

**BANKRUPTCY RELATED DECISIONS
U.S. BANKRUPTCY COURT, DISTRICT OF NORTH DAKOTA
U.S. DISTRICT COURT, DISTRICT OF NORTH DAKOTA
EIGHTH CIRCUIT BANKRUPTCY APPELLATE PANEL
EIGHTH CIRCUIT COURT OF APPEALS & U.S. SUPREME COURT**

**Prepared by Judge William A. Hill
United States Bankruptcy Court
January 19, 2008 to December 28, 2010**

ABUSE

In re Draisey, 395 B.R. 79 (8th BAP 2008)

Here, the BAP discusses the meaning of 707(b)(9) and the presumption of abuse.

ADMINISTRATION

In re Skyline Woods Country Club, LLC, 431 B.R. 830 (8th Cir. BAP 2010)

Bankruptcy court was within its discretion to deny purchasers' motion to reopen case to "enforce" sale order.

In re Shotkoski, 420 B.R. 479 (8th Cir. BAP 2009)

Bankruptcy Court did not abuse its discretion in denying Chapter 11 debtors' motion for entry of final decree.

In re Duncan, 418 B.R. 278 (8th Cir. BAP 2009)

Debtors failed to demonstrate "exigent circumstances" warranting temporary exemption from credit counseling requirement.

APPEALS

In re Goodwin, 437 B.R. 844 (8th Cir. BAP 2010)

Debtor failed to demonstrate "excusable neglect" in failing to timely file notice of appeal.

AMENDMENT

In re Bigelow, 393 B.R. 667(8th Cir. BAP 2008)

A statute of limitations is not tolled during pendency of an action.

ATTORNEY CLIENT PRIVILEGE

Leonard v. Dorsey & Whitney LLP, 553 F.3d 609 (8th Cir. 2009)

Participating purchaser in loan participation agreement had no malpractice right of action against lead lender's law firm.

AVOIDANCE

In re Raynor, 617 F.3d 1102 (8th Cir. 2010)

Avoidance action was timely.

BAD FAITH

In re Barrows, 408 B.R. 239 (8th Cir. BAP 2009)

Debtors who failed to disclose funds in bad faith, warranting denial of motion to amend exemptions.

In re Marshall, 407 B.R. 359 (8th Cir. BAP 2009)

Debtor unfairly manipulated Bankruptcy Code and was operating in bad faith, supporting dismissal of case.

BAILMENT

Bremer Bank v. John Hancock Life Ins. Co., 601 F.3d 824 (8th Cir. 2010)

Indenture trustee sufficiently declared leveraged lease of aircraft to be in default, as required to exercise remedies under indenture or lease.

BANKRUPTCY ESTATE

In re Wolk, 437 B.R. 850 (8th Cir. BAP 2010)

Remand was required to consider impact of trustee's strong arm powers in deciding sale motion.

In re Carpenter, 614 F.3d 930 (8th 2010)

Social Security Act automatically and completely excludes social security proceeds from the bankruptcy estate.

In re Stephens, 425 B.R. 529 (8th Cir. BAP 2010)

Filing amended schedules claiming exemption did not undo prior orders declaring debtor's lack of interest in the property.

CLAIMS

In re Passa, 436 B.R. 120 (N.D. 2010)

Creditor that released lien, even if in error, prepetition could be treated as an unsecured creditor.

In re Burival, 613 F.3d 810 (8th Cir. 2010)

Lessor's rent claim under crop lease could be approved as administrative expense.

In re EDM Corp., 431 B.R. 459 (8th Cir. BAP 2010)

Debtor's trade or "d/b/a" name should not have been included in financing statement's name field.

Knudsen v. I.R.S., 581 F.3d 696 (8th Cir. 2009)

Chapter 12 debtors' hogs were used in farming operation as would permit unsecured treatment of tax claim arising from hog sale.

In re Mierkowski, 580 F.3d 740 (8th Cir. 2009)

Chapter 13 debtors were barred from bifurcating automobile finance company's secured claim.

In re Callicott, 580 F.3d 753 (8th Cir. 2009)

Creditor had purchase-money security interest, precluding bifurcation of its claim into secured and unsecured parts.

CONTEMPT

In re M & S Grading, 526 F.3d 363 (8th Cir. 2008)

Bankruptcy Court's denial of show cause motion was not final appealable order.

