

SURVEY OF RECENT DECISIONS
OF
THE HONORABLE PAUL J. KILBURG

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

October 10, 2012 – October 4, 2013

Prepared by
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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

Jirak v. Bradford Mortgage et al (In re Jirak), No. 12-00169, Adv. 19-09044, 2012 WL 5832437 (Bankr. N.D. Iowa Nov. 16, 2012) (dismissing adversary proceeding based on statutes of limitations)

Debtors assert claims against three mortgage companies and other unknown parties based on allegations that they were deceived when they refinanced their mortgage and received a sub-prime adjustable rate mortgage loan without their knowledge. Deutsche Bank moves to dismiss the adversary proceeding. HELD: Several of the arguments for dismissal have merit. Most conclusively, the applicable statutes of limitations have run. Debtors' claims are barred as untimely and the adversary proceeding is dismissed.

III. THE CASE, 2201-2360

C. Voluntary Cases, 2251-2280

In re Mosher, No. 13-01154, 2013 WL 4453360 (Bankr. N.D. Iowa Aug. 16, 2013) (dismissing Chapter 13 case for abuse of the bankruptcy process from serial filings)

U.S. Trustee asserts Debtors' multiple Chapter 13 cases constitute an abuse of the bankruptcy system. He requests an order prohibiting future filings by Debtors unless they obtain prior permission of the Court. The married debtors individually filed a total of five Chapter 13 petitions in less than two years within days of scheduled foreclosure sales. They were advised to do so by an online loan modification company and their mortgage lender. HELD: The multiple filings are an abuse of the bankruptcy process. The case is dismissed and Debtors are barred from filing another bankruptcy petition for one year without leave of the Court.

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

C. Relief from Stay, 2421-2460

In re Cornish, No. 12-02250, 2013 WL 1755485 (Bankr. N.D. Iowa April 24, 2013) (granting relief from automatic stay to allow state court to address Debtors' rights)

The Bank seeks relief from the automatic stay to foreclose on real estate. Debtors resist. They state the Bank is not a secured creditor of Debtors. Rather, they argue, the Bank is an unsecured creditor attempting to deprive Debtors of their life estate in real estate. HELD: The Bank holds a mortgage granted by Debtors when they thought Debtor Mark Cornish held fee simple title in the real estate. Assuming without deciding that Debtor held a life estate interest at that time, under Iowa law Debtor could grant a mortgage on his interest in the real estate. This gives the Bank at least a colorable claim to the property in question. Debtors have no equity in the property and the property is not necessary for reorganization as this is a Chapter 7 liquidation case. Any prejudice to Debtors is outweighed by the benefit to the Bank by allowing it to proceed with its foreclosure action in Iowa District Court. That court is in as good a position as this Court to determine the property interests of the parties. The foreclosure action is already at the summary judgment stage. Judicial economy is better served by allowing the Iowa District Court to resolve these matters.

D. Enforcement of Injunction or Stay, 2461-2480

In re Ehlinger, No. 12-01680, 2013 WL 1147216 (Bankr. N.D. Iowa March 19, 2013) (creditor's actions in Debtor's bar constitute a willful violation of the automatic stay)

Debtor seeks sanctions against William Bullock and Bullock Ag Service for violating the automatic stay. He asserts Mr. Bullock's actions in Debtor's bar on a Saturday night in October 2012 constitute a willful violation of the stay and caused him to lose income. Mr. Bullock denies that he made any attempt to collect funds in violation of the automatic stay or that his actions caused Debtor to lose business. HELD: On the issue of credibility, the Court finds Debtor's testimony is more likely to be true. The Court is convinced that Mr. Bullock said something about Debtor's bankruptcy and wanting payment from Debtor for money owed, loudly enough to be heard by other customers in the bar. This constitutes a willful violation of the automatic stay. William Bullock willfully violated the automatic stay by his actions on October 27, 2012. The Court awards Debtor actual damages of \$500 and attorney fees of \$500.

V. THE ESTATE, 2491-2760

VI. EXEMPTIONS, 2761-2820

VII. CLAIMS, 2821-3000

E. Determination, 2921-2950

In re Tanner, No. 12-01429, 2013 WL 2318848 (Bankr. N.D. Iowa May 28, 2013) (finding Debtor rebutted validity of mortgagee's proof of claim)

Debtor disputes the amounts set out in Nationstar's proof of claim. He asserts he entered into a modification agreement with Bank of America Home Loans, Nationstar's predecessor in interest. The proof of claim is contrary to that agreement. Debtor asserts his payments are current under the agreement. Nationstar denies Debtor's assertions. HELD: Debtor has presented sufficient evidence to rebut the presumptive validity of Nationstar's Proof of Claim. Nationstar has failed in its burden to prove the allowability of the claim. None of the testimony or documents in the record sufficiently substantiates the amounts set out in the Proof of Claim. Therefore, Debtor's objection to the Proof of Claim is sustained. Nationstar's claim is allowed in the amounts set out in Debtor's confirmed plan.

In re Pierce, No. 12-01271, 2013 WL 968101 (Bankr. N.D. Iowa March 12, 2013) (allowing claim as filed in light of lack of evidence to rebut the validity of the proof of claim)

Debtors object to the claim filed by the IRS. They assert the value of the equity in their property is much less than the amount the IRS lists as its secured claim. The IRS used Debtors' schedules to value the secured claim. HELD: Debtors have failed to rebut the presumptive validity of the IRS claim with sufficient proof of the value of their equity in the property. The IRS claim is allowed as filed.

