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CONSUMER BANKRUPTCY CASES

Recent Developments in Consumer Bankruptcy Law
June 2019 – May 2020

United States Supreme Court
5th Circuit Court of Appeal
Texas Federal District Courts
Texas Bankruptcy Courts

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Appeals

In re Brown, 2020 WL 730878 (S.D. Tex. Feb. 13, 2020) (Hanen)
Appeals

Debtor appealed bankruptcy court's order approving a settlement and its denial of Debtor's motion for rehearing, based on her inability to attend the hearing. District court affirmed bankruptcy court's approval where: (i) two hearings were held on the proposed settlement, at which Debtor appeared and participated; (ii) bankruptcy court specifically verified on the record Debtor's approval of settlement at the second hearing; (iii) settlement was within policy limits; (iii) the third hearing at which Debtor was not present simply reiterated bankruptcy court's previous findings; (iv) Debtor failed to advise bankruptcy court of her inability to attend the third hearing; and (v) settlement represented best outcome for all parties.

Dick v. Colo. Hous. Enters., LLC, 780 F. App'x 121 (5th Cir. 2019) (per curiam)
Appeals

Debtor obtained a $100,000.00 loan from Lender, secured by Debtor's condominium, to open Restaurant with Husband. Restaurant closed and Debtor stopped making payments. Lender sent notice of default and acceleration and commenced foreclosure proceedings. Over the next ten months, Debtor filed chapter 13 bankruptcy three times to avoid foreclosure. After a fourth foreclosure was initiated, Debtor filed suit in state court alleging, among other things, that Lender breached loan by failing to honor Debtor's right to reinstatement. Lender then removed to federal court. District court dismissed the suit and Debtor appealed. On appeal, Debtor argued that Husband contacted Lender twice for the purpose of initiating reinstatement. During the first contact, Husband claimed that Debtor had $20,000.00 equity in property that could be sold to pay off the loan. During the second contact, Husband offered to bring loan current, but not to pay the entire accelerated amount. The Fifth Circuit affirmed, finding that: (i) the first offer was a mere future promise; and (ii) the second offer was followed by Lender's offer to allow Debtor to pay amount owed, even after the bankruptcy filings, and Debtor did not make payments on debt after default.

Crocker v. Navient Sols., LLC (In re Crocker), 941 F.3d 206 (5th Cir. 2019) (Southwick)
Appeals/Discharge/Jurisdiction & Venue

Debtors separately obtained student loans from Lender and later filed chapter 7 bankruptcy in Texas and Virginia. Courts independently discharged Debtors' loans and closed their bankruptcy cases. Lender allegedly called and emailed Debtors, demanding repayment multiple times after Debtors' discharge. Texas Debtor filed adversary proceeding against Lender in same Texas bankruptcy court. Bankruptcy court entered an agreed preliminary injunction, barring Lender from pursuing collection until further order. Virginia Debtor joined the Texas suit. Lender moved for summary judgment arguing that bankruptcy court lacked personal jurisdiction and that Debtors'

education loans were not dischargeable. Bankruptcy court rejected Lender's motion, authorized interlocutory appeal, and certified the order for direct appeal to the Fifth Circuit.

Adopting Second Circuit precedent, the Fifth Circuit reversed in part, holding bankruptcy courts lack authority to enforce a discharge injunction entered by a different district's bankruptcy court. The Fifth Circuit affirmed and remanded to bankruptcy court the question of whether Debtors' educational loans were dischargeable. Bankruptcy court discharged loans because they did not fall within any of Congress's statutory prohibitions of educational loan discharge.

Domel v. JPMorgan Chase Bank, N.A., 795 F. App'x 273 (5th Cir. 2020) (per curiam)
Appeals/Discharge

Chapter 7 Debtor received discharge, after which Bank obtained judgment declaring its lien valid and enforceable. Debtor filed a post-judgment motion to amend, raising a statute of limitations defense. Bankruptcy court denied Debtor's motion, finding Debtor waived defense by failing to raise it in her answer. Bank began foreclosure proceedings. Debtor appealed, arguing that Bank's right to foreclosure was barred by the statute of limitations. District court affirmed, and Debtor sought appeal. Fifth Circuit affirmed, noting Debtor's discharge extinguished her personal liability on the debt, but did not affect Bank's continuing lien; therefore, the four-year statute of limitations began to run when Bank exercised its option to accelerate, not when Bank filed declaratory action.

Arguello v. Lafavers, 2020 WL 1444049 (S.D. Tex. Mar. 24, 2020) (Brown)
Appeals/Discharge

Debtor stipulated to $2 million in liability and damages in state court for injuring Son-in-Law with a firearm during altercation, which arose when Debtor demanded that Son-in-Law return to guesthouse after approaching Debtor's home. Son-in-Law ignored the demand, prompting Debtor to discharge firearm. Son-in-Law physically attacked Debtor resulting in additional shots—two striking Son-in-Law. While state proceedings were pending, Debtor filed chapter 7 bankruptcy. Son-in-Law filed proof of claim, objecting to dischargeability of damages. Bankruptcy court held damages were not dischargeable without considering whether Debtor's actions were sufficiently justified in light of Debtor's claim that he discharged the firearm in response to Son-in-Law's physical attack. Debtor appealed. District court found Debtor acted both willfully and maliciously because discharging a firearm at least five times, when analyzed from the perspective of a reasonable person, was substantially certain to cause harm. District court vacated judgment and remanded to bankruptcy court the questions of whether Debtor's actions were sufficiently justified.

Green v. Ocwen Loan Serv., LLC (In re Green), 2019 WL 4016202 (S.D. Tex. Aug. 26, 2019) (Atlas)
Appeals

Bankruptcy court found Debtors completed all payments to Lender as required under their chapter 13 plan and granted Debtors' discharge pursuant to 11 U.S.C. § 1328(a). Debtors subsequently

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