Plenary Session

Consumer Update 2010

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2010 Educational Materials

CONSUMER BANKRUPTCY UPDATE

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Chief Bankruptcy Judge for the Middle District of Florida

PART I "SALES ARE UP"

Sales are Up. When I speak to groups of bankruptcy professionals now, I love to show a graph of the soaring rate of bankruptcy filings across the nation and proclaim that "Sales are Up." As we know, legislation in 2005 had a significant effect, and we began 2006 with substantially reduced filings. We had a fairly steady recovery during 2006 and 2007. In 2008 filings increased at a more rapid pace, a trend that continued into 2009 and 2010. The number of bankruptcies filed in calendar year 2009 totaled 1,473,675, an increase of 356,034 cases from 2008. Specifically, Chapter 11 filings rose 50%, Chapter 7 filing rose 41% and Chapter 13 filings rose 12%. Also, the number of bankruptcy filings for the 12 month period ending March 31, 2010 was up 27% from the bankruptcy filings for the 12 month period ending March 31, 2009. This increase represents the highest total number of bankruptcy filings since the 12 month period ending March 31, 2009.

Fair is Foul. However, this is not a development to celebrate. The circumstances leading to the significant increases are indeed unfortunate. Our country is experiencing the most severe economic difficulties of our lifetimes, and we are seeing a direct result of these.

Filings as a percent of population. It is interesting to look at where the cases are being filed and why. Rather than look at volume first, we look at the States where the highest percentage of people are filing.

Chapter 7 cases. In first place for Chapter 7 filings is Nevada, home of America's Playground, Las Vegas. The industrial Midwestern states of Michigan, Indiana and Ohio occupy the second, third and fifth place slots. In fourth place is Colorado.

The Profile of Selected Economic Characteristics of the U.S. Census Bureau[1] shows that the industry category of Arts, Entertainment, Recreation, Accommodation and Food Services in Las Vegas accounts for 29.8% of its economy, which is close to four times the national average of 7.9% for the United States. The U.S. Bureau of Labor Statistics reports that as of March 2010, Nevada has the second highest unemployment rate of any state, a rate of 13.4%.[2] Additionally, in 2009 Nevada experienced the nation's highest foreclosure rate of metropolitan areas with populations of 200,000 or more.[3] In Las Vegas, more than 12% of the housing units were issued a foreclosure notice in 2009, more than five times the national average.[4]

The problems in the industrial Midwest appear to be tied to the significant difficulties experienced by the American automobile industry, as well as the "extraordinary debt levels of consumers and corporations throughout the country."[5] To illustrate, in 1979, GM employed 618,000 Americans, which accounted for more than any other company in the country. In early 2009, that figure was only 88,000, and the company plans to shed another 21,000 workers and close 12-20 factories.[6] Additionally, the U.S. Bureau of Labor Statistics shows that in March 2010, Michigan had the highest unemployment rate in the country (14.1%), Ohio had the eighth highest unemployment rate (11%), and Indiana the twelfth highest rate (9.9%).[7] The Bureau of Labor Statistics also reports that among the 19 metropolitan areas with jobless rates of at least 15%, five were located in Michigan.

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[1] These profiles of economic characteristics by the U.S. Census Bureau are based on the 2000 census, but should continue to be reasonably appropriate indicators.

[2] The Regional and State Employment and Unemployment Summary of the U.S. Bureau of Labor Statistics is current through March, 2010.

[3] Consumer Bankruptcy News, "Las Vegas had most foreclosure activity in 2009" Volume 20, Issue 7 (Feb. 25, 2010).

[4] Id.

[5] The Indianapolis Star, June 20, 2009, p. 1; Ted Evanoff, Jobless rate in state expected to climb higher: Experts say auto shutdowns, debt levels could push unemployment to 11.5%.

[6] "General Motors files for Bankruptcy Protection," The Associated Press, June 2, 2009.

In Colorado, filings increased approximately 34% in 2009. The 34% increase in filings is apparently attributable to failing businesses in real estate, construction and mortgages.

Chapter 13 cases. For Chapter 13 filings as a percent of the population, the top five states are Alabama, Tennessee, Georgia, Nevada, and Louisiana. Alabama led the country with the highest concentration of filings, 4.20 filings per 1,000 people. A common characteristic of these states is that they have all been hit hard by the drastic decline in the real estate market and with the exception of Louisiana, they all have non-judicial foreclosure procedures.

Total filings. Next, we look at the Districts that have the highest number of total filings for all chapters. In first place is the Central District of California, second is the Middle District of Florida, third is the Northern District of Illinois, fourth is the Eastern District of Michigan, and fifth is the Northern District of Georgia.

Central California is usually the busiest District in the country. With Los Angeles as its major metropolitan area, it has a population of over 18 million, over half of the people in California.[8] The District has a varied population and economic base, and is experiencing significant unemployment and foreclosures. For example, the metropolitan area of Riverside-San Bernardino-Ontario in Central California ranked fourth in foreclosures, with one in 80 foreclosure filings per housing unit.[9] As economist Sean Snaith, from the University of Central Florida's business school aptly observed in reference to California being in the epicenter of the housing bubble, "[t]hese economies were self-feeding off the housing boom. And when the

[7] In May 2009, the unemployment level in Indiana "was the highest ever recorded for any month in any year in Indiana in half a century of data maintained by the Bureau of Labor Statistics." Evanoff, supra note 5, at 2.
[8] See www.fedstats.gov. These population estimates are as of 2006.
[9] PR Newswire, September 10, 2009; p.3, Foreclosure Activity Remains Near Record Level in August According to RealtyTrac(R) U.S. Foreclosure Market Report.

boom went bust, there was no safety net to fall back on."[10] With an unemployment rate of 12.2%, California ranks fourth in the United States.[11]

The Middle District of Florida regularly ranks in the top five or six in filings. With a population of over 10 million, it includes over half of the people in the state. A large area, it stretches from Northeast Florida (Jacksonville) through Central Florida (Tampa, Orlando, Ocala, Daytona) to Southwest Florida (Ft. Myers). Filings have increased almost 400% between April 2006 and April 2010. Although this massive increase is attributable in part to the recovery from the decline in filings after the passage of BAPCPA, much of the increase is due to the fallout from the crash of Florida's housing market and from the significant reduction in tourism in the State. For example, the metropolitan area of Orlando-Kissimmee ranked eighth in the nation with one in every 87 housing units receiving a foreclosure notice,[12] and Cape Coral-Fort Myers ranked ninth with one in every 88.[13]