CONSTRUCTIVE POSSESSION

In re Western Iowa Limestone, Inc., 538 F.3d 858 (8th Cir. 2008)

Reversing the BAP, the Circuit held that constructive possession existed.

CONTRACTS

In re Smith, 402 B.R. 887 (8th Cir. BAP 2009)

Commissions earned in connection with contracts entered into prepetition were estate property.

CRIMINAL SENTENCING

U.S. v. Waldner, 580 F.3d 699 (8th Cir. 2009)

16-Level sentencing increase warranted based on \$1.8 million intended loss.

CROP LEASE

In re Burival, 406 B.R. 548 (8th Cir. 2009)

BAP adopts “billing date” approach for debtors’ performance obligations under unexpired nonresidential lease.

DEBT RELIEF AGENCY- DEFINITION

Milavetz, Gallop & Milavetz, P.A. v. U.S., 541 F.3d 785 (8th Cir. 2008)

Circuit defines “Debt Relief Agency” holding that applied to attorneys, 528(a)(4) and (b)(2) are unconstitutional. Attorneys are “Debt Relief Agencies”.

DEFAULT

Stephenson v. El-Batrawi, 524 F.3d 907 (C.A.8 2008)

The law presumes defendant’s address was correct, mere denial is insufficient. The creditor was properly served. Facts must have more than mere allegations.

DEFAULT JUDGMENT

In re Burwell, 391 B.R. 831 (8th Cir. BAP 2008)

Detailed allegations in complaint were sufficient to support default judgment when defendants failed to respond.

DEFICIENCY CLAIMS

AmeriCredit Financial Services, Inc. V. Moore, 517 F.3d 987 (8th Cir. 2008)

A 910 claim is still an allowed secured claim. A claim is not satisfied under Section 1325(a)(5)(C) and it is entitled to full payment of its claim. Thus AmeriCredit is entitled to an unsecured deficiency claim.

DEFICIENCY JUDGMENT

Capital One Auto Finance v. Osborn, 515 F.3d 817 (8th Cir. 2008)

Reversing and remanding the BAP, (363 B.R. 72 (8th Cir.BAP 2007)) the circuit holds that the majority position is not correct. Under §1322(b)(2) the debtors argued that it allowed holder of secured claims to modify a claim. The circuit held that state law applies.

DEBTOR PROTECTION

In re Marino, 437 B.R. 676 (8th Cir. BAP 2010)

Creditor did not violate stay by petitioning for protection under Domestic Abuse Act.

DERIVATIVE STANDING

In re Racing Services, Inc., 540 F.3d 892 (8th Cir. 2008)

Reversing the BAP, the circuit determined that a bankruptcy court may grant derivative standing.

M & S Grading, Inc., 541 F.3d (8th Cir. 2008)

Affirming the BAP, the Circuit found creditors may have derivative standing.

DISCHARGE

In re Thomas, 431 B.R. 468 (8th Cir. BAP 2010)

Debtor-husband acted with fraudulent intent in omitting items from debtors' schedules and statement of financial affairs.

In re Freier, 604 F.3d 583 (8th Cir. 2010)

Judgment was nondischargeable on ground of fraud.

In re Glen, 427 B.R. 488 (8th Cir. BAP 2010)

Debt was not for "money obtained by fraud" within the meaning of the discharge exception for false representations.

In re Marble, 426 B.R. 316 (8th Cir. BAP 2010)

Obligation to hold ex-wife harmless fell within discharge exception for alimony, maintenance, or support.

In re Asbury, 423 B.R. 525 (8th Cir. BAP 2010)

Bankruptcy court may take into account creditors' interests in determining whether to approve debtor's discharge waiver.

In re Treadwell, 423 B.R. 309 (8th Cir. BAP 2010)

Despite lack of investigation, hotel justifiably relied on debtor's representation that she would pay for travel event.

In re Mitchell, 418 B.R. 282 (8th Cir. BAP 2009)

Debtor was required to list name of creditor who was then a minor.

In re Deitz, 411 B.R. 636 (D.N.D. 2009)

Creditor could file request to revoke discharge after filing its amended complaint.

In re Stark, 408 B.R. 831 (D.N.D. 2009)

Deceptive conduct in omitting signature precluded discharge of second mortgage.

In re Patch, 526 F.3d 1176 (8th Cir. 2008)

Reversing the BAP, the circuit determined that the debtor who left her child with his abuser did not act "willingly," within the meaning of the discharge exception.

