

SURVEY OF RECENT DECISIONS
OF
THE HONORABLE PAUL J. KILBURG

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

October 18, 1997 - October 1, 1998

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 October 17, 1997) may be available soon on our 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

Terpstra v. Koehring Crane Co. (In re Iowa Iron Works)
No. 94-11378C, Adv. 96-1231C, Chapter 7, 11/21/97

Rule 55(c)
60(b)

Defendant moves to set aside default judgment for inadvertence or excusable neglect. HELD: Defendant failed to forward the notice and complaint to counsel. Although Defendant had informed Trustee it felt it had a defense entitling it to setoff, Defendant neglected its duty to answer the complaint and assert that defense. Defendant's neglect of the proceeding is not excusable.

C. Costs and Fees, 2181-2200

In re Scott Allan Garrison
No. 97-03688-W, Chapter 7, 3/16/98

11 U.S.C. § 362(d)

Bank requested an award for costs in its Motion for Relief from Automatic Stay. No resistance was filed. HELD: Generally, creditors are not entitled to attorney fees or costs in bankruptcy litigation. This holds true in motions for relief from stay. Relief from stay is granted; the Bank's requests for costs is denied.

III. THE CASE, 2201-2360

D. Involuntary Cases, 2281-2310

In re N2N Incorporated
No. 98-01666-C, Chapter 7, 7/31/98

11 U.S.C. § 303

Creditors filed an involuntary petition against N2N. N2N moves to dismiss arguing the petition was not properly executed. HELD: The defects in the petition may be cured by amendment. Defects in the number of creditors is also a correctable error. The petition is now sufficient through amendment and joinder of other creditors. Motion to Dismiss is denied.

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

A. In General, 2361-2390

In re Joan Loehr
No. 96-12235-C, Chapter 7, 4/14/98

11 U.S.C. § 524(a)(2)
§ 105(a)

Debtor asserts Bank violated discharge injunction by continuing to send letters and statements requesting payment after the entry of discharge. Debtor testified that this correspondence was very unsettling and she has required the assistance of a psychiatrist. HELD: Bank has committed contempt if it willfully intended the actions which violated the discharge injunction. The court may award actual and punitive damages. Debtor has met her burden of proof by clear and convincing evidence. The Court awards actual damages of \$1,120, attorney fees of \$560 and punitive damages of \$3,360.

C. Relief from Stay, 2421-2460

In re Martin R. Bielenberg
No. 97-03063-S, Chapter 12, 1/26/98

U.C.C. § 1-201(37)

Bank requests relief from stay regarding two pieces of farm machinery. Debtor debates whether the financing provided by the Bank constitute leases or contracts intended to create a security interest. HELD: The Court makes this analysis by applying the criteria in UCC 1-201(37). The “lease” regarding the vac-u-vator constitutes a contract creating a security interest. Adequate protection exists and the Bank is not entitled to relief from stay. As to the tractor, the lease is a true lease. The Bank is entitled to relief from stay as to the tractor.

D. Enforcement of Injunction or Stay, 2461-2480

In re John and Lee Ann Tomlinson
No. 95-62170-W, Chapter 13, 5/5/98

11 U.S.C. § 362(h)

Credit Bureau continued to attempt to collect payment on Debtor's medical bills postpetition. A glitch in its computer program generates a letter and a contact by a Credit Bureau employee before flagging a file as being protected by the automatic stay. Credit Bureau also filed a small claims action and made other attempts at collection. Debtor moves to hold Credit Bureau in contempt and requests damages. HELD: Even if the computer glitch were the sole cause of the Credit Bureau's contacts with Debtors, that does not excuse the Credit Bureau's conduct. Failure to provide adequate safeguards to prevent violations of the automatic stay renders creditors culpable for such violation. The Credit Bureau had direct knowledge of Debtors' bankruptcy filing. It willfully violated the automatic stay, warranting an award of damages. The Court awards actual damages of \$1,250, attorney fees of \$1,751.20, and punitive damages of \$5,000, for a total of \$8,001.20.

