

SURVEY OF RECENT DECISIONS
OF
THE HONORABLE PAUL J. KILBURG

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

October 8, 2011 – October 10, 2012

Prepared by
Amy M. Kilpatrick
Law Clerk

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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 the Court's web site, www.ianb.uscourts.gov.

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I. IN GENERAL, 2001-2120

II. COURTS; PROCEEDINGS IN GENERAL, 2121-2200

B. Actions and Proceedings in General, 2151-2180

FIA Card Services, N.A. v. Hall (In re Hall), No. 11-02339, Adv. 11-09092, 2012 WL 4501619 (Bankr. N.D. Iowa Sep. 28, 2012) (denying summary judgment based on untimely answers to requests for admissions)

Plaintiff seeks entry of summary judgment, asserting the relevant facts should be deemed admitted based on Debtor's failure to timely answer or object to requests for admissions. Debtor moves that the deemed admissions be withdrawn or amended and asks that his late responses be substituted for the deemed admissions. HELD: The Court has discretion to allow Debtor to amend the admissions, which would promote the presentation of the merits of the action. Plaintiff has the burden to show that it would be prejudiced in maintaining its action on the merits. Plaintiff states it is prejudiced as a consequence of Debtor withdrawing and amending the admissions because "a trial shall occur with all of its attendant risks and costs." This is not the type of prejudice contemplated by Rule 36(b). The Court concludes that Debtor's motion to amend or withdraw the admissions should be granted. This creates factual disputes which preclude entry of summary judgment in Plaintiff's favor.

Jirak v. Argent Home Mortgage Co. LLC (In re Jirak), No. 11-01510, Adv. 11-09068, 2011 WL 5325474 (Bankr. N.D. Iowa Nov. 3, 2011) (dismissing adversary case after underlying Ch. 13 case is dismissed)

HELD: In light of the dismissal of the underlying bankruptcy case, and as a matter of judicial economy, convenience to the parties, fairness and comity, the Court concludes that this adversary proceeding should be dismissed. Plaintiffs are no longer Debtors in bankruptcy. Their non-bankruptcy claims can be raised in other courts. There is no reason to retain jurisdiction over this adversary proceeding.

C. Costs and Fees, 2181-2200

In re Wright, 08-02079, 451 B.R. 757 (Bankr. N.D. Iowa Dec. 28, 2011) (awarding actual and punitive damages against AHMSI for failure to abide by requirements in the confirmed plan to provide notice of mortgage payment changes post-confirmation)

Debtors seek sanctions against AHMSI for violations of the Chapter 13 plan. They argue AHMSI failed to give them notice of monthly mortgage payment increases although notice is mandated by the confirmed plan. This failure to notify led to defaults in Debtors' mortgage payments and two Motions for Relief from Stay in the past two years. Debtors

request actual and punitive damages and attorney fees as sanctions. HELD: The Court has discretion to sanction AHMSI for violating the terms of the confirmed plan. It failed to notify Trustee, Debtors and Debtors' attorney of changes in plan payments and failed to respond to Debtors requests for payment information. During the relevant time period, AHMSI obviously knew what its obligations were under the plan but failed to act on those obligations. Considering the time spent and the stress and frustration suffered by both Debtors, the Court finds compensatory damages are appropriate. The Court considers AHMSI's conduct to be willful. AHMSI's attitude and conduct in this matter are indefensible. The Court awards actual damages of \$10,000 and punitive damages of \$40,000, plus attorney fees.

III. THE CASE, 2201-2360

B. Debtors, 2221-2250

In re Jordan, No. 11-01951, 2011 WL 5325460 (Bankr. N.D. Iowa Nov. 3, 2011)
(dismissing Chapter 13 case for ineligibility based on debts exceeding the statutory limit)

A creditor asserts Debtor is not eligible for Chapter 13 because his secured and unsecured debts exceed the limitations in § 109(e). Trustee joins in the Motion to Dismiss, noting that Debtor's schedules show at least \$460,000 in noncontingent, unsecured debt, along with more than \$9.9 million in contingent unsecured debt. The limit of unsecured noncontingent debt in § 109(e) is \$360,475. Trustee also states Debtor has not turned over all tax returns and pay information. HELD: The case is dismissed because noncontingent secured and unsecured debts exceed the limitations of § 109(e).