DISMISSAL

Weil, Gotshal & Manges, LLP, 437 B.R. 342 (8th cir. BAP 2010)

Section 1447 (c) required remand of entire case, despite potential judicial economy to be served by dismissal.

In re Blumeyer, 383 B.R. 457 (8th Cir.BAP 2008)

The multiple appeals were all stale in that the debtor lacked standing.

DISPOSABLE INCOME

In re Lasowski, 384 B.R. 205 (8th Cir.BAP 2008)

In this case the court discusses the meaning of the term "disposable income".

see also Projected Disposable Income

EQUITABLE RELIEF

In re Racing Services, Inc., 571 F.3d 729

Bankruptcy Courts are courts of equity and reversal of criminal conviction warrants relief from equitable subordination order.

ESTATE

In re Danduran, 438 B.R. 658 (8th Cir BAP 2010)

Debtor could claim entire amount deposited into savings account as exempt under ND homestead exemption statutes.

In re Reagan, 374 Fed.App 683 (2010)

Bankruptcy court acted within its discretion in denying motion to dismiss or to remove trustee.

In re Nessa, 425 B.R. 312 (8th Cir. BAPP 2010)

IRA qualified for Bankruptcy Code's exemption for retirement funds.

In re Carpenter, 408 B.R. 244 (8th Cir. BAP 2009)

Social Security Act protecting benefits was not a mere exemption.

EXEMPTIONS

In re Addison, 540 F.3d 805 (8th Cir. 2008)

Circuit found that there was no intent to defraud. No act on fraudulent intent. A careful analysis of *Hanson* and *Tveten* cases.

EXPENSE

In re Wilson, 383 B.R. 729 (8th Cir.BAP 2008)

"Projected disposable income" under 707(b) means actual expenses. If a debtor has no car payment, only the operating cost may be deducted.

FALSE REPRESENTATION

In re Eccles, 407 B.R. 338 (8th Cir. BAP 2009)

Debtors' silence was false representation.

FALSE STATEMENTS

U.S. v Mitchell, 528 F.3d 1034 (8th Cir. 2008)

False statements must be to a material matter. Financial transactions are material,

because they may impede an investigation.

FIDUCIARY

In re Freier, 402 B.R. 891 (8th Cir. BAP 2009)

No fiduciary duty existed in this case.

FRAUD

Schaaf v. Hotzer, 517 F.3d 544 (8th Cir. 2008)

Complaint did not allege causation for securities fraud claim under Minnesota law.

In re Sandiford, 394 B.R. 487 (8th Cir. BAP 2008)

Burden of proof is on party objecting to debtor's discharge. A presumption of fraud exists where a debtor transfers valuable property without payment.

In re Wilmoth, 397 B.R. 915 (8th Cir. BAP 2008)

Court determined that not all elements of fraud were present. This case involved the homestead exception.

INCOME

Hamilton v. Lanning, 2010 WL 2243704 (U.S.)

Projected income may account for changes in debtor's income that are known or certain at the time of confirmation. The Court follows the "forward looking" approach.

INSURANCE

Acceptance Ins. Companies Inc., 383 B.R.128 (8th Cir.BAP 2008)

Insured was not relieved of obligation for premiums by frustration of the purpose doctrine.

In re SRC Holding Corp., 545 F.3d 661 (8th Cir. 2008)

Here, the court interprets insurance law, under Minnesota statutes applying plain language to the policy exclusions

In re Acceptance Ins. Companies Inc., 567 F3d 369 (8th Cir. 2009)

"Frustration of purpose" doctrine did not apply to relieve bankrupt insurer of obligation

to reinsurer for premiums.

JUDGMENT

In re Leiferman, 428 B.R. 850 (8th Cir. BAP 2010)

Default judgment was properly entered against debtor as a sanction for his failure to cooperate with discovery requests.

JUDICIAL LIEN

Midwest Agri Development Corp., 387 B.R. 580 (8th Cir. BAP 2008)

Finding of avoidability of transfer on timely complaint is prerequisite for disallowance of claim filed by transferee.

JURISDICTION

In re Stabler, 418 B.R. 764 (8th Cir. BAP 2009)

Bankruptcy Court properly abstained from exercising jurisdiction over debtors' adversary proceeding.

Travelers Indemnity Co. v. Bailey, Nos. 08-295, 08-307 (June 18, 2009)

Court had jurisdiction to enforce its own injunctions.

In re Farmland Industries, Inc., 567 F.3d 101 (8th Cir. 2009)

Bankruptcy court had "related to" jurisdiction over action in which unsuccessful bidder asserted state-law tort claims.