The Northern District of Illinois, with Chicago as its major area and approximately 9.3 million people, is regularly one of the top five, and was the third busiest District in 2009. The industrial Midwest has been hit extremely hard because of several factors, largely related to problems in the automobile industry. In 2006 and again in 2007, the Eastern District of Michigan, with Detroit as its major metropolitan area and with approximately 6.7 million people in the District,[14] had the most filings in the country, even more than the Central District of

[10] The Washington Post, January 17, 2009, A01; Dina ElBoghdady and Sarah Cohen, The Growing Foreclosure Crisis.
[11] The Regional and State Employment and Unemployment Summary of the U.S. Bureau of Labor Statistics through August 2009.
[12] PR Newswire, September 10, 2009; p.3, Foreclosure Activity Remains Near Record Level in August According to RealtyTrac(R) U.S. Foreclosure Market Report.
[13] Orlando is generally a tourist area and Ft. Myers a retirement area, and on average approximately 15% of Orlando's filings are Chapter 13 filings, whereas approximately 55% of Ft. Myers' filings are Chapter 13's.
[14] See www.fedstats.gov. These population estimates are as of 2006.

California, which has approximately three times as many people. The Eastern District of Michigan is now fourth for the 12 months ending December 31, 2009.

The Northern District of Georgia, with Atlanta as the main metropolitan area, has also been affected significantly by the real estate crisis. Georgia ranks among the top ten in foreclosures, and as of March 2010 had the 11th highest unemployment rate in the country (10.6%).

Business Filings. According to a news release from the U.S. Courts, business filings totaled 60,837 in calendar year 2009, which is up 40% from the 43,533 business filings in calendar year 2008.

The top five districts for business filings include the Central District of California, the Middle District of Florida, the Northern District of Georgia, the Southern District of New York, and the Northern District of Illinois.

As discussed, the Districts of California Central and Florida Middle are in two of the states that have been hit hardest by the foreclosure crisis. As a result, all aspects of the economy in these districts have suffered. What began as a decline in real estate sales led to problems in a vast array of businesses in the real estate and construction related industries. The consequences of this, together with reduced tourism and declining retail sales, have led to difficulties in businesses outside the realm of real estate and construction.

The Northern District of Georgia has also been significantly affected by the real estate crisis. A creditors' rights group in Atlanta has explained that due to rising unemployment, upside down mortgages, and credit card debt, there are more corporate Chapter 7's than they have seen in the last twenty years.[15] They also predict that "[t]here will be more Chapter 11's here, but the corporate covenant defaults and commercial real estate cases are still in the workout stages.

We're going to be disproportionately worse off over the next two or three years because of our over-reliance on real estate development."[16]

The Southern District of New York is an established forum for large corporate cases so it is no surprise that the Southern District of New York is in the number four spot. Although Delaware currently claims the eighth spot on the list, it is another established forum for large corporate cases. In fact, these "two locations have been home to six of the 10 biggest bankruptcy filings, including Chrysler, GM, Lehman Brothers, Washington Mutual and Enron, according to BankruptcyData.com."[17] While all of us would love to handle such major cases, Delaware and New York Southern are outstanding courts.

The Northern District of Illinois claims the fifth spot on the list, which is no surprise due to how hard the industrial Midwest has been hit, primarily because of the problems in the auto industry.

Chapter 11 filings. The top five districts for Chapter 11 filings include Southern New York, Delaware, Central California, Middle Florida, and Arizona. For the reasons discussed above, it is clear why Delaware, Southern New York, Central California, and Middle Florida are in the top four spots.

The District of Arizona, which holds the fifth spot for Chapter 11 filings, had several high profile Chapter 11 filings in 2009. These filings include: (1) Opus West Corp., which owns numerous high profile residential, office, and retail development in the East Valley; (2) Eurofresh, Inc., a hydroponic vegetable producer and Southern Arizona employer; (3) Bashas' Supermarkets Inc., a large grocery chain which "expanded rapidly as developers flocked to

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[15] Atlanta Journal Constitution, May 14, 2009, p. 2; Paul C. Peralte, "Bankruptcy Filings."
[16] Id.
[17] The New York Times Company, April 27, 2009, p. 1; Jonathan D. Glater and Micheline Maynard, "Detroit Would Prefer Any Auto Bankruptcy To Be Handled Locally."

Phoenix during the housing boom, pinning hopes for future success on those new communities filling up;[18] (4) the Phoenix Coyotes hockey team; and (5) Arvizu Advertising & Promotions Inc.

State of economy presents benefits and responsibilities. In an era of bailouts, bank failures, foreclosures, and the crumbling of small businesses that are America's backbone, bankruptcy attorneys as well as bankruptcy courts across the nation are as busy as ever. In this ongoing recession, as others in almost every field imaginable - from blue collar workers to white collar professionals -are struggling to keep their jobs, "sales are up" for bankruptcy professionals. It is important to recognize, however, that although the economy presents unique opportunities for bankruptcy professionals, it also requires us to be even more diligent in making sure that we are up to date in how the law is changing and evolving.

PART II CONSUMER BANKRUPTCY UPDATE

As discussed above "sales are up." Therefore it is more imperative than ever for bankruptcy attorneys to be up to date with respect to new developments in consumer bankruptcy law. The following materials are set out topically and cover some of the latest decisions that will affect consumer bankruptcy attorneys in Southeastern states.

A. PROPERTY OF THE ESTATE

Robinson v. Tyson Foods, Inc., 595 F.3d 1269 (11th Cir. 2010)

In Robinson, the plaintiff, while in Chapter 13 bankruptcy, brought an employment discrimination claim against her former employer, Tyson Foods. On the basis that the plaintiff should be judicially estopped, due to her failure to disclose her claim against Tyson to the bankruptcy court, the District Court for the Northern District of Alabama granted summary judgment in favor of Tyson and the debtor appealed.

[18] Arizona Daily Star, July 14, 2009, p. 1; Dale Quinn, "Bashas' bankruptcy will hit Phoenix area hardest."

In affirming the district court's decision, the Eleventh Circuit agreed that the plaintiff had an ongoing duty to disclose changes in her bankruptcy schedules. The court noted that in addition to the general statutory duty to disclose, there was also a court ordered duty to disclose additional assets. Thus, because the plaintiff filed suit against Tyson while in Chapter 13, the claim became property of the estate and the plaintiff had an affirmative duty to disclose and notice the suit to her creditors. The court also noted that the district court's finding that the plaintiff had a motive to conceal the claim, in order to keep the settlement proceeds from her creditors, was reasonable based on the record before the court.

See also In re Benetatos, 2010 WL 1041474 (9th Cir. Mar. 19, 2010) (unpublished) (Debtor's failure to schedule cause of action, including the failure to schedule by amendment, justified judicial estoppel).

B. PREFERENCES/FRAUDULENT TRANSFERS

In re Egidi, 571 F.3d 1156 (11th Cir. 2009)

In Egidi, the debtor and a credit card company appealed the decision issued by the district court for the Southern District of Florida, which affirmed the bankruptcy court's holding that the debtor's payment of a credit card debt using balance transfers and credit card advances, drawn on other credit cards, constituted property of the debtor so that the transfers were avoidable preferences under § 547(b).

In affirming the decision of the district court, the Eleventh Circuit found that: (1) the funds from the creditors constituted the debtor's property because she had control over the funds and the transfer of funds was within her discretion; (2) the transfer diminished the funds available to other creditors because the funds could have been used to buy items that could have been considered assets of the estate and distributed to other creditors; (3) because the funds were

not issued to satisfy a designated creditor the earmarking exception did not apply; and (4) the transfers did not constitute "bank-to-bank" transfers because the creditors did not direct payment to the company.

C. EXEMPTIONS

Baker v. Tardif, 590 F.3d 1261 (11th Cir. 2009)

In Baker, the debtor appealed the judgment of the United States District Court for the Middle District of Florida, which affirmed the bankruptcy court's judgment that the debtor's Keogh plan was property of her bankruptcy estate and was not exempt under Fla. Stat. § 222.21(2)(a)(1).

The debtor in Baker was the sole participant in and beneficiary of a Keogh plan and claimed the plan as exempt pursuant to Fla. Statute § 222.21(2)(a)(1). In sustaining the trustee's objection to the exemption, the bankruptcy court reasoned that she could not claim the exemption under § 222.21(2)(a)(1) because she was the "sole shareholder and sole participant in the Keogh plan." In affirming the bankruptcy court, the district court found that in order for the debtor to claim the exemption the plan would have had to have been maintained under the Employee Retirement Income Security Act.

The Eleventh Circuit did not agree and noted that in 2005 the Florida Legislature amended § 222.21 to provide that an exempt plan did not have to comply with the Employee Retirement Income Security Act. Specifically, the court stated that "[s]ection 222.21(2)(a)(1) requires that a profit-sharing plan qualify under Section 401(a) of the Internal Revenue Code, not that the plan comply with the Employee Retirement Income Security Act." Accordingly, the circuit court remanded the case to the bankruptcy court for it to determine whether the plan complied with § 401(a).

Sheehan v. Peveich, 574 F.3d 248 (4th Cir. 2009)

In eight consolidated cases, the trustee directly appealed the decisions of the bankruptcy court in the Northern District of West Virginia. The bankruptcy court's decision overruled the trustee's objection that the claims of exemptions pursuant to W. Va. Code § 38-10-4 were preempted by federal law.

On direct appeal, the Fourth Circuit addressed whether the Supremacy Clause invalidates state property exemptions that apply only in bankruptcy actions. In affirming the bankruptcy court's decision, the Fourth Circuit reasoned that there could be no preemption where Congress has expressly authorized the state legislation. Additionally, the court found that 11 U.S.C. § 522(b)(1) "affords states the authority to restrict their respective residents to exemptions promulgated by the state legislatures, if they so choose. This statutory provision is an express delegation to the states of the power to create state exemptions in lieu of the federal bankruptcy exemption scheme." The court also noted that, "Congress has not seen fit to restrict the authority delegated to the states by requiring that state exemptions apply equally to bankruptcy and non-bankruptcy cases, and we are without authority to impose such a requirement."

In re Williams, 2010 WL 1553456 (Bankr. M.D. Fla. Mar. 31, 2010)

In 1989, the Debtor's mother executed a Warranty Deed transferring real property (the Home) to the Debtor, subject to a life estate reserved for herself. The Debtor resided in the Home with his wife and mother. The issue before the Court was whether the Debtor was entitled to claim his remainder interest in the Home as exempt pursuant to article X, section 4 of the Florida Constitution. In finding that the exemption should be allowed, the court found that (1) the property in which a debtor holds a vested remainder is "property owned by a natural person"

within the meaning of the Constitutional exemption and (2) under the circumstances of this case where the Debtor occupies the family Home, and where the evidence establishes the permanence of his occupancy, the Home is the "residence" of the Debtor within the meaning of article X, section 4 of the Florida Constitution.

In re Harle, 422 B.R. 310 (Bankr. M.D. Fla. 2010).

Debtors owned two homes, both of which they lived in prior to filing for bankruptcy. The debtors were residing in the first home at the time a judgment was recorded against the debtor wife. The judgment was obtained by the debtor wife's siblings who alleged she mismanaged her father's estate. By the time the debtors filed for bankruptcy they were living in a new home. The debtors claimed the new home as exempt homestead and the debtor's siblings objected. Although the debtors still owned the first home on the petition date, the court found that they had established the new home as their homestead prior to filing. Specifically, the court found that the debtors had occupied the new home with the intent to make it their personal residence. However, the court also found that because the perfected preexisting judgment lien antedated the debtor's eligibility to claim the new home as exempt, that the homestead exemption would be subject to the preexisting lien.

In re Cabrera, 2009 WL 4666460 (Bankr. S.D. Fla. Dec. 8, 2009).

In Cabrera, the court addressed the issue of whether a federal credit union could apply pre-petition funds on deposit, that the debtor had claimed as exempt, to offset a mutual debt based upon either the debtor's contractual pledge of those funds or the statutory lien granted by the Federal Credit Union Act pursuant to 12 U.S.C.S. § 1757(11). As of the petition date, the Debtor was indebted to the credit union for $1,818.62. Debtor's account on the petition date contained $1,820.84. Debtor claimed the sum on deposit with the credit union exempt pursuant

to Fla. Stat. §§ 222.16, 222.25(4). The court disagreed and held that "[t]he Credit Union's lien was perfected under Federal law by virtue of its insertion in the Note of its intent to impress a lien on all permissible accounts of the Debtor; and, under Florida law by virtue of the contractual pledge." The court also recognized that the Federal Credit Union Act authorized the credit union's security interest in the debtor's share draft account, despite the exclusion of bank accounts from the scope of Article 9, Uniform Commercial Code.

In re Johnson, 2009 WL 3763709 (Bankr. E. D. Va. Nov. 6, 2009).

Prior to filing for bankruptcy, debtor husband withdrew funds from his qualified retirement savings plan in the amount of $33,563 and placed the funds in a checking account and savings account. The debtors claimed that pursuant to § 541(c)(2) the money deposited in the bank accounts was not part of the bankruptcy estate because it could be traced to money that was exempt from the claims of creditors under § 522(b)(3)(C). The chapter 7 trustee objected to the debtors' claim of exemption. In sustaining the trustee's objection, the court stated that once the debtor husband withdrew the funds and placed those funds in bank accounts to which he and his wife had unrestricted access, the money became property of the estate.

D. DISCHARGE/DISCHARGEABILITY

Coady v. D.A.N. Joint Venture III, L.P., 588 F.3d 1312 (11th Cir. 2009)

In Coady, the debtor appealed the district court's order affirming an order of the bankruptcy court that sustained the creditor's objection to the debtor's discharge under 11 U.S.C. § 727(a)(2)(A). In affirming the decision of the district court, the Eleventh Circuit agreed with the finding that the debtor had intentionally attempted to shield assets from his creditors by diverting the fruits of his labor to increase the value of his wife's businesses. The debtor then used those business assets to support his personal lifestyle. The court noted that although the

debtor devoted his talents and time to increasing the businesses' value, whatever increase in equity realized in the business would be protected from his creditors. Most importantly, the debtor's personal use of business accounts, along with the financial support he received from his wife, replaced any regular compensation that could otherwise have been available to pay the claims of his creditors. The court determined that through this arrangement the debtor acquired and concealed an equitable interest in his wife's businesses. Further, the court held that although the debtor did not legally own the businesses, his equitable interest in the businesses constituted property of the debtor within the scope of § 727(a)(2)(A) because the bankruptcy estate broadly includes all legal or equitable interests of the debtor in property under § 541(a)(1).

Cassim v. Educational Credit Management Corp., 594 F.3d 432 (6th Cir. 2010)

Four days prior to her chapter 13 plan being confirmed, the debtor, who was disabled, filed an adversary proceeding against Educational Credit Management Corp., seeking an undue hardship discharge of her student loans. The creditor mover to dismiss the complaint on the basis that the issue was not ripe. The bankruptcy court denied the motion and explained that "[a] rigid time period for filing determination of dischargeability of student loans should not be established when such time restrictions are absent from the Bankruptcy Code and Bankruptcy Rules." The 6th Circuit BAP affirmed the bankruptcy court's decision and held that the issue was ripe from the beginning of the debtor's case. The court reasoned that "[t]he dispute … involved a specifically-defined debt and a statutorily-based claim for relief that Cassim, as a Chapter 13 petitioner, was entitled to pursue. The collision of these opposing interests produced a definite and substantial controversy between the parties, not an abstract disagreement."

E. CHAPTER 13 AND HOME MORTGAGE MODIFICATION

In re Ennis, 558 F.3d 343 (4th Cir. 2009)

The issue in Ennis was whether the definition of a "debtor's principal residence," which includes a mobile home that is not "attached to real property," alters the real property requirement of the anti-modification clause. The Fourth Circuit held that § 101(13A's) definition of "debtor's principal residence" did not alter the real property requirement of § 1322(b)(2)'s anti-modification clause. The court reasoned that "the definition of 'debtor's principal residence' and the real property requirement in the anti-modification clause may each be given effect according to their plain language: 'property can be a debtor's principal residence even if it is personalty, but it cannot be subject to the [anti-]modification provision unless it is realty.'"

Gray v. Bank of America**,** 2010 WL 276179 (Bankr. E.D. Va., Jan. 15, 2010).

Plaintiffs, Chapter 13 debtors, in two separate Chapter 13 cases, filed adversary proceedings to strip off junior mortgages that they alleged were wholly unsecured. The defendant creditors did not file answers to the complaint and the plaintiffs moved for default judgments. Debtor plaintiffs alleged their homes were worth less than the proofs of claim filed in their respective cases. In support of their valuations, one debtor relied on an internet valuation that was further supported by the county's real estate tax assessment and the other debtor relied on a broker's competitive market analysis. In denying both debtors motions for default judgments the court stated that it was not satisfied with the evidence presented.

First, the court determined that the broker's competitive market analysis was not sufficient because (1) it was prepared prior to the filing of the petition and was not updated, (2) adjustments were not made as to comparable filings, (3) no explanation of the choice of the comparable properties was offered, and (4) the information was not analyzed.

With respect to the debtor who relied on the internet valuation, the court stated "[t]he problem with the internet valuation is that the court has no idea how the valuation was made or the information upon which it was based. Property valuation is, except for the owner of the property, generally testimony that requires an expert witness. The court cannot evaluate the internet company's expertise. The court cannot evaluate the facts or data upon which the valuation is based. The court cannot determine the principles or methods used to derive the valuation. The court cannot determine whether the internet company applied the principles and methods reliably to the facts."

F. JURISDICTION

In re Kirkland, 2010 WL 851414 (4th Cir. March 12, 2010).

The Chapter 13 debtor scheduled her student loan debts with the confirmed plan. Errors in administration led to some loans being overpaid and some not being paid. In response to the creditor's attempt to collect interest and costs, the debtor filed an adversary proceeding. The bankruptcy court held that the debtor owed the full amount of interest and principal on the loan but denied collection costs and awarded postpetition interest. On appeal the Fourth Circuit held the debtor's complaint was not a proceeding arising in or related to the debtor's bankruptcy petition under 28 U.S.C. § 1334. The court noted that the debtor was not in default at the time she filed her petition and that the claim existed irrespective of her bankruptcy case and had no effect on her bankruptcy estate.

In re Wynne, 422 B.R. 763 (Bankr. M.D. Fla. 2010).

Creditor filed a motion to dismiss for failure to state a claim and for lack of subject matter jurisdiction with respect to plaintiff's claims for violation of the automatic stay, the discharge injunction, the Fair Debt Collection Practices Act and the Florida Consumer Collection

Practices Act. The court denied the motion to dismiss as to the causes of action for violation of the automatic stay and discharge injunction but granted the motion to dismiss with respect to the Fair Debt Collection Practices Act and Florida's Consumer Practices Act as they were not within the court's "arising in" or "arising under" subject matter jurisdiction.

G. MISCELLANEOUS

Ride Through

In re Jones, 591 F.3d 308 (4th Cir. 2010)

In Jones, the chapter 7 debtor filed a statement of intention to remain current on his car loan payments, but did not state whether he intended to reaffirm the debt and the lender was subsequently granted stay relief. Pursuant to the ipso facto clause the lender then enforced its security interest by repossessing the vehicle without notice. Debtor and his wife then successfully sought for the vehicle to be returned by filing an adversary proceeding against the lender. In holding for the debtors, the bankruptcy court held that the Fourth Circuit had previously recognized the ride through option which allowed debtors who were current on their installment payments to retain the collateral after discharge without redeeming the collateral or reaffirming the debt. The district court disagreed and reversed upon the basis that BAPCPA had eliminated the ride through option. The Fourth Circuit affirmed and held that "Sections 521(a)(2)(C) and 362(h) significantly alter the pre-BAPCPA analysis by explicitly requiring a debtor to indicate on the statement of intention an intent to either (1) redeem the property or (2) reaffirm the debt, in order to retain the property. If the debtor fails to so indicate, the stay terminates with respect to the property, and the property will no longer be part of the estate."

Lift stay order in first case remains binding in second case

In re Barner, 597 F.3d 651 (5th Cir. 2010).

Pre-BAPCPA the Debtor filed a case under Chapter 7 and the mortgage creditor obtained stay relief. Debtor's chapter 7 case was subsequently dismissed and post BAPCPA debtor filed a second case under Chapter 13, one day before a foreclosure sale. Based on an order entered in the debtor's previous case the bankruptcy court found that the automatic stay was not in effect at the time of the sale. Debtor appealed the decision and argued that BAPCPA precluded application of the prior order.

The Fifth Circuit disagreed and held that the pre-BAPCPA authority relied on by the bankruptcy court, Jefferson v. Mississippi Gulf Coast YMCA, Inc., 73 B.R. 179 (S.D. Miss. 1986), was still effective as BAPCPA did not modify or affect orders issued in cases filed before its effective date. In Jefferson the court held that the stay doesn't prevent foreclosure when an order lifting the stay had been entered in a prior bankruptcy case involving the same debtor, creditor and property.

Debtor has absolute right to dismiss Chapter 13 case

B-Line, LLC v. Wingerter, 594 F.3d 931 (6th Cir. 2010)

In finding that the claimant did not have to support its proof of claim with original documentation the Sixth Circuit reversed the decisions of the lower courts. The court held that the bankruptcy courts finding that it was a Rule 9011 violation to file a proof of claim absent the original documentation was harmful to the claimant's cost-saving practice of waiting to obtain originating documents until a claim was challenged. The court also reasoned that although the claimants failure to completely fill out Bankruptcy Form 10 violated Fed. R. Bankr. P. 3001, the

resulting violation merely resulted in the fact that the proof filed would not constitute prima facie evidence of the claim's validity, not the imposition of sanctions.

Negative Equity and PMSI Status

In re Howard, 597 F.3d 852 (7th Cir.2010); In re Westfall, 2010 WL 1050265 (6th Cir. Mar. 24, 2010).

The Sixth and Seventh Circuits recently considered how the "hanging paragraph" in Chapter 13 of the Bankruptcy Code, applies to a secured claim when a portion of that claim relates to the financing of negative equity. In joining the other circuits that have addressed this issue, the courts held that the entire debt was secured by a purchase money security interest. Thus, the creditor's claim was protected from bifurcation by the hanging paragraph.

State violated confirmation order by pursuing collection other than what plan provided

In re Rodriguez, 2010WL 597224 (11th Cir. Feb. 22, 2010).

The Eleventh Circuit affirmed the ruling of the lower courts that pursuant to pre-BAPCPA § 362(b)(2)(B) the Florida Department of Revenue did not violate the automatic stay by sending collection notices to the debtor with respect to child support payments. However, the court did find that the State had violated the terms of the debtor's confirmed plan by attempting to collect more than the plan provided and thus found that the bankruptcy court's finding of contempt and award of attorney's fees was appropriate. The circuit court also agreed with the district court's finding that by filing its proof of claim the State had waived its defense of sovereign immunity under § 106(b).

Bartron Doctrine applied in plaintiff debtor's civil suit because outcome could effect administration of debtor's bankruptcy estate

Lawrence v. Goldberg, 573 F.3d 1265 (11th Cir. 2009)

Plaintiff debtor filed suit in the district court against the trustee, the trustee's attorneys, investigators employed by the trustee, and Bear Sterns who agreed to finance the trustee's efforts in bringing 7 million in trust assets to the estate. The debtor alleged that the defendants violated his civil rights in connection with their efforts to enforce the turnover order entered by the bankruptcy court. The district court dismissed the case for lack of subject matter jurisdiction pursuant to the Barton doctrine.

In affirming the district court, the eleventh circuit cited to its only published decision interpreting the Barton doctrine. Carter v. Rodgers, 220 F.3d 1249, 1252 (11th Cir. 2000). In Carter, the court held that as a matter of federal common law "a debtor must obtain leave of the bankruptcy court before initiating an action in district court when that action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor's official capacity." The court reasoned that each of the parties sued by the debtor served as the equivalent of a court appointed officer as they all assisted the trustee in executing his official duties.

The court of appeals also rejected the debtor's argument that the Bartron doctrine was not applicable because the civil suit was not related to the bankruptcy proceeding. The court recognized that although the debtor raised claims under various federal and state laws that the outcome of the suit could clearly have an effect on the administration of the debtor's bankruptcy estate and was therefore "related to" the debtor's bankruptcy case.

Debt Collector not entitled to bona fide defense

Edwards v. Niagara Credit Solutions, Inc., 584 F.3d 1350 (11th Cir. 2009).

The debtor sued a debt collection agency for leaving messages on her answering machine in violation of the Fair Debt Collection Practices Act (the Act). Despite the Act's requirement that an agency must disclose its status as a debt collection agency, the debtor alleged that the defendant failed to do so and would merely state the call was in reference to an important matter. The agency asserted that it had specifically not complied because it feared doing so would risk violating a different provision of the Act, which forbids an agency from communicating about an outstanding debt with a third party. The agency therefore contended that it was entitled to a bona fide error defense.

In affirming the district court's entry of summary judgment in favor of the debtor the circuit court recognized that to be protected by the bona fide error defense a debt collector must show by a preponderance of the evidence that the violation of the Act: (1) was not intentional; (2) was a bona fide error; and (3) occurred despite the maintenance of procedures reasonably adapted to avoid any such error. The court held that by its own admission the debt collector could not satisfy the first element and that it was not reasonable for the debt collector to violate the Act with every message it left in order to avoid the mere possibility that if overheard, some of those messages, may violate a different provision of the Act. Finally, the court rejected the debt collector's argument that a holding against it would result in it not being able to leave any messages on answering machines, as the Act does not guarantee debt collectors such a right.

§ 365 Executory Contract and Unexpired Leases

Chira v. Saal (In re Chira), 567 F.3d 1307 (11th Cir. 2009).

Prior to getting divorced the debtor and his spouse owned a hotel. During the divorce proceedings the divorce court appointed a receiver to run the hotel and the receiver subsequently entered into a contract to sell the hotel to a third party for 5.85 million. Prior to the sale closing, debtor's creditors filed an involuntary petition for bankruptcy seeking relief under Chapter 7 and the court entered an order granting relief. The chapter 7 trustee subsequently entered into a settlement agreement with the third party to assume the purchase contract and clear title to the hotel in exchange for an additional 2 million dollar payment to the bankruptcy estate. The trustee's motion to assume was granted pursuant to § 365 and in a separate adversary proceeding the bankruptcy court subordinated the wife's claim to all other creditors based on a finding that she had engaged in underhanded conduct to deprive the debtor of his equity in the hotel. The district court affirmed and found that § 365 could be used to assume executory contracts that have been modified post-petition.

In affirming the lower courts, the circuit court found that the settlement agreement did not modify the terms of the purchase contract but merely settled the trustee's dispute with the third party purchaser. The court also found that the bankruptcy court did not abuse its discretion in ruling that the wife was not entitled, on either legal or equitable grounds, to any portion of the 2 million dollar payment. The circuit court also established the following requirements for approval of a settlement agreement that includes assumption of a pre-bankruptcy contract: (1) the contract at issue must be executory in nature and meet other basic requirements in § 365; and (2) the settlement agreement must meet the four part test for approval under Bankruptcy Rule 9019

as established in Wallis v. Justice Oaks, II, Ltd. (In re Justice Oaks II, Ltd), 898 F.2d 1544 (11th Cir. 1990).

No separate classification but injunction against student loan creditor

In re Harding, 423 B.R 568 (Bankr. S.D. Fla. 2010).

A chapter 13 debtor proposed a plan to pay off her student loan debt in full and sought to classify the student debt separately from the other unsecured debts. The debtor asserted that because repayment of the student loan extended beyond the life of her plan that she would incur late fees, penalties, and collection fees if the debt was paid on a pro rata basis rather than in full. The bankruptcy court found that classifying the student loan debt separately would result in unfair discrimination to other unsecured creditors as they would receive substantially diminished dividends. However, the court also held that pursuant to § 362(a)(6) the creditor must refrain from "charging late fees, collection fees, or any other penalties based solely upon its *pro rata* Chapter 13 Plan distributions being less than the minimum monthly payments it would otherwise be contractually entitled to during the life of the five-year Plan." In reaching its decision the court balanced the debtor's fresh start, the clear legislative objective of student loan repayment, and fair treatment to creditors as a whole.

Note: Compare the court's decision in Harding to its earlier decision in In re Kalfayan, 415 B.R. 907 (Bankr. S.D. Fla. 2009) in which the court found that separate classification was not unfair discrimination because the debtor's optometrist license could be jeopardized if she failed to stay current on her student loan payments. The court found that making the student loan payments would benefit the estate and that the debtor had satisfied her burden of showing that the proposed discrimination was fair under § 1322(b)(1) because there was a basis for the discrimination other than nondischargeability. The court also reasoned that the creditors who

were being discriminated against would benefit from the arrangement as it was directly related to her ability to earn income. However, the debtor could only make the payments that were necessary for her to remain current on her loan.

Putative class action against Chase Home Finance allowed to proceed

In re Woodruff, 2010 WL 386209 (Bankr. M.D. Ala. Jan. 27, 2010).

The debtor alleged the creditor had committed fraud on the court by filing false affidavits in support of stay relief motions, which reflected an institutional practice to mislead the court. Relevant factors for the cause of action were: (1) the filing of large numbers of motions for relief from the automatic stay; (2) the short period of time to dispose of the motions; (3) the huge economic disparity between the resources available to the parties; (4) the subject matter was critical to the debtor's survival and (5) the fact that such matters are only rarely litigated to a final order after a hearing and evidence. In finding that the debtor had stated a cause of action the court opined that "it appears that this is part of a massive, industry-wide practice, if not conspiracy, on the part of large institutional lenders to defraud debtors and mislead the bankruptcy courts, thereby inflating claims, generating excessive attorney's fees and, perhaps in some cases, leading to wrongful foreclosures."

Debtor has the absolute right to dismiss Chapter 13 case

In re Hamlin, 2010 WL 749809 (Bankr. E.D. N.C. Mar. 1, 2010).

A Chapter 13 trustee filed a motion to confirm the debtors' plan and the debtors subsequently moved to dismiss their case pursuant to § 1307(b). In granting the debtors' motion to dismiss, the court held that the debtors had the absolute but not unconditional right to dismiss under § 1307. In reaching its ruling the court stated, "[f]or reasons that are not obvious to this court, some courts have extended the holding in Marrama to limit the debtor's right to dismiss

under § 1307(b), notwithstanding the use of "may" in § 706(a) and the use of "shall" in § 1307(b)." The court also noted that the instant case was distinguishable from the other cases that considered whether the right to dismiss under § 1307 is absolute because unlike the other cases there was no motion to convert or allegations of fraud. The court also opined that "Congress intended for chapter 13 to be purely voluntary, and the thirteenth amendment prohibits compelling debtors to work for the benefit of creditors, a problem not present in converted chapter 7 cases where postpetition earnings are not paid to creditors." Finally, the court observed that the situation only arose because of the district's "unique" procedure of having the trustee file the motion for confirmation, unlike the majority of other districts in which the debtors are the parties to seek confirmation.

IRS acquired non-debtor spouse's share of proceeds pursuant to a notice of levy

In re Bernardo, 2010 WL 55334 (Bankr. M.D. N.C. Jan. 5, 2010).

In Bernardo, the Chapter 7 Trustee sold property that was jointly owned by the debtor and his non-debtor spouse as tenants by the entirety. Although half of the proceeds from the sale were available for distribution to the non-debtor spouse, the IRS served a notice of levy on the net proceeds. The issue before the court was whether the Trustee was required under section 363(j) to immediately disburse to the non-debtor her share of the proceeds, even though the payment was subject to IRS levy under 26 U.S.C. § 363(j). Specifically, the IRS contended that it had acquired the non-debtor spouse's share of the proceeds pursuant to the levy as the spouse had a joint and several tax liability with the debtor. The court agreed and held that the trustee was not required to immediately disburse the funds under § 363(j). The court reasoned that the Internal Revenue Code creates a lien on a tax debtor's property, or in this case a co-owner, non-debtor spouse's property, attaching at the time the taxes are assessed. The Service's interest in seized

property is its lien on that property." The court went on to conclude that "[w]hile the bankruptcy court could attempt to resolve this conflict between the co-owner, non-debtor spouse's rights and the IRS's authority by ordering a disbursement of funds to the wife, the fact that those funds, once disbursed, could be subject to levy by the IRS, evidences the fact that the IRS ultimately holds the superior right to possession."

Consumer Update 2010: Supplement on Supreme Court Decisions

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I. Introduction

After the written materials were submitted for this panel, the Supreme Court decided the last two bankruptcy cases of this Term: Hamilton v. Lanning, and Schwab v. Reilly. This supplement discusses the two decisions, both of which involved consumer bankruptcy issues.

II. Most Recent Supreme Court Decisions

A. Determining a debtor's "projected disposable income" for chapter 13 plan payments: Hamilton v. Lanning, ___ S. Ct. ___, 2010 WL 2243704 (June 7, 2010).

The Supreme Court, with Justice Scalia dissenting, rejected a purely "mechanical" approach to the calculation of a chapter 13 debtor's projected disposable income under 11 U.S.C. § 1325(b)(1) and adopted a "forward-looking" approach that allows consideration in unusual cases of changes in the debtor's income prior to confirmation.

The debtor, Stephanie Kay Lanning, received a significant one-time buyout from her former employer within the six months prior to filing her chapter 13 petition. As a result of this buyout, the debtor's disposable income as determined by Official Form 22C was $1,114.98 per month. The debtor reported her actual income at the time of filing on Schedule I, and, based on the expenditures reported on Schedule J, she concluded that her monthly disposable income was $149.03. The debtor filed a plan calling for payments of $144 per month for three years. Petitioner Hamilton, the chapter 13 trustee, objected to confirmation of the debtor's plan based on her failure to devote to it all of her disposable income as determined by Official Form 22C. The trustee argued that the debtor should be required to pay $756 a month for five years, which payments would enable her creditors to be paid in full.

The bankruptcy court rejected the trustee's argument and confirmed the debtor's proposed monthly payments of $144 (while requiring a five-year plan). The Tenth Circuit

Bankruptcy Appellate Panel affirmed. The Tenth Circuit also affirmed, holding that the mechanical approach established a presumption of projected disposable income that could be rebutted by evidence of a substantial change in the debtor's income during and after the six-month period prior to filing.

Section 1325(b) of the Bankruptcy Code forbids bankruptcy courts from confirming chapter 13 plans over the objection of a trustee or an unsecured creditor if the plan does not either pay unsecured claims in full or commit all of the debtor's projected disposable income to the plan payments. The Bankruptcy Code does not define "projected disposable income"; however, "disposable income" is defined in § 1325(b)(2). The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") changed the statutory definition of "disposable income" from "income which is received by the debtor and which is not reasonably necessary to be expended" for certain purposes, to the debtor's "current monthly income" that is not reasonably necessary to be expended for those purposes. "Current monthly income," as defined by § 101(10A), is generally based on the debtor's income during the six-month period prior to the filing of the bankruptcy petition. Prior to BAPCPA bankruptcy courts typically determined projected disposable income by multiplying monthly net income (determined by Schedules I and J) by the plan period, but they exercised discretion to take into account clearly foreseeable changes in the debtor's financial circumstances.

Justice Alito's opinion for the Court began its analysis by examining the ordinary meaning of the word "projected." Pointing to non-bankruptcy cases and statutes, as well as to the basis for predicting the outcomes of political elections and sports teams' winning percentages, Justice Alito observed that projections generally are not "based on the assumption that the past will necessarily repeat itself." Instead, he wrote, "[w]hile a projection takes past

events into account, adjustments are often made based on other factors that may affect the final outcome." 2010 WL 2243704 at *6. He further noted that, had Congress intended a purely mechanical approach to calculating projected disposable income, it could have used the word "multiplied" instead of "projected." He cited provisions of the Bankruptcy Code and other federal statutes that are expressed in that manner.

The majority opinion also relied on the pre-BAPCPA use of the forward-looking approach to determine projected disposable income. That practice was "telling," said the Court, because Congress had not clearly indicated that it intended a departure from past bankruptcy practice when it amended § 1325(b). *Id.* at *7. Relying on prior Supreme Court bankruptcy decisions, Justice Alito wrote that "had Congress intended for 'projected' to carry a specialized – and indeed, unusual – meaning in Chapter 13, Congress would have said so expressly." *Id.* He also identified other clauses in § 1325(b) that were said to be inconsistent with the mechanical approach.

The Court dismissed the trustee's arguments and proposed solutions to the practical problems caused by the mechanical approach that he advocated. Justice Alito said that the majority's interpretation does not make the statutory definition of disposable income superfluous because, as the Tenth Circuit observed, the calculation of disposable income, as defined by § 1325(b), is the starting point in all cases. It establishes a rebuttable presumption that applies in all but those "unusual" cases in which "other known or virtually certain information about the debtor's future income or expenses" can be taken into account. *Id.* at *9. Furthermore, according to the Court, the trustee's proposals for debtors who, like Lanning, cannot confirm viable plans under the mechanical approach were not satisfactory. For example, delaying the

filing of the petition until the unusual income is outside of the six-month period is not an option for debtors who need immediate bankruptcy protection, and it might also be considered abusive.

Justice Scalia's dissent criticized the majority for straying from the statutory text to reach its conclusions. He wrote that, while analogies to sports and politics show that "relying exclusively on past data for [a] projection may be a bad idea," they do not show that Congress did not incorporate this "bad idea" into the Bankruptcy Code with the BAPCPA amendments. *Id.* at *14. Moreover, he pointed out, under his view the calculation of projected disposable income does sometimes require a projection, because consideration of the debtor's expenses, which were not at issue in this case, allows a bankruptcy court to take into account circumstances occurring after the six-month prebankruptcy period. Justice Scalia said the rebuttable presumption approach adopted by the majority requires either ignoring statutory text (the definition of "disposable income") or adding to it (by treating that definition in some cases as a mere suggestion or presumption). Finally, the Court's citation to pre-BAPCPA case law was similarly unpersuasive to Justice Scalia. He stressed that BAPCPA made significant changes – in particular redefining "disposable income" to incorporate a backward-looking approach – so reliance on the pre-amendment practice was "suspect." *Id.* at *16.