VIII. TRUSTEES, 3001-3020

IX. ADMINISTRATION, 3021-3250

E. Compensation of Officers and Others, 3151-3250

In re Dyaljee, No. 09-02033, 2013 WL 2154384 (Bankr. N.D. Iowa May 17, 2013) (additional attorney fees not approved)

Debtors' attorney seeks additional compensation to be paid through the Chapter 13 plan. HELD: The Court declines to approve additional attorney fees. The attorney has already received more than double the amount considered sufficient to compensate for basic services in a Chapter 13 case. This is a straight forward Chapter 13 case with no controverted issues. No further attorney fees will be allowed or paid for services as attorney for Debtors in this case.

In re Kolberg, No. 12-01857, 2013 WL 878770 (Bankr. N.D. Iowa March 8, 2013) (ordering petition preparer to refund fee paid by Debtors)

U.S. Trustee seeks sanctions against a petition preparer for providing legal advice and using improper advertising. HELD: The petition preparer improperly provided legal advice. She is ordered to refund the \$150 fee paid by Debtors.

X. DISCHARGE, 3251-3440

B. Dischargeable Debtors, 3271-3340

Du Trac Community Credit Union v. Hefel (In re Hefel), No. 10-02787, Adv. 12-09016, 2013 WL 4010304 (Bankr. N.D. Iowa Aug. 5, 2013), aff'd, No. C 13-1029 EJM (N.D. Iowa Nov. 19, 2013) (revoking discharge for fraud in recklessly or knowingly omitting assets in schedules and testimony)

Du Trac seeks revocation of Debtors' discharge for fraud including false oaths and concealment of property. Debtors assert Du Trac is barred from bringing these claims. They argue Du Trac had knowledge of the relevant facts prior to entry of discharge and is therefore prevented from pursuing its claim. Debtors also deny that they committed fraud. HELD: The Court concludes that Du Trac has proven that Debtors committed fraud by recklessly or knowingly omitting assets in their bankruptcy schedules and statements in order to mislead Du Trac and Trustee. They further failed to disclose all their assets when questioned under oath at the § 341 meeting of creditors and Rule 2004 exams. Thus, Debtors committed fraud under §§ 727(a)(2) and (4). Debtors' discharge is revoked pursuant to § 727(d)(1).

DuTrac Community Credit Union v. Hefel (In re Hefel), No. 10-02787, Adv. 12-09016, 2013 WL 80152 (Bankr. N.D. Iowa Jan. 7, 2013) (denying summary judgment on claim based on fraudulent intent; allowing amendment of complaint to specifically plead fraud)

Plaintiff requests summary judgment on its complaint to revoke discharge. Debtors argue some of Plaintiff's allegations were not properly pled. HELD: Because fraudulent intent is a factual question, the Court declines to grant Plaintiff summary judgment. Cause exists to grant Plaintiff time within which to amend the complaint to include the "who, what, when, where, where, and how" surrounding each of the allegations of fraud set out in the Joint Pre-Trial Statement and Motion for Summary Judgment which were not included in the original complaint.

C. Debts and Liabilities Discharged, 3341-3410

Alliant Credit Union v. Hansen (In re Hansen), No. 12-01989, Adv. 12-09135, 213 WL 1707683 (Bankr. N.D. Iowa April 17, 2013) (excepting debt from discharge for third party's losses arising from Debtor's embezzlement from his employer)

The Credit Union seeks to except debt from discharge under § 523(a)(4) based on losses it sustained from Debtor's embezzlement from his employer. Debtor denies he committed embezzlement with respect to the Credit Union. He argues the Credit Union is not entitled to a finding of nondischargeability based on the embezzlement from his employer. HELD: The Court finds that the Credit Union has standing to assert a § 523(a)(4) claim for embezzlement. The stipulated facts, including Debtor's guilty plea to the charge of theft, establish that Debtor committed embezzlement. He fraudulently deposited checks payable

to his former employer, Triton, in his personal account and kept the funds for his personal use. Debtor presented the checks for deposit at the Credit Union. The Credit Union has a claim against Debtor under the Uniform Commercial Code. The Credit Union was injured by Debtor's embezzlement from Triton to the extent it was liable to Triton under the Uniform Commercial Code. The Court concludes the Credit Union has met its burden to prove that its claim is excepted from discharge under § 523(a)(4) for embezzlement.

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

B. The Plan, 3531-3590

In re Kwik-Way Products, Inc., No. 08-00362, 2012 WL 6737828 (Bankr. N.D. Iowa Dec. 28, 2012) (awarding sanctions for Bank's failure to release liens as required by confirmed Chapter 11 plan)

Debtor seeks sanctions, asserting the Bank of America violated the confirmed Plan by improperly filing and continuing UCC liens post-confirmation. The Bank seeks sanctions, asserting Debtor's allegations are without basis in law or fact. HELD: Debtor has proved that its attempts to obtain financing were impeded by the Bank's failure to release liens as required by the Chapter 11 plan. The Court awards Debtor the reopening fee, certain quarterly fees and attorney fees.

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 Baker, No. 12-00107, 2013 WL 1897844 (Bankr. N.D. Iowa May 7, 2013) (allowing Debtor to retain a portion of additional disposable income for unexpected expenses)

Debtor wishes to retain \$5,685.59 he received as a profit sharing bonus and CIPP payout. He is planning a June wedding with a cost of \$4,261.89 and seeks permission to use the bonus and CIPP payout to pay for wedding expenses and potential overages. HELD: The Court

finds that \$2,000 of the \$5,685.59 Debtor received as a profit sharing bonus and CIPP payout may be utilized for these expenses. The remainder is disposable income to be turned over to the Chapter 13 Trustee and applied to the confirmed Chapter 13 plan.

XIX. REVIEW, 3741-3860

XX. OFFENSES, 3861-3863