V. THE ESTATE, 2491-2760

C. Property of Estate in General, 2531-2570

Fokkena v. Nicola (In re David West)
No. 97-02206-W, Adv. 97-9194-W, Chapter 7, 4/15/98

Settlement

Trustee requests an order compelling Defendant, Debtor's ex-wife, to perform the terms of their settlement agreement. Defendant asserts a misunderstanding in the creation of the settlement agreement. HELD: The parties' attorneys had reached an agreement to settle. The settlement should be enforced as a

contract. There was ample consideration and a meeting of the minds. Defendant's unilateral misunderstanding is not grounds to set the settlement aside.

In re Cynthia Climer
No. 97-01864C, Chapter 7, 11/26/97

11 U.S.C. § 554
Iowa Code § 630.18

Creditor objects to Trustee's abandonment of garnished funds to Debtor. Creditor had garnished Debtor's wages prepetition; the garnished funds were held by the Clerk of Iowa District Court at the time Debtor filed her petition. HELD: Debtor has bare legal title to the funds and the right to challenge the garnishment. This is the extent of the bankruptcy estate's interest in the garnished funds. Trustee should abandon the garnished funds back to the Clerk of Court for completion of condemnation proceedings.

In re Connie June Meyer
No. 95-62169-W, Chapter 7, 1/26/98

11 U.S.C. § 541(a)(1)
31 C.F.R. § 315.5

Debtor's mother objects that savings bonds she purchased in Debtor's name are not property of the estate. HELD: Federal regulations are dispositive regarding ownership of Savings Bonds. The fact that the bonds are solely in Debtor's name is dispositive of her ownership. Her mother did not create a spendthrift trust by placing the bonds in a Bank's vault with instructions not to turn the bonds over to Debtor except in certain circumstances. The bonds are property of the estate, available to Trustee for distribution to creditors.

D. Liens & Transfers; Avoidability, 2571-2600

In re Keith A. Konzen
No. 96-21884D, Chapter 7, 11/5/97

Iowa Code § 554.9301
§ 554.9402

Debtor's attorney claims lien on assets of the estate. Attorney's security agreement listed nonexempt property as collateral; his financing statement listed exempt property as collateral. HELD: Financing statement was misleading and contained an insufficient collateral description. Trustee has priority over attorney's lien.

F. Fraudulent Transfers, 2641-2670

Cambridge Tempositions v. Cassis (In re Joseph and Joyce Cassis)
No. 97-03206-C, Adv. 98-9021-C, Chapter 7, 5/4/98
(published at 220 B.R. 979)

11 U.S.C. § 548
§ 727(a)(2)

Plaintiffs' complaint asserts claims for exception from discharge, denial of discharge and avoidance of fraudulent transfer against Debtors based on a transfer of assets by Debtors' corporation. Debtors move to dismiss, asserting lack of jurisdiction, lack of standing, and failure to state a claim for relief. HELD: The Court has core jurisdiction. Plaintiffs, creditors of Debtors' corporation, do not have standing to assert a § 548 claim. The complaint fails to state a valid claim under § 548 and § 727(a)(2)(A), as neither denial of discharge or avoidance of fraudulent transfer can be based on a transfer of corporate assets. Plaintiffs also fail to state a § 523(a)(2)(A) claim.

Dunbar v. Stiefel (In re Ralph E. Stiefel)
No. 97-00839-W, Adv. 97-9063-W, Chapter 7, 1/8/98

11 U.S.C. § 548(a)(2)

Debtor's parents, real estate contract sellers, forfeited the contract for sale of the family farm for Debtor's default in payments. Trustee seeks to avoid the forfeiture as a fraudulent transfer. Creditors assert equivalent value was received by Debtor based on the low original purchase price. HELD: Contract forfeiture can constitute a constructively fraudulent transfer. Any reduction in sale price of the farm constitutes an irrevocable and unconditional gift. Satisfaction of a debt of \$177,811 by forfeiture of property valued at \$280,200 is not reasonably equivalent value. The forfeiture may be avoided by Trustee.

H. Avoidance Rights, 2701-2740

Fokkena v. Zezulka (In re George and Rose Tripp)
No. 97-03430-W, Adv. 98-9026-W, Chapter 7, 4/13/98

11 U.S.C. § 544(a)(1)
§ 551
Iowa Code § 554.9312(2)

Trustee seeks to avoid Defendant's unperfected purchase money security interest in proceeds of cows sold by Debtors. He asserts the avoided interest has priority over Bank's blanket lien. HELD: Avoided liens, preserved for the benefit of the estate, retain their priority status as they existed prior to avoidance. Bank's perfected blanket lien is superior to Defendant's unperfected purchase money security interest. Lien avoidance would be pointless.

United States v. Lincoln Savings Bank
(In re Commercial Millwright Service Corp.)
No. 95-60007W, Adv. 96-6068W, Chapter 7, 10/27/97

Rule 15
11 U.S.C. § 546(a)

Trustee seeks to amend answer to add cross-claim against co-defendant. HELD: Leave to amend pleadings is freely granted. Trustee may raise avoiding powers defensively outside the time limits of § 546(a).

VI. EXEMPTIONS, 2761-2820

In re Ted and Deb Mausser
No. 98-01548-D, Chapter 7, 9/30/98

Iowa Code § 627.6(11)
Rule 2002(j)(4)
4003(b)

FSA objects to Debtors' exemption of farm equipment. It requests its late objection be considered timely because Debtors failed to give FSA notice by including U.S. Attorney's office on the matrix. HELD: Debtors failed to include the U.S. Attorney's office on the matrix, resulting in that office's lack of notice of the deadline for filing objections to exemptions. FSA's objections to exemptions is considered timely filed because of its lack of timely notice. Debtors are not "engaged in farming" as no objective evidence supports their asserted intent to return to farming. They are not entitled to claim farm machinery and equipment exempt.

In re Dennis and Lawonna Opel

Iowa Code § 561.21

No. 98-01862-C, Chapter 7, 9/30/98

Trustee objects to homestead exemption as it applies to Debtors' preacquisition debt. Before they were married, Debtors purchased the homestead with money from Mr. Opel's father's probate estate. They own as tenants in common. Mrs. Opel has \$29,000 of preacquisition debt; Mr. Opel has \$1,000. HELD: As tenants in common, Debtors own undivided one-half interests, with Mrs. Opel's half presumed to be gifted from Mr. Opel. Mr. Opel's homestead interest does not end based on his current occupancy of a nursing home. He cannot claim his deceased father's homestead continues into his homestead as he received cash from the probate estate, not the homestead real estate. The preacquisition debt is not joint debt. The creditors of each Debtor cannot reach the homestead right of the other Debtor. Homestead rights of a husband and wife cannot be split.

In re Paul and Danette Knode

11 U.S.C. § 522(f)

No. 97-01814-C, Chapter 7, 4/3/98

Debtors move to avoid the judgment lien of a creditor whose claim predates the acquisition of Debtors' homestead. HELD: The judgment lien is not avoidable because it does not impair Debtors' homestead exemption. Debtors' homestead is not exempt from pre-acquisition debt.

In re Douglas and Karen Crane

11 U.S.C. § 522

No. 97-02968-C, Chapter 7, 2/11/98

Iowa Code § 627.6(1)

Trustee objects to exemption of diamond wedding ring. The ring was purchased after Debtors' marriage, to replace a lost wedding band. HELD: The exemption statute applies to a ring "owned and received by the debtor . . . on or before the date of marriage." This temporal limitation is not merely advisory; it must be given full force and effect. Debtors may not claim the ring exempt as a wedding or engagement ring, but may include it within their exempt household goods up to the statutory limit.

In re Paul and Danette Knode

Iowa Code § 561.21

No. 97-01814-C, Chapter 7, 11/24/97

§ 624.23

(aff'd N.D. Iowa, 8/26/98)

Creditor objects to homestead exemption, asserting a judgment lien from pre-acquisition debt against Mrs. Knode. Mr. Knode does not have any title interest in the homestead. HELD: Mr. Knode has homestead rights under Iowa law although he has no ownership interest in the property. His rights, however, are purely derivative of Mrs. Knode's. Both Debtors' homestead rights are subject to Creditor's pre-acquisition debt.

