponderance of the evidence the requisite elements of her claim under § 523(a)(2)(A). She failed to prove that Debtor made any false representation and she has not established that she justifiably relied on any alleged representations.

United States v. Hampton (In re Hampton), No. 08-00933, Adv. 08-09101, 396 B.R. 28 (Bankr. N.D. Iowa Oct. 16, 2008)

The SSA seeks to except debt from discharge for fraud or false representations under § 523(a)(2)(A). The debt arises from overpayment of disability benefits. Debtor moves to dismiss the complaint. She asserts the complaint fails to state a claim upon which relief may be granted. HELD: The complaint alleges Debtor knowingly withheld material information with the intent to deceive the SSA. It also alleges the SSA relied on inaccurate facts when making disability payments to Debtor. The allegations of the complaint, if true, sufficiently state a claim under § 523(a)(2)(A). Debtor's Motion to Dismiss must be denied.

D. Effect of Discharge, 3411-3440

In re Tarnowski-Giedrys, Ch. 7, No. 08-02262, 2009 WL 424999 (Bankr. N.D. Iowa Feb. 11, 2009) (rejecting reaffirmation agreement due to undue hardship)

Debtors seek court approval of a reaffirmation agreement for a 2005 BMW 330i. HELD: The reaffirmation agreement would pose an undue hardship on Debtors. If the reaffirmation agreement was approved, Debtors expenses would exceed their income. Mrs. Tarnowski has a job offer but the income is speculative. Further, Debtors failed to demonstrate they need a luxury vehicle or that they had investigated less expensive transportation options.

In re Byers, Ch. 7, No. 08-02228, 2009 WL 427339 (Bankr. N.D. Iowa Feb. 11, 2009) (rejecting reaffirmation agreement due to undue hardship)

Debtor seeks court approval of reaffirmation agreement for a 2008 Chevy Silverado. HELD: The Court rejects the reaffirmation agreement. Even though he has eliminated some expenses,

Debtor's monthly expenses exceed his income and he has failed to provide evidence of an alternative source of income.

In re Lang, No. 07-01387, 398 B.R. 1 (Bankr. N.D. Iowa Dec. 10, 2008) (remedies under discharge injunction not determinable until state court decides if creditor has a viable claim)

Debtor asserts Creditor violated the discharge injunction by filing an action against him in Iowa District Court after he received his bankruptcy discharge. Creditor asserts his Iowa action is based on Debtor's postpetition conduct and is not subject to the discharge. HELD: Creditor asserts Debtor is liable for prepetition judgment against Debtor's former corporation under the "mere continuation" doctrine based on Debtor's postpetition business activities. Some authority exists for Creditor's legal theory. Creditor may assert this claim in state court. After the claim is resolved, Debtor may revisit his assertion that Creditor's activities violate the discharge injunction.

In re Sickels, No. 07-01569, 2008 WL 4975878 (Bankr. N.D. Iowa Nov. 20, 2008) (allowing rescission of Reaffirmation Agreement for mutual mistake)

Debtors wish to rescind a Reaffirmation Agreement. Credit Union resists the rescission, asserting that the statutory period for rescission of the Reaffirmation Agreement has expired. HELD: The Reaffirmation Agreement was entered into under mutual mistake. Contract principals require that Debtors be allowed to rescind it. Credit Union's objection to the rescission must be denied.

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

C. Conversion or Dismissal, 3591-3594

In re Miell, Ch. 11, No. 09-01500, 2009 WL 3270508 (Bankr. N.D. Iowa Oct. 9, 2009) (converting case from Chapter 11 to Chapter 7)

The U.S. Trustee and Heritage Bank both move to convert the case to Chapter 7, joined by thirteen other parties. They assert the estate is incurring significant expenses and secured creditors interests are at risk. Debtor and Chapter 11 Trustee object, asserting that reorganization of Debtor's property management business is possible and the real estate has significant equity which would be lost in a Chapter 7 case. Debtor owns 460 properties with 850 rental units which

he values at \$69 million. HELD: Debtor's estate is in considerable disarray. Property taxes are unpaid; security deposits are missing; many of the properties require substantial repairs. The movants have established loss to or diminution of the estate. In addition, there is an absence of a reasonable likelihood of rehabilitation. The problems with Debtor's business are compounded by his conviction in Federal court on multiple counts of fraud. Cause exists to convert to Chapter 7 and no "unusual circumstances" were shown which weigh against conversion.

D. Administration, 3621-3650

In re Gonzales, Ch. 13, No. 08-00719, 2009 WL 1939850 (Bankr. N.D. Iowa July 6, 2009) (denying motion to incur debt to purchase two vehicles)

Debtors wish to borrow \$31,000 to purchase a 2009 VW Routan to transport themselves and their four children, and a 2001 Jeep Grand Cherokee. Trustee responds that she has no objection because the total monthly payment, or \$965, is \$20 less than previous vehicle payments. HELD: The purchase price for the 2001 Jeep appears reasonable. The cost of the 2009 VW, however, is excessive. The Court needs more information regarding the vehicles, the credit arrangements and whether less expensive alternatives are available.

XV. ARRANGEMENTS, 3661.100-3661.999

XVI. COMPOSITIONS, 3662.100-3670

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

XVIII. INDIVIDUAL DEBT ADJUSTMENT, 3701-3740

In re Lynch, Ch. 13, No. 07-02323, 2009 WL 3192939 (Bankr. N.D. Iowa Oct. 1, 2009) (allowing Debtors to retain part of their tax refund)

Debtors wish to retain \$1450 of their tax refund to cover a University of Northern Iowa bill of \$820, the muffler system replacement for one of their vehicles of \$430, and plumbing and HVAC license fees of \$200. Trustee objects, asserting she needs more information on the UNI bill and the license fees. HELD: UNI's attempt to have Debtor pay an outstanding prepetition tuition bill before allowing her to register for additional classes may violate the automatic stay. The remainder of Debtors' request is granted as the vehicle repair bill and the professional licenses are reasonable and necessary expenses.

In re Kruse, No. 08-02383, 406 B.R. 833 (Bankr. N.D. Iowa June 11, 2009) (denying confirmation where plan separately classified student loan debt)

Trustee objects to confirmation of Debtor's Chapter 13 Plan. She argues Debtor improperly includes 2008 tax refunds in her monthly income on Schedule I. She asserts Debtor should turn over 2008 tax refunds to Trustee as requested. Trustee also objects that Debtor's student loan claim should be paid through the plan and should be prorated with all unsecured claims. Debtor's plan classifies the student loan claim separately from other unsecured claims and provides for direct payment of \$250 per month to the student loan creditor. HELD: The tax refund is disposable income. Debtor may retain a portion for reasonable, necessary expenses but the remainder must be paid toward the plan. Debtor may not separately classify student loan debt to the detriment of other secured creditors. Schedules must be amended to more accurately reflect current and foreseeable income and expenses.

XIX. REVIEW, 3741-3860

XX. OFFENSES, 3861-3863