LEAVE TO AMEND

In re Weber, 392 B.R. 760 (8th Cir. BAP 2008)

Rule 15 provides that the amendment should be freely given.

LITIGATION

U.S. v. Ritchie Special Credit Investments, Ltd., 620 F.3d 824 (8th Cir. 2010)

Denial of secured creditor's motion to intervene as untimely was warranted, in civil fraud action brought by government.

Jefferson v. Hicks, 364 Fed.Appx. 281 (8th Cir. 2010)

Defendant's reliance on erroneous legal advice did not establish excusable neglect

warranting vacating of default judgment.

MORTGAGES

In re Stradtman, 391 B.R. 14 (8th Cir. BAP 2008)

Case is similar to *In re Vondall*, 364 B.R. 668 , discussing bona fide purchases under §544 no apparent defect in the mortgage so trustee had no notice of defect.

PLAN

In re Harman, 435 B.r 596 (8th Cir. BAP 2010)

Spouse's income had to be included in calculating "applicable commitment period," though debtors had separate households.

Hamilton v. Lanning, 130 S.Ct. 2464 (U.S. 2010)

"Projected disposable income" calculation may account for known or virtually certain changes in debtor's income or expenses.

In re Jenkins, 428 B.R. 845 (8th Cir. BAP 2010)

Debtor's post-confirmation of plan payments was not meant to increase the plan base.

In re M & M Marketing, L.L.C.,426 B.R. 796 (8th Cir. BAP 2010)

Representation of trustee as special counsel by attorney who also represented petitioning creditors posed actual conflict.

In re Potts, 421 B.R. 518 (8th Cir. BAP 2010)

Chapter 13 plan which modified lender's default remedies could be confirmed.

In re Lasowski, 575 F.3d 815 (8th Cir. 2009)

Calculation of debtor's projected disposable income had to consider that 401(k) loans would be paid off during plan term.

In re Zahn, 526 F.3d 1140 (8th Cir. 2008)

A debtor who objects to her own plan may be an "aggrieved" party with standing to appeal confirmation of such plan.

In re Burnett, 408 B.R. 233 (8th Cir. 2009)

Confirmed plan did not limit former wife's right to collect accrued interest on arrearages.

In re Washburn, 579 F.3d 934 (8th Cir. 2009)

Chapter 13 debtor need not owe a vehicle loan or lease payment to claim a vehicle ownership expense deduction.

PLAN CONFIRMATION

In re Russell, 386 B.R. 229 (8th Cir.BAP 2008)

Debtor was bound by terms of confirmed plan and could not later seek to change it's terms.

PREFERENCE

In re Schwartz, 383 B.R. 119 (8th Cir.BAP 2008)

A debtor's postpetition refinancing of home mortgage does not impact trustee's ability to avoid perfection as a preferential transfer.

PRINCIPAL RESIDENCE

In re Coleman, 392 B.R. 367 (8th Cir.BAP 2008)

Section 1322(b)(2) includes manufactured homes that is debtor's principal residence.

PROFESSIONALS

Ritchie Special Credit Investments, Ltd. v. U.S. Trustee, 620 F.3d 847 (8th Cir. 2010)

Appointment of a trustee was immediately appealable.

In re Grand Jury Proceedings, 609 F.3d 909 (2010)

Crime-fraud exception applied to require attorney to produce evidence relating to his representation of debtors.

PROJECTED DISPOSABLE INCOME

In re Frederickson, 545 F.3d 652 (8th Cir. 2008)

Here, the Circuit defines the concept of projected disposable income and determined that the statutory text was not clear. It held that Form 22C is the starting point.

PUNITIVE DAMAGES

JCB, Inc. v. Union Planters Bank, NA, 539 F.3d 862 (8th Cir. 2008)

Here, the Circuit considers punitive damages and whether they were excessive.

REAL ESTATE

Fix v. First State Bank of Roscoe, 559 F.3d 803 (8th Cir. 2009)

Debtor did not have a life estate or other real estate interest in home, thus she was not entitled to a homestead exemption.

In re Linne, 414 B.R. 536 (N.D. 2009)

Under North Dakota law, mortgage granted by husband and wife on their homestead was not enforceable.

RECORDS

In re Mesaba Aviation, Inc., 418 B.R. 756 (8th Cir. BAP 2009)

Claimant's request to seal her application for in former pauperis (IFP) status was properly denied.

