OFFICE OF THE CLERK
U. S. BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

CALENDAR FOR:
Thursday, February 18, 2016

LOCATION:
UNLV William S. Boyd School of Law
Thomas and Mack Moot Court Facility
4505 South Maryland Parkway
Las Vegas, Nevada

Summary of Cases on Calendar[1]

NV-14-1532-DJuKi Horizon Ridge Medical & Corporate Center, LLC

The order on appeal granted final fees for Chapter 11 debtor's counsel. Counsel representing the debtor in a Chapter 11 reorganization must have the employment approved by the bankruptcy court (11 U.S.C. § 327) and must have all fees and expenses approved by the bankruptcy court as reasonable compensation for actual, necessary services and reimbursement of actual, necessary expenses (11 U.S.C. §330). In this appeal, a creditor is challenging the award of fees to debtor's counsel, arguing that the work performed by debtor's counsel was for the benefit of the debtor's insiders and not the debtor and therefore should not be paid from the bankruptcy estate.

NV-14-1564-KiDJu Beltway One Development Group, LLC

The order on appeal approved the Chapter 11 debtor's disclosure statement and plan of reorganization. In Chapter 11, a debtor reorganizes its financial affairs through a plan of reorganization. The plan identifies the debtor's assets and liabilities and describes how the creditors will be treated. Creditors have the opportunity to vote for or against the plan. The disclosure statement is akin to a prospectus which is distributed to creditors with the proposed plan to assist the creditors in understanding

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[1] This summary was drafted to assist law students in following the oral arguments. It does not purport to be a complete description of the issues on appeal. Rather it is designed to provide basic background information which might be helpful for law students unfamiliar with the particular cases or the intricacies of bankruptcy law when listening to oral arguments.

the plan and deciding whether to vote for or against the plan. The disclosure statement must be approved by the court as containing adequate information to enable a hypothetical investor to make an informed judgment about the plan (11 U.S.C. § 1125). The plan may classify claims and interests of creditors (11 U.S.C. § 1122); must do certain things and may do other things (11 U.S.C. § 1123); and must comply with specific requirements set forth in the bankruptcy code (11 U.S.C. §1129). The plan is not binding on creditors unless it is approved by the bankruptcy court. The court cannot confirm the plan unless it complies with the bankruptcy code.

In this appeal, an over-secured creditor (one who is owed less than its collateral is worth) is objecting to the plan because it does not provide the creditor with payment of default rate interest (typically a higher rate of interest which kicks in when a debtor fails to make payments). An over-secured creditor is entitled to interest on its claim and any reasonable fees, costs, or charges provided for under the agreement or state statute which is the basis of the claim (11 U.S.C. §506(b)). In this instance, the bankruptcy court determined that the over-secured creditor is not entitled to default rate interest because the plan **cures** pre-bankruptcy defaults (11 U.S.C. § 1124 and In re Entz-White Lumber Supply Co., 850 F.2d 1338 (9th Cir. 1988)). The creditor argues Entz-White is distinguishable.

In Entz-White, the plan cured the creditor's claim by paying the claim in full in cash. The plan subject to this appeal provides for payment of the over-secured creditor's claim over multiple years. The creditor argues that payment of its claim over multiple years is distinguishable from the full cash payment in Entz-White and does not qualify as a cure. If not cured, default interest is required.

NV-14-1575-DJuKi Hebert

The order on appeal granted summary judgment excepting the creditor's claim against the debtor from discharge as a debt obtained by false pretenses, a false representation, or actual fraud (11 U.S.C. § 523(a)(2)(A)). The purpose of bankruptcy is to allow an honest debtor to eliminate (discharge) his debts. Congress has identified certain types of debts which should not be eliminated (discharged), including debts arising from fraud. Liability for these nondischargeable debts survives bankruptcy.

To except the debt from discharge (preserve the liability), the creditor must establish that the debt qualifies as one of the types of debts which are excepted from discharge under the bankruptcy code. In this case, the creditor sued the debtor and obtained a default judgment against him and a co-debtor in state court prior to bankruptcy. The co-debtor filed bankruptcy. The creditor obtained a judgment in the co-debtor's bankruptcy case (in Michigan) excepting the debt from discharge as arising from fraud. The debtor testified as a witness in the trial in the co-debtor's bankruptcy case. When the debtor filed bankruptcy, the creditor sued to have the debt excepted from discharge as a debt obtained by false pretenses, false representation or actual fraud. The creditor sought summary judgment in bankruptcy on the theory that the nondischargeability judgment in the co-debtor's bankruptcy case preclusively established the debtor's liability for false pretense, false representation or fraud. The court granted summary judgment based on the findings by the bankruptcy court in the co-debtor's bankruptcy case. The debtor is challenging the summary judgment, arguing that claim preclusion was not appropriate.

NV-15-1074-JuKiD Caldwell

The order on appeal limits the debtor's homestead exemption to $155,675. When a debtor files a Chapter 7 bankruptcy case, a trustee is appointed to liquidate his assets and distribute the proceeds to his creditors. A debtor is entitled to exempt certain assets from the reach of his creditors. State law establishes the debtor's homestead exemption. However the bankruptcy code limits a debtor's homestead exemption to $155,675 if the debtor acquired the property within 1215 days before filing bankruptcy (11 U.S.C. § 522(p)). In this case, the debtor has continuously resided in the property from 1994 to the present. However, title to the property changed during this period. The property was titled to an LLC from 1998 until 1,061 days before the debtor's bankruptcy filing. At that time, the LLC transferred the property to the debtor's trust. (The debtor is entitled to a homestead when the property is titled to a trust.) The bankruptcy court concluded that debtor acquired the property when the LLC transferred the property to the trust (within 1215 days before bankruptcy) and therefore the $155,675 limitation applies. The debtor disputes this, arguing that he continuously resided in the property (retaining an equitable interest) and that he did not **acquire** the property when the bare legal title was changed from the LLC to the trust.

NV-15-1096-JuKiD 3.78 Irish Acres, LLC

A chapter 7 liquidation case may be dismissed for cause including unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 707(a)(1)). The bankruptcy court dismissed the debtor's case for cause on three bases: (1) claim preclusion; (2) issue preclusion; and (3) bad faith determined by the totality of circumstances. The manager of the LLC had filed an earlier bankruptcy petition on the LLC's behalf in 2014. The bankruptcy court dismissed the 2014 case because a manager does not have authority to file a bankruptcy petition on behalf of the LLC. In dismissing the first case, the court noted that a majority member could authorize a bankruptcy petition for the LLC and noted that it appeared this LLC had 2 members each of whom owned 50% of the LLC. Two days after the first case was dismissed, one member of the LLC filed a second bankruptcy case on behalf of the LLC. The second case (2015 case) was dismissed because a single 50% member was not a majority member and therefore lacked authority to file a bankruptcy petition on behalf of the LLC. The debtor LLC is challenging the dismissal of its second bankruptcy case.