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

B. Automatic Stay, 2391-2420

In re Nemeec, No. 12-00986, 2012 WL 2803735 (Bankr. N.D. Iowa July 10, 2012)
(automatic stay does not protect property of corporation solely owned by individual Chapter 13 debtor)

Liberty Bank wishes to proceed with a foreclosure petition against RDN Properties, L.C. Debtor objects. He asserts a pending buyout of RDN real estate would benefit the Bank and other creditors by allowing him to use equity in the property to pay into his Chapter 13 plan. HELD: The automatic stay arising in Debtor's individual case does not apply to actions against property owned by his solely-owned entity. The Court will not invoke its equitable powers under § 105(a) to extend the stay to cover the Bank's foreclosure proceeding against RDN. Only individuals, not corporations, are entitled to utilize the protections of Chapter

13. Debtor's wish to extend the Chapter 13 automatic stay to protect RDN's property is an attempt to reverse pierce the corporate veil in order to make RDN's assets liable for the debts of Debtor, the sole shareholder of RDN. Under Iowa law, such lowering of the corporate shield at the whim of a principal of the corporation is inappropriate.

V. THE ESTATE, 2491-2760

VI. EXEMPTIONS, 2761-2820

VII. CLAIMS, 2821-3000

VIII. TRUSTEES, 3001-3020

IX. ADMINISTRATION, 3021-3250

E. Compensation of Officers and Others, 3151-3250

In re A'Hearn, No. 11-00615, 2012 WL 1378467 (Bankr. N.D. Iowa April 19, 2012) (fees paid to counsel for Debtors from non-exempt property of the estate ordered disgorged)

Trustee seeks the return of fees paid to Debtors' counsel from non-exempt property of the estate. The Law Firm asserts only a portion of the fees paid are traceable to property of the estate. HELD: Communications from counsel for Trustee on Trustee's behalf have the same authority as do direct communications from Trustee. The law is settled that a Chapter 7 Debtors' attorney may not be paid from property of the bankruptcy estate. Trustee has the right to require turnover of funds to the extent they are non-exempt property of the bankruptcy estate. It is evident to the Court from the timing of the payments to the Law Firm that they came from non-exempt funds. The total amount to be disgorged is \$15,667.58.

X. DISCHARGE, 3251-3440

B. Dischargeable Debtors, 3271-3340

Du Trac Comm. Credit Union v. Hefel (In re Hefel), No. 10-02787, Adv. 12-09016, 2012 WL 1853851 (Bankr. N.D. Iowa May 21, 2012) (compromise in Chapter 7 case does not preclude adversary proceeding seeking revocation of discharge)

Debtors seek summary judgment on their claim of res judicata. Debtors argue the claims asserted in DuTrac's Complaint are precluded from further litigation by the Court's Order granting Trustee's Motion to Compromise in the Chapter 7 case. DuTrac argues that the claims asserted in this proceeding were not litigated in the pre-discharge proceedings in the

Chapter 7 case. HELD: Debtors are not entitled to summary judgment based on claim preclusion. They have failed to convince the Court that the Order approving the Motion to Compromise satisfies all four elements of that doctrine. The two proceedings are not based on the same claims or causes of action and it is debatable whether the earlier Order constitutes a final judgment on the merits or whether both proceedings involve the same parties.

Du Trac Comm. Credit Union v. Hefel (In re Hefel), No. 10-02787, Adv. 12-09016, 2002 WL 1565233 (Bankr. N.D. Iowa May 1, 2012) (denying motion to quash discovery requests, setting copy costs at \$0.10)

Debtors' Motion to Quash and Motion for Protective Order state Plaintiff has issued subpoenas and requests for production on nine other individuals and businesses seeking voluminous documentation regarding Debtors' assets and the closely-held entities they previously claimed exempt. Debtors assert the requests are duplicative of discovery Plaintiff obtained on the issue of exemptions, include property that was not property of the bankruptcy estate, or include irrelevant information arising postpetition. Plaintiff responds it is seeking more information than it received regarding the exemption issue. Further documentation is necessary regarding its claims in this adversary proceeding. HELD: The Court, in its discretion, concludes that Plaintiff's subpoenas and requests for productions should not be quashed. Plaintiff is entitled to seek information pursuant to a liberal interpretation of the discovery rules. At the hearing, Plaintiff professed it was open to discussions to limit duplication of efforts between the parties and between this litigation and the exemption litigation. In addition, Plaintiff offered to pay a reasonable amount for copying costs. The Court finds that the cost for copies should be \$0.10.