VII. CLAIMS, 2821-3000

B. Secured Claims, 2851-2870

In re Ronald and Phyllis O'Brien

11 U.S.C. § 502(b)

No. 98-00545-C, Chapter 13, 10/1/98

§ 522(f)

§ 1325(a)(5)

Iowa Code § 572.32

Creditor asserts a secured claim in the amount of its judgment on foreclosure of mechanic's lien, including attorney fees awarded in state court postpetition. Debtors assert the attorney fees are not part of the secured claim. They also argue Creditor's lien should only attach to non-homestead real estate. HELD: Attorney fees under advisement in state court at filing date are included in Creditor's secured claim based on its mechanic's lien. The lien is statutory and not avoidable under § 522(f). Debtors may not shift the lien from their homestead to non-exempt real estate.

F. Priorities, 2951-3000

In re Dennis Weymiller
No. 94-20350-D, Chapter 7, 3/6/98

11 U.S.C. § 507(a)(7)
§ 726(a)(1)

IDOR filed a late proof of claim and objected to Trustee's final report. Trustee argues the Final Report should be approved because the claim was untimely. HELD: The pre-1994 version of § 726(a)(1) applies. Priority status for § 507 claims exists without regard to timeliness of filing. Trustee is given the opportunity to object to the claim.

VIII. TRUSTEES, 3001-3020

IX. ADMINISTRATION, 3021-3250

E. Compensation of Officers and Others, 3151-3250

In re Thomas Digman
In re Ricky and Joann Meade
Nos. 98-00220-C, 98-00322-C, Chapter 13, 8/17/98

11 U.S.C. § 330(a)(1)(A)

Attorney for Chapter 13 debtors requests \$1,200 in attorney fees, with \$1,000 to be paid through the plan. HELD: In making fee awards to Chapter 13 debtors' attorneys, the court must address the lodestar calculation. Local rules can set an amount for Chapter 13 fees, such as Local Rule 2016-1(b) which sets a base amount for attorney fees at \$1,000. Absent court approval, neither the estate nor the debtor is liable for attorney fees. The Court reduced fees to a total of \$1,000 with the remaining due of \$800 to be paid through the plan.

In re Patricia Ann Beer
No. 97-00586-C, Chapter 7, 3/4/98

11 U.S.C. § 330(a)

Debtor's attorney requests payment of attorney fees and expenses. Creditor argues payment from the estate is unjustified. He asserts the attorney's services benefitted only Debtor. HELD: Prepetition services are compensable from the estate, postpetition services consistent with Debtor's duties under § 521 are compensable. The remainder of the services provided either benefitted only Debtor or duplicated the duties of Trustee and are noncompensable.

In re D.C., Inc.
No. 97-01860-W, Chapter 11, 12/19/97

11 U.S.C. § 327
§ 328

After real estate sale was negotiated, Debtor applies to hire real estate brokers as professionals. HELD: Without prior approval, applications for fees for professionals should only be granted in limited circumstances. Fundamental fairness requires the realtors be compensated. Responsibility for failing to apply to hire the realtors rests with Debtor and its counsel. Retroactive appointment of the realtors as professionals is appropriate, with a penalty for failure to timely apply for court approval. Debtor's attorney will also be sanctioned by a reduction in fees.

X. DISCHARGE, 3251-3440

B. Dischargeable Debtors, 3271-3340

Fokkena v. Tripp (In re George and Rose Tripp)
No. 97-03430-W, Adv. 98-9027-W, Chapter 7, 8/3/98
(published at 224 B.R. 95)

11 U.S.C. § 727(a)(2)
§ 727(a)(4)

A few weeks after filing the bankruptcy petition, Debtors were charged with possession and manufacture of marijuana. Trustee asserts discharge should be denied based on Debtors' failure to disclose their ownership of marijuana in their bankruptcy schedules. HELD: An intent to deceive to gain personal benefit is sufficient to find fraudulent intent under § 727(a). Debtors' ownership of the marijuana was material to the case, regardless of its lack of value for creditors. Debtors' failure to list the marijuana as their property on the schedules constitutes a false statement and concealment of property with fraudulent intent.

C. Debts and Liabilities Discharged, 3341-3410

Avco Financial Services v. Langreck (In re Dale Langreck)
No. 97-02444-W, Adv. 97-9229-W, Chapter 7, 9/15/98

11 U.S.C. § 523(a)(2)

Avco asserts its claim is nondischargeable based on Debtor's materially false Statement of Indebtedness. Debtor failed to disclose an outstanding debt when he applied for additional credit from Avco. HELD: Avco has proved all the elements of § 523(a)(2)(B). The amount of debt excepted from discharge is disputed. Debtor's existing debt at the time he applied for new credit from Avco was not "obtained by"

Debtor's fraudulent financial statement. Some detriment to the creditor is required to except debt from discharge under § 523(a)(2).

Jomo Investments, Inc. v. Glew (In re Charles and Sheryl Glew) 11 U.S.C. § 523(a)(2)(A)
No. 97-01387-C, Adv. 97-9158-C, Chapter 7, 8/27/98

Creditor asserts its claim is nondischargeable as arising from fraudulent representations. It states it would not have given Debtors a check had they not agreed to apply it to pay a materials supplier on their construction project, and preexisting debt. HELD: Debtor Charles Glew was not present at the time Debtor Sheryl Glew spoke to Debtor's representative. There is no proof that he had any involvement or knowledge of the alleged misrepresentations by Mrs. Glew. In the circumstances, Creditor has failed to prove Mrs. Glew made a false representation with the intent to fraudulently obtain funds, or that it justifiably relied on any misrepresentations. Proximate cause and damages are also not apparent in the record.

Hobson Mould Works, Inc. v. Lease et al 11 U.S.C. § 523(a)(4)
(In re Aaron Lease et al) § 523(a)(6)
No. 97-03590-W, Adv. 98-9002-W, Chapter 7, 7/21/98 Collateral Estoppel

Plaintiff holds a prepetition state court judgment against debtors. Jury verdicts awarded Plaintiff \$300,000 on a breach of contract of fiduciary duty count and \$500,000 on misappropriation of trade secrets. The jury also awarded punitive damages. Plaintiffs argue the state court judgment supports nondischargeability of its claim as a matter of law. HELD: The actual damages and punitive damages awarded in the misappropriation of trade secrets count in state court are nondischargeable. The jury instructions show that jury findings satisfy the elements of willful and malicious injury and larceny. The breach of contract of fiduciary duty award is not excepted from discharge.

Klein v. State of Iowa (In re Maurice Klein) 11 U.S.C. § 523(a)(1)(C)
No. 96-12914-C, Adv. 96-1238-C, Chapter 7, 6/15/98

IDOR asserts tax debt is excepted from discharge because Debtor made a fraudulent return and willfully attempted to evade or defeat the taxes. Adjustments arising from audits focus on Debtor's claimed deductions. IDOR asserts Debtor failed to cooperate in audits and made derogatory comments to revenue agents. HELD: Debtor's conduct prior to the tax years in question is relevant on the issue of deliberate evasion and fraudulent intent. Overstatement of deductions can indicate fraudulent intent. Other badges of fraud are present. Tax debt is excepted from discharge.

AT&T Universal Card Services v. Miller 11 U.S.C. § 523(a)(2)
(In re Sherrillie M. Miller) § 523(d)
No. 96-62499-W, Adv. 97-9007-W, Chapter 7, 5/12/98

AT&T asserts its claim is excepted from discharge for fraud. Debtor incurred one charge and two cash advances several months prior to filing her Chapter 7 petition. HELD: The Court discerns Debtors intent through a totality of the circumstances approach. Under the 12-factor test, Debtor had no intent to defraud. Her lack of financial sophistication is an important factor in this case. AT&T was not

substantially justified in bringing its dischargeability complaint. Debtor is entitled to attorney fees and costs.

