

Bankruptcy In Brief

News from the Bankruptcy Court

Western District of Louisiana - Lafayette/Opelousas/Lake Charles Divisions Editor: Alice Dukes

Volume 89

March 30, 2007

STUFF ABOUT CHAPTER 13

BY: Keith A. Rodriguez

I have been pleased to see so many of you now including the home mortgage payment in the plan from inception. I believe, over the course of the plan, this will assist your clients greatly. There are, however, still a few points to be made on this issue.

As you know, there is a thirty day delay from the entry of the Order for Relief to the date when the first payment is due to the Trustee. Additionally, any payment timely received will not be disbursed until the following month. Therefore, if your client were to file a case during March, then the Trustee would not receive the first payment until April. That would then be disbursed in May. Consequently, when calculating pre-petition arrears, you should also include the month in which the plan is filed and then add one additional month. This will insure that your client is current upon plan completion.

An issue that was recently brought to my attention by creditor's counsel had to do with adjustable rate mortgages. Any of your clients with such a mortgage know by contract that the rate will likely adjust every six months. The thing they do not know is the amount of the adjustment. Two things need to happen to be sure this whole concept works smoothly:

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RECENT DECISIONS

Court Issues Written Decision on Hanging Paragraph

Judge Summerhays had previously expressed his opinion on the personal use issue contained in the hanging paragraph. He has now written a formal decision on the matter. The court held that driving to and from work is personal. Accordingly, if the debtor uses a 910 vehicle for that purpose alone, the hanging paragraph will prohibit modification of the secured claim. A debtor must demonstrate, by the totality of the circumstances, that the vehicle is used primarily for business purposes. In re Joseph, Case Number 06-50655.

Debtors Not Allowed Vehicle Ownership Cost in Means Test for Vehicle Owned Free and Clear of Liens

The Chapter 13 Trustee objected to confirmation arguing that the Debtors improperly included the full IRS allowance for vehicle ownership costs for a vehicle that they own free and clear of any liens in calculating disposable income under § 1325(b)(1)(B). The Debtors respond that the IRS allowance for vehicle ownership expenses referenced by § 707(b)(2) is a fixed minimum amount that all debtors may claim regardless of whether a debtor is making a car payment or owns the vehicle free and clear. The court sustained the Trustee's objection holding that, in the means test calculation, debtors cannot claim the full IRS allowance for



For Your Information

Deadline for Articles

Anyone wishing to submit articles or jokes for inclusion in the April newsletter should have the articles to me no

later than April 13, 2007.

Lunch with the Judge

April 27, 2007, at noon, at Don's
Downtown

Editor's Comments

Most of you have probably noticed that I've spent a great deal of my free time working on the Komen Race for the Cure. The Race was held on March 17 and was a huge success. We doubled our participation numbers from last year and raised more money than we ever imagined we would. For all of you who donated, participated, volunteered or just provided moral support, thank you very much!

You may have noticed that our monthly luncheons have been held almost exclusively at Don's Downtown.

The reason for that is that Don's has been the only reliable location to provide us with a private room. We've had some issues at other locations, which will remain nameless, who have promised us the private room and then stuck us in the middle of the restaurant (with that big alligator!) So anyway, if you have suggestions for other locations which have a private room and serve lunch, let me know. We have enjoyed Don's as they have been happy to tolerate our "entertainment."

Movie reviews to follow in April issue.

To Get Bankruptcy In Brief:

If you would like to receive copies of Bankruptcy in Brief in the mail, you may either send me self-addressed stamped envelopes or join the SLBBA. Copies of the newsletter are mailed free of charge to SLBBA members. To get an application for membership, please contact me.

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- a) The creditor must inform your client (or you) of the amount and effective date of the change;
- b) Your plan must have language in it requiring such notification to your client by the creditor and further advising the Court and the Trustee that your client will amend accordingly. While the Trustee can assist with an amended confirmation order and forego the necessity of an entire amended plan, the request for such change must come from your client. Therefore, they must be fully informed about these changes so

that they can make the appropriate request to the Trustee.

A number of years ago, we made a change to the Motion to Dismiss form that we use requesting certain types of documentation should the response to the motion to dismiss have to do with payments not properly credited; money deducted by the employer but not sent to the Trustee, etc.. Unfortunately, even though debtor's counsel has been authorized to receive higher fees in cases filed post BAP-CPA (presuming not just an increase in the amount of work but also in the quality of the work) the responses to most motions to dismiss are just as lacking as they were prior to the amendments. While I have no idea if the Court will support the Trustee's position, I can assure you that we will begin asking that inadequate and non responsive answers to motions to dismiss be stricken and the case be

AND NOW A WORD FROM OUR SPONSOR

Are you in a Chapter 13?

Having a problem getting your plan confirmed?

We can help at *Extreme Wheelchair Rentals!!*

Even if its your 4th case in four months, we guarantee confirmation with our special deluxe extreme turbo model wheelchair or on rainy days - turbo charged model with mud flaps. Call our Manager, Don, for details and ask for our guaranteed confirmation special.

Use our deluxe model for two or more hearings and get a free cervical collar, cane and oxygen tank. Our confirmation deluxe model special will bring a tear to the Trustee and the most callous and hard-hearted creditors' counsel, even Fred Rogers

Confirmation guaranteed or double your money back. We also sell confirmation insurance.

*Our friend, Mr. Boudreaux, decided not to seek the services of **Extreme Wheelchair Rentals**, and he is still waiting to get his case confirmed. The Trustee continues to object indicating that his food budget is excessive (\$150.00 for a family of four), and therefore, his plan is not feasible.*

Need other help - For a guaranteed continuance or to have your case called quickly on a lengthy hearing day - call our subsidiary - Rent a Baby Crying or Rent a Seeing-Eye dog. For a substantial additional fee, we can obtain a new Social Security number with no history of previous filings. To get through those nasty 910 hearings, we also provide "employer" letters stating that your automobile is necessary to carry out your duties at work If you want to increase your earned income credit - call our tax experts - at Rent A Deduction.

* CALL 1-800-CONFIRM (13)

FROM THE PRESIDENT

By W. Simmons Sandoz

Our Luncheon with the Judge took place Friday, March 9, 2009, at Don's Downtown @ noon.

MONKEY BUSINESS

For those of you who have attended our last several "Luncheons with the Judge" you are aware that we start our meetings with an attempt at entertainment and/or humor. Sometimes we succeed - sometimes we fail.

Our first segment was "An Overlooked Christmas Present." After our Christmas party which was dubbed "The Coming Out Party for Judge Robert Summerhays - Here Come Da Judge," we discovered that we overlooked and failed to deliver one present. To make amends, we delivered that Christmas present at our March "Luncheon with the Judge." Our own Vice President, D. Patrick Keating, delivered a delightful and entertaining musical interlude entitