BANKRUPTCY

DEBTOR WHO CONVERTS FROM A CHAPTER 13 TO A CHAPTER 7 IS ENTITLED TO RETURN OF POST PETITION WAGES NOT DISTRIBUTED BY THE CHAPTER 13 TRUSTEE

Harris v. Viegelahn, 135 S.Ct. 1829 (U.S. 2015).
https://scholar.google.com/scholar_case?case=6882960002787385239&hl=en&as_sdt=6&as_vis=1&oi=scholarr

FACTS: Petitioner, Charles Harris ("Harris"), was indebted to multiple creditors and was behind on his mortgage payments to Chase. Harris filed for Chapter 13 bankruptcy and the court planned monthly withholding from his wages that would be distributed to his secured creditors first, including Chase, by a trustee, Mary Viegelahn ("Vieglahn"). Harris again failed to make his monthly mortgage payments and the bankruptcy court permitted Chase to foreclose on his home. Harris's wages continued to be withheld and sent to Viegelahn, but she did not make any payments to Chase causing the withheld wages to accumulate. Harris then converted his plan to a Chapter 7 bankruptcy and then Viegelhan distributed the remaining balance to his unsecured creditors. Harris moved the bankruptcy court for a refund.

The Court noted that filing for Chapter 7 bankruptcy only affects the debtor's assets prior to the filing.

Harris moved the bankruptcy court to order Viegelahn to return the amount distributed to his unsecured creditors arguing that Viegelahn lacked authority to distribute the funds after the conversion. The bankruptcy court granted Harris's motion, the district court affirmed, the Fifth Circuit reversed, and the Supreme Court granted certiorari.

HOLDING: Reversed and remanded.

REASONING: The Supreme Court held that undistributed funds should be returned to the debtor. The Court noted that filing for Chapter 7 bankruptcy only affects the debtor's assets prior to the filing, and assets the debtor acquired after filing for Chapter 7 bankruptcy remain the property of the debtor. The Supreme Court discussed congressional intent, which allows a debtor to make a fresh start by converting a Chapter 13 bankruptcy to a Chapter 7 bankruptcy in good faith. For that reason, no penalty should be exacted in the form of requiring the disbursement of assets acquired after the filing date. The Supreme Court unanimously agreed that once a Chapter 13 bankruptcy is converted to a Chapter 7 bankruptcy in good faith, any assets acquired after the filing of the Chapter 13 revert back to the debtor.

DEBTOR CANNOT APPEAL BANKRUPTCY COURT'S REJECTION OF PROPOSED PLAN

Bullard v. Blue Hills Bank, 135 S.Ct. 1686 (2015).
https://supreme.justia.com/cases/federal/us/575/14-116/

FACTS: Plaintiff, Louis Bullard ("Bullard"), financed his house with a mortgage held by Defendant, Blue Hills Bank ("Bank"). Bullard filed a petition for Chapter 13 bankruptcy and a proposed repayment plan. The repayment plan denoted that the house was worth substantially less than the amount Bullard owed the Bank and called for him to pay only a small fraction of the unsecured claim. The Bank rejected the plan. The Bankruptcy Court refused to confirm the plan and ordered Bullard to submit a new plan within thirty days.

Bullard appealed to the First Circuit Court of Appeals, which dismissed his appeal for lack of jurisdiction. The court noted that it would only have jurisdiction if the appeal was a final order of the Bankruptcy Appellate Panel and that an order denying confirmation was not final as long as the debtor remained free to propose another plan. The Supreme Court granted certiorari to address how to define the immediately appealable proceeding in the context of the deliberation of Chapter 13 plans.

HOLDING: Affirmed.

REASONING: Bullard argued for a plan-by-plan approach, alleging that both an order denying confirmation and an order granting confirmation terminate the proceeding and are thus final and appealable. The Bank viewed "a proceeding" as the entire process of considering plans and claimed that an order denying confirmation was not final because it left the debtor free to propose another plan.

The Court accepted the Bank's view of a proceeding holding that a bankruptcy court's order denying confirmation of a proposed repayment plan with leave to amend is not a "final" order that the debtor can immediately appeal. The Court reasoned that a plan confirmation or case dismissal alters the status quo, while denial of confirmation with leave to amend changes little with regard to the parties' rights and obligations. The Court also pointed to the language in 28 U.S.C. §157(b)(2)(L) and stated that the inclusion of the phrase confirmation of plans, combined with the absence of any reference to denials, suggested that Congress viewed the larger confirmation process as the proceeding and not the ruling on each specific plan.

The Court stated that if a question is important enough that it should be addressed immediately, the appellate process has several mechanisms of interlocutory review to address such cases. An ordinary case treating only confirmation or dismissal as final will not unfairly burden a debtor because he maintains the right to propose plans that he can freely modify.

BANKRUPTCY COURT MAY NOT AWARD FEES TO PROFESSIONALS FOR DEFENDING FEE APPLICATIONS

Baker Botts L.L.P. v. ASARCO LLC., 135 S.Ct. 2158 (2015).
http://www.bankruptcybulletin.org/bankruptcy-bulletin/2015/9/7/baker-botts-llp-v-asarco-llc-no-compensation-for-defending-fee-application-on-appeal

FACTS: Respondent ASARCO LLC ("ASARCO") hired Petitioner Baker Botts LLP ("Baker Botts") to assist it in carrying out its duties as a Chapter 11 debtor in possession. When ASARCO emerged from bankruptcy, Baker Botts filed fee applications requesting fees under §330(a)(1) of the Bankruptcy Code, which

permits bankruptcy courts to award reasonable compensation for necessary services rendered by professionals. ASARCO challenged the applications, but the Bankruptcy Court rejected ASARCO's objections and awarded Baker Botts fees for time spent defending the applications. ASARCO appealed to the district court, which held that the law firms could be awarded fees for defending their fee applications. The Fifth Circuit reversed, holding that §330(a)(1) did not authorize fee awards for defending fee applications.
HOLDING: Affirmed.
REASONING: The U.S. Supreme Court held the basic point of reference for awards of attorney's fees is that each litigant pays his own attorney's fees, win or lose, unless a statute or contract provides otherwise. Congress applied this "American Rule" in §330(a)(1) for fee-defense litigation. Professionals are hired to serve as estate's administrator for the benefit of the estate, and §330(a)(1) authorized "reasonable compensation for actual, necessary services rendered." The word "services" ordinarily refers to "labor performed for another." Thus, the phrase "reasonable compensation for services rendered" implied loyal and disinterested service in the interest of a client. Time spent litigating a fee application against the bankruptcy estate's administrator cannot be fairly described as "labor performed for" – let alone "disinterested service to" – that administrator. Had Congress wished to shift the burdens of fee-defense litigation under §330(a)(1), it could have done so, as it has done in other Bankruptcy Code provisions.

MISCELLANEOUS

EXEMPLARY DAMAGES CAP IS NOT AN AFFIRMATIVE DEFENSE

Zorrilla v. Aypco Constr. II, ____S.W.3d____ (Tex. 2015).
http://law.justia.com/cases/texas/supreme-court/2015/14-0067.html

FACTS: Homeowner Mirta Zorilla ("Zorrilla") agreed to pay construction contractor, Aypco Construction II, L.L.C. and its owner Jose Luis Munoz ("Aypco"), for certain construction services at two residential properties in May 2007. Zorrilla refused to pay several invoices for charges related to construction work.

Aypco brought an action against Zorrilla for breach of contract and fraud. The district court entered judgment on special jury verdict for Aypco and awarded them exemplary damages, in excess of the statutory cap, because Zorrilla did not assert the cap as an affirmative defense to the excess damages award until her motion for new trial. The appellate court affirmed, noting the split amongst the appeals court regarding the exemplary damages cap as an affirmative defense. The Texas Supreme Court granted the petition for review.
HOLDING: Reversed.
REASONING: In addressing whether the statutory cap on exemplary damages was an affirmative defense or could be asserted in a motion for new trial, the Texas Supreme Court held that the exemplary damages cap did not constitute an affirmative defense. The exemplary damages cap applied automatically when invoked, and Zorrilla did not need to prove any additional facts.

RULE 68 OFFER TO INDIVIDUAL PLAINTIFF DOES NOT MOOT CLASS ACTION

Hooks v. Landmark Indus. ___F.3d___(5th Cir. 2015).
http://www.ca5.uscourts.gov/opinions %5Cpub%5C14/14-20496-CV0.pdf

FACTS: Plaintiffs-Appellant David Hooks ("Hooks") withdrew funds from an ATM operated by Defendant-Appellee Landmark Industries, Inc. ("Landmark"). During the transfer, Hooks was charged for the withdrawal without any posted notice on or at the ATM. Hooks sued Landmark seeking statutory damages for alleged violations of the Electronic Funds Transfer Act ("EFTA").

At trial, Landmark tendered an offer of judgment to Hooks under Rule 68 of the Federal Rules of Civil Procedure that would cover the full statutory amount of one thousand dollars. Hooks motioned to strike the offer of judgment. Hooks then motioned for an extension deadline to file a motion for class certification. Landmark filed a motion to dismiss for lack of subject matter jurisdiction, which the district court granted. Hooks appealed.
HOLDING: Reversed.
REASONING: Landmark argued Hooks' individual claim and class action suit were moot by his rejection of the offer under Rule 68. Hooks argued that the offer was not a complete offer of judgment because it only included reasonable attorney's fees accrued through the date of the offer, and it did not include post offer fees. The court stated that an incomplete offer of judgment does not render a plaintiff's claim moot.

The court followed the Ninth and Eleventh Circuit's reasoning that an unaccepted Rule 68 offer cannot moot an individual's claim.

The court considered the split of authority in the federal appellate courts and rejected the argument that a rejected Rule 68 offer of judgment could moot a plaintiff's claims. The court held that an unaccepted offer of judgment to a named plaintiff in a class action is a legal nullity with no operative effect and nothing in Rule 68 alters that principle. The court followed the Ninth and Eleventh Circuit's reasoning that an unaccepted Rule 68 offer cannot moot an individual's claim. The court noted that a contrary ruling would result in allowing defendants to unilaterally moot named-plaintiffs' claims in a class action context.

The court was not deprived of the ability to enter relief, thus the claim was not mooted. The court concluded that even if Landmark's offer were complete, it did not moot Hooks's claim as the named plaintiff in the class action because Hooks's individual claim was not mooted by the unaccepted offer, and neither were the class claims.