Whitlock v. Rizzio (In re Steven Matthew Rizzio)
No. 97-00914-C, Adv. 97-9115-C, Chapter 7, 4/7/98

11 U.S.C. § 523(a)(2)

Plaintiff asserts her damages from Debtor's improper roofing job are excepted from discharge for fraud. Old layers of shingles remained on the roof contrary to Debtor's agreement to remove them before reshingling. HELD: Plaintiff proved the elements under § 523(a)(2)(A) of common law fraud. Debtor made a false representation intending to deceive Plaintiff which caused her damage. Debtor is liable for his employee's actions. The court has jurisdiction to liquidate damages.

Vander Werf v. Barker (In re Bernie B. Barker)
No. 97-01813-C, Adv. 97-9176-C, Chapter 7, 4/7/98

11 U.S.C. § 523(a)(5)
§ 523(a)(15)

Plaintiff asserts her claims are excepted from discharge as property or support arising from their divorce. Debtor asserts he does not have the ability to pay. HELD: The debt does not constitute support. Debtor has the burden to prove he does not have the ability to pay, or that the benefit of discharge outweighs the detriment to Plaintiff. Here, Debtor has the ability to pay considering the parties' respective disposable incomes. He has not proven that the benefit of discharge to him outweighs the detriment to Plaintiff.

Jomo Investments, Inc. v. Glew (In re Charles and Sheryl Glew)
No. 97-01387-C, Adv. 97-9158-C, Chapter 7, 2/20/98

11 U.S.C. § 523(a)(2)
§ 727(a)(4)

Creditor asserts Debtors should be denied discharge for fraud, and that its claim should be excepted from discharge for fraud. It alleges that Debtors failed to pay suppliers as agreed after it paid on a construction contract. Debtor moves for summary judgment. HELD: The § 727(a)(4) action is dismissed because the alleged fraud did not occur in connection with the bankruptcy case. Issues of fact exist regarding whether Debtors made false representations and the amount of damages Creditor sustained. Summary judgment is not appropriate on the § 523(a)(2)(A) claim.

Farmers State Bank v. Francke (In re Sean Patrick Francke)
No. 97-00759-C, Adv. 97-9093-C, Chapter 7, 2/17/98

11 U.S.C. § 523(a)(2)

Bank asks that its claim be excepted from discharge as arising from a false financial statement. HELD: Debtor intentionally understated his debts on the loan application. Bank has proved the elements of § 523(a)(2)(B).

Drexler v. Hayzlett (In re Charles Hayzlett and Jessica Bernacki)
No. 97-92094-C, Adv. 97-9205-C, Chapter 7, 2/10/98

11 U.S.C. § 523(a)(9)

Debtor Hayzlett moves to dismiss. He asserts a debt arising from an auto accident caused by driving while intoxicated is not excepted from his discharge. He owned the vehicle involved but was not in the vehicle or driving it at the time. Codebtor Bernacki was the driver. HELD: The statute excepts from discharge a debt "caused by the debtor's operation of a motor vehicle" if the debtor was intoxicated.

That section does not apply to a person who did not operate the vehicle. Debtor Hayzlett is entitled to dismissal from the case as the complaint does not allege he was driving the vehicle.

Buffalo Bay Grain v. Schuster (In re Matthew and Lisa Schuster) 11 U.S.C. § 523(a)(2)
No. 96-22380-D, Adv. 97-9004-D, Chapter 7, 1/26/98

Creditor asserts Debtors presented a bad check to pay for grain, knowing they had insufficient funds in their account. It argues the debt is excepted from discharge for fraud. HELD: Creditor has established all five elements under § 523(a)(2)(A) regarding Mr. Schuster who presented the bad check. The debt is not excepted from Mrs. Schuster's discharge as she did not assist her husband in creating the false impression the check would clear.

D. Effect of Discharge, 3411-3440

Raymon v. IRS (In re Richard D. Raymon) Rule 37(b)(2)
No. 92-11849C, Adv. 96-1066KC, Chapter 7, 12/23/97
(appeal withdrawn)

Debtor requests summary judgment or procedural sanctions for the IRS's failure to reply to discovery requests. HELD: Dismissal is not warranted. The appropriate sanction is to limit the IRS's ability to present evidence at trial. The IRS has the burden to prove the tax debt falls within an exception to discharge under § 523.