Justice Scalia ended his dissent by stating what many bankruptcy lawyers had already concluded: "It may be that no interpretation of § 1325(b)(1)(B) is entirely satisfying." He suggested, however, that the Court should "trust that Congress will correct the law if what it previously prescribed is wrong." *Id.* at *19.

B. Objection to a debtor's valuation of property claimed as exempt: Schwab v. Reilly, ___ S. Ct. ___, 2010 WL 2400094 (June 17, 2010).

The Supreme Court, in a 6-3 decision, held that an objection under § 522(*l*) of the Bankruptcy Code and Fed. R. Bankr. P. 4003 is not required in order for an interested party to challenge the debtor's valuation of exempt property and thereby allow the estate's recovery of any value exceeding the claimed exemption amount.

Nadejda Reilly, the debtor in this case, operated a catering business. When she commenced her chapter 7 bankruptcy case, she listed as an asset on Schedule B business equipment valued at $10,718. On her Schedule C, she claimed an exemption for the equipment in the same dollar amount, using the entire "tools of the trade" exemption from § 522(d)(6) and the majority of the "wildcard" exemption permitted by § 522(d)(5). Schwab, the bankruptcy trustee, did not object to the exemption of the equipment within the 30-day period allowed by Rule 4003(b) for filing objections to a debtor's claimed exemptions, despite having obtained an appraisal prior to the close of the objection period that indicated the equipment might have a value as high as $17,200. Instead, the trustee later moved to sell the equipment, pay the debtor the monetary value of her claimed exemptions, and distribute the rest of the proceeds to her creditors. The debtor opposed this motion by arguing that her Schedule C indicated an intent to exempt the full value of the equipment and the trustee had failed to object to the exemption. Thus, she claimed, the property in its entirety was now exempt.

The bankruptcy court agreed with the debtor and denied the trustee's motion. The trustee then appealed to the district court and to the Third Circuit, with both courts affirming the bankruptcy court's decision. The Supreme Court granted *certiorari* to resolve a split among the

circuits over whether a party must file a timely objection to an exemption in order to challenge the debtor's valuation of the property claimed as exempt.

Section 522(*l*) requires a debtor to "file a list of property that the debtor claims as exempt" and states that "[u]nless a party in interest objects, the property claimed as exempt on such list is exempt." A debtor provides this list of exempt property on Schedule C. Section 522(d) lists the categories of property that a debtor using the federal exemptions can claim as exempt. This section limits exemptions under most of the categories, including the exemptions used by this debtor, to a debtor's interest in property up to a certain dollar amount.

Reilly argued that, by listing the current market value of the business equipment and the value of the claimed exemptions in the same amount on her Schedule C, she notified the trustee that she intended to fully exempt the property, regardless of its value. Thus she contended that the trustee was required to object to her claimed exemption in order to challenge her valuation of the property. The trustee argued that he had no duty to object to the debtor's exemptions, since the type and amount of the exemptions she claimed were within the statutory limits of the Bankruptcy Code. The Supreme Court agreed with the trustee's position.

Justice Thomas, writing for the Court, concluded that the language of § 522(d) limits the "property claimed as exempt" – the target of an objection under § 522(*l*) – to "the debtor's interest" in the property. Subsection (*l*) does not require a trustee or other party to object to the debtor's statement of the value of the property itself. Instead, the Court held, a trustee or other party must object to a claimed exemption only if the description of the property claimed as exempt, the statutory exemption provision cited, or the "value of the claimed exemption" is inconsistent with § 522. In this case, the trustee had no obligation to object in order to preserve the estate's right to retain any excess value in the cooking equipment, because Reilly "accurately

describe[d] an asset subject to an exempt interest and . . . declare[d] the 'value of [the] claimed exemption' as a dollar amount within the range the Code allows." 2010 WL 2400094 at *7.

Justice Thomas stated that the Court's conclusion does not make the valuation information on Schedule C unnecessary, as it allows the trustee to compare the stated market value of the property with the claimed exemption amount. By doing so, the trustee can determine whether there may be some value in the asset available to the estate or whether there is property whose full value may not be available for an exemption due to the existence of an unavoidable lien. Justice Thomas further noted that historically debtors have claimed exemptions only by listing the value of the claimed exempt interest and only since 1991 have they been required by Schedule C to state the estimated market value of the property itself. That form change, he stated, was not occasioned by any amendment of the relevant provisions of § 522.

The Court concluded that Taylor v. Freeland & Kronz, 503 U. S. 638 (1992), did not require a contrary result in this case. In *Taylor* the Court held that a trustee had a duty to object in order to challenge an exemption listed as "unknown" because this value could exceed the statutory limits. Here, however, Reilly's claimed exemptions were within the statutory limits. In addition, Justice Thomas wrote that the policy arguments advanced by Reilly, such as finality and preventing trustees and creditors from sleeping on their rights, "threaten[ed] to convert a fresh start into a free pass." 2010 WL 2400094 at *11.

Justice Ginsburg dissented in an opinion joined by Chief Justice Roberts and Justice Breyer. Noting that "challenges to valuation have been, until today, the most common type of objection leveled against exemption claims," *id.* at *13, she argued that a trustee should be required to object under Rule 4003 in order to challenge a debtor's valuation of property in

which an exemption is claimed. In her view, by exempting an amount equal to the stated value of property, a debtor notifies the trustee and other parties that she is claiming the entire property as exempt. Thus a timely objection to the claimed valuation is required in order to challenge the exemption. Justice Ginsburg also noted a practical problem created by the majority opinion: If trustees are not required to object under Rule 4003 in order to challenge the valuation of property claimed as exempt, they will be able to sell the property at any point before the end of the bankruptcy case. Because a case could last several years, a debtor would be unable to make future plans regarding the property with any confidence that she would remain the owner of the property at the conclusion of the bankruptcy case. Schwab's contention that a contrary ruling "'would give debtors a perverse incentive to game the system by undervaluing their assets'" did not persuade Justice Ginsburg, given other provisions of bankruptcy and criminal law that discourage the undervaluation of a debtor's assets. *Id.* at *19.