RULE 60 EXCUSABLE NEGLECT

In re President Casinos, Inc., 397 B.R. 468 (8th Cir. BAP 2008)

Excusable neglect is an extraordinary remedy. Illness of counsel must be more than an oversight.

RULE 60 MOTIONS

Baldwin v. Credit Based Asset Servicing and Secur., 516 F.3d 734 (8th Cir. 2008)

Before property can be taken, notice and an opportunity for a hearing must be provided. Pro se motions are construed liberally.

SENTENCING

U.S. v. Mitchell, 608 F.3d 384 (8th Cir. 2010)

Loss was properly estimated at \$500,000 for purpose of sentencing defendant convicted of bankruptcy fraud.

SETTLEMENTS

In re SportsStuff, Inc., 430 B.R. 170 (8th Cir. BAP 2010)

Bankruptcy court lacked jurisdiction to impose settlement injunction.

Tri-State Financial, LLC v. Lovald, 525 F.3d 649 (8th Cir. 2008)

In assessing the reasonableness of settlement, four factors are generally considered.

Contemporary Industries Corp. V. Frost, 564 F.3d 981 (8th Cir. 2009)

Chapter 11 debtor's payments for privately held securities were exempt from avoidance as settlement payments.

STANDING

In re Zahn, 391 B.R. 840 (8th Cir. BAP 2008)

IRA distribution had to include current monthly income.

STAY

In re Krivohlavek 405 B.R. 312 (8th Cir. BAP 2009)

Credit Union violated stay by applying portion of funds received via automatic payroll deductions to prepetition debt.

American Prairie Const. Co. V. Hoich, 560 F.3d 780 (8th Cir. 2009)

Investor was not personally liable under settlement agreement on grounds that accountant was his ostensible agent.

SUBORDINATION

In re Racing Services, Inc., 386 B.R. 751 (8th Cir. BAP 2008)

Once criminal orders were overturned, there was no basis for equitable subordination.

TAX

In re Carlson, 394 B.R. 491 (8th Cir. BAP 2008)

In Minnesota, a spouse who did not pay tax of the withholdings to which a joint income tax refund is attributable has no ownership interest in the refund.

TAXATION

Florida Department of Revenue v. Piccadilly Cafeterias, Inc., 2008 WL 2404077 (U.S.)

The stamp tax exemption does not apply to transfers made before a plan is confirmed under chapter 11.

TOOL OF TRADE

In re Cleaver, 407 B.R. 353 (8th Cir. BAP 2009)

Debtors were entitled to opportunity to show that motor vehicle was “tool of the trade” for lien avoidance purposes.

TORTS

Waterson v. Hall, 515 F.3d 852 (8th Cir. 2008)

A “no asset” case does not apply where there is an undisclosed asset in the form of an insurance policy.

TRUST

In re Farr, 407 B.R. 354 (8th Cir. BAP 2009)

No constructive trust could be imposed based on simple mistake to protect transfer from avoidance.

TRUTH IN LENDING ACT (TILA)

In re Thayer, 384 B.R. 546 (8th Cir.BAP 2008)

Rescission under TILA requires that the borrower be returned to the *status quo ante* the rescinded transaction.

UNCLAIMED FUNDS

In re Future Trust, Inc., 387 B.R. 574 (8th Cir.BAP (Mo.) 2008)

Assignee of debtor’s sole shareholder was not entitled to unclaimed funds in Chapter 11.

UNDUE HARDSHIP

In re Walker, 427 B.R.471 (8th Cir. BAP 2010)

Debtor was entitled to “undue hardship” discharge of more than \$300,000.00 in student loan debt.

United Student Aid Funds, Inc. v. Espinosa, ___ U.S. ___ 2010

It was error for debtor’s plan to be confirmed absent a finding of undue hardship.

In re Boaz, 386 B.R.756 (Bkrtcy.D.N.D. 2008)

No undue hardship until debtor is nearing for discharge.

506(b)

Tri-State Financial, LLC v. First Dakota Nat. Bank, 538 F.3d 920 (8th Cir. 2008)

Circuit considered application of Section 506(b), with the issue being whether bank was entitled to a pre-payment penalty.

727(a)(5)

In re Huynh, 392 B.R. 802 (Bkrtcy.D.N.D. 2008)

Here, trustee sought to have debtor denied a discharge under 727(a)(2),(3),(4) and (5). After hearing the facts, the court denied the debtor a discharge under 727(a)(5).