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

XII. BROKER LIQUIDATION, 3461-3480

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

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United States v. Lincoln Savings Bank 11 U.S.C. § 502(a)
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No. 96-60007-W, Adv. 96-6068-W, Chapter 7, 2/23/98 § 552(a)
(appeal pending) § 1141(a)

Trustee requests determination concerning the status of the IRS's lien and the Bank's lien in Debtor's post-confirmation property. Both liens were retained in Debtor's original Chapter 11 confirmed plan, until paid in full. The Bank granted Debtor post-confirmation financing, referencing its prepetition financing statement and security agreement. The IRS tax liens expired after Debtor filed its second Chapter 11 petition, now converted to Chapter 7. HELD: The IRS liens attached to Debtor's postconfirmation property. Expiration postpetition does not invalidate the liens, which are determined on the date the petition was filed. The Bank's prepetition lien in after-acquired property terminated in

Debtor's first Chapter 11 case. The lien retained in the original confirmed plan terminated when its claim was paid in full. The Bank's continuation statement, unsigned by Debtor, does not perfect its lien in postconfirmation after-acquired property.

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

<u>In re Steven Mammel</u>	11 U.S.C. § 523(a)(8)
No. 98-01184-C, Chapter 13, 6/9/98	§ 1327(a)
(published at 221 B.R. 238)	§ 1328

Trustee raises issue of whether a plan may be confirmed which provides that, upon confirmation, student loans are dischargeable as imposing undue hardship on the debtor. HELD: Such a provision in a confirmed plan is enforceable, even though it may be contrary to the Code, because of the binding effect of the plan. Pre-confirmation, the Court finds the provision is objectionable. It allows for discharge of a category of debts prior to completing plan payments. It defeats the adversary requirements for determining dischargeability. The provision does not satisfy the elements of § 523(a)(8). It may constitute unfair discrimination against a class of creditors. Further, it fails to provide for sufficient notice to creditors that their claims may be discharged.

<u>In re Jonas and Jean Harnish</u>	11 U.S.C. § 506(a)
No. 97-02185-C, Chapter 13, 6/3/98	§ 1327(a)
(published at 224 B.R. 91)	Iowa Code § 554.9307(1)

After confirmation of Debtors' plan, Sears objects to treatment of its claim. Debtors assert Sears' secured claim is limited to the value of collateral remaining on the date of filing the petition. HELD: Sears' lien is limited to the value of a lawnmower. Confirmation of the Chapter 13 plan has a res judicata effect. Sears participated in the bankruptcy by filing a proof of claim. The plan did not mention Sears' lien. It provides for Sears as an unsecured creditor. Because the plan was confirmed without preserving Sears' lien, that lien was extinguished.

<u>In re Rebecca Janssen</u>	11 U.S.C. § 1322(b)(1)
No. 98-00141-C, Chapter 13, 5/7/98	§ 1325(a)
(published at 220 B.R. 639)	

Debtor's plan proposes a separate class of co-signed, unsecured claims. The Court questioned whether separate classification is appropriate. Trustee states that consumer debts which are cosigned may be separately classified. Debtor's father is her co-signer. HELD: The Code contains a provision which allows preferential treatment of claims on which a co-signor is liable with the debtor. The debt must benefit the debtor and it must be consumer debt. Debtor must show a reasonable basis for the separate

classification of co-signed debt. This is shown by Debtor's desire to maintain her relationship with her father. The plan passes the good faith test and the liquidation analysis. Claims based on the co-signed debt are not entitled to post-petition interest through the plan.

In re Herman and Ellen Debner
No. L92-00616-W, Chapter 13, 4/3/98

11 U.S.C. § 1322(d)
§ 1307(c)

Debtors' five-year plan expired in March 1997. The Court set a status hearing sua sponte to determine whether the case should be dismissed. HELD: Chapter 13 plans cannot be confirmed or modified if they provide for terms longer than five years. Plans cannot be modified after the term expires. Acceptance of payments after the five-year term must be closely scrutinized. Expiration of a plan is a significant factor in considering dismissal. Cause exists to dismiss this case.

XIX. REVIEW, 3741-3860

XX. OFFENSES, 3861-3863