C. Debts and Liabilities Discharged, 3341-3410

In re Scharpf, 09-00246, 2012 WL 589649 (Bankr. N.D. Iowa Feb. 22, 2012)
(dischargeability of debt cannot be relitigated in bankruptcy court after Iowa District Court found the debt was not discharged)

Debtor filed a Motion to Reopen and Motion to Amend Schedule. They assert that a debt owed to Robert Thola in the amount of \$15,000 was included in the original filing and request a 30-day deadline for Mr. Thola to file an objection to discharge of the debt. Mr. Thola argues that Debtor is barred by the Rooker–Feldman doctrine and claims preclusion from receiving any relief in this reopened case because the dischargeability issue has already been decided by the Iowa District Court to Debtor's detriment. HELD: The Iowa District Court found that Mr. Thola had not received notice of Debtor's bankruptcy case and his claim was excepted from discharge under § 523(a)(3)(A). This Court and others have found to the contrary. Under the Rooker–Feldman doctrine as well as the laws of claim preclusion, however, this Court may not substitute its determination for that of the Iowa District Court. The law of claim preclusion prevents relitigation in this forum of the dischargeability of Mr. Thola's claim.

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

XVIII. INDIVIDUAL DEBT ADJUSTMENT, 3701-3740

In re Keller, No. 07-01516, 2012 WL 1918580 (Bankr. N.D. Iowa May 25, 2012) (Chapter 13 debtors may not use disposable income to replace roof post-confirmation)

Debtors seek Court approval to use a bonus check of \$8,630.34 to replace their defective asphalt shingles with a metal roof estimated to cost \$9,320. HELD: Debtors' new roof is not a reasonable and necessary expense to be paid from Debtors' \$9,320 bonus which is acknowledged to be disposable income. Debtors have only a few more months to make payments in their five-year plan. They have been paying \$490 per month out of their ample income and could still afford to make multiple purchases for home maintenance over the life of the plan. They prefer to replace their defective asphalt roof with a metal roof, although it appears to cost twice as much. The Court concludes that the entire bonus should be paid into the Chapter 13 plan for the benefit of creditors.

In re Jirak, No. 11-01510, 2011 WL 5325431 (Bankr. N.D. Iowa Nov. 3, 2011) (cause exists to dismiss Chapter 13 case for lack of eligibility, failure to file documents, etc.)

Trustee moves to dismiss this case on several grounds. She asserts Debtors are not eligible for Chapter 13 relief because their unsecured debt exceeds the statutory limit. Additionally, Trustee notes that Debtors have not timely complied with the Court's order to amend the Plan and Schedules. Debtors are also currently delinquent in making plan payments. The U.S. Trustee's comment notes that Debtors' Schedule J shows negative monthly net income making them unable to make any payment to creditors under a Chapter 13 plan. HELD: Cause exists to dismiss this case. The automatic stay has been in place for almost four months without a confirmable plan on file. The Claims filed to date exceed the statutory limit of \$360,475 for Debtors to be eligible for Chapter 13 relief. Debtors have not filed an

amended plan or amended schedules as ordered by the Court. Debtors do not have sufficient income to fund a plan.

In re Schmitt, No. 09-02238, 2011 WL 5024232 (Bankr. N.D. Iowa Oct. 20, 2011) (granting hardship discharge in Chapter 13; student loans remain excepted from discharge)

Trustee moves to dismiss the case asserting Debtors are delinquent in making plan payments. Debtors request a hardship discharge. The U.S. Department of Education objects to the extent Debtors intend to include student loan debt in their discharge. HELD: Debtors are entitled to a hardship discharge under § 1328(b). Neither Trustee nor the Department of Education object to a hardship discharge so long as student loans are not included in the discharge. Debtors' revised Schedules I and J show Debtors are not able to make monthly Chapter 13 plan payments. Unsecured creditors have already received substantially more in this case than they would have in a Chapter 7 liquidation. Debtors have satisfied each of the three elements of § 1328(b) and granting a hardship discharge is appropriate. Student loans remain excepted from discharge under § 523(a)(8).

XIX. REVIEW, 3741-3860

XX. OFFENSES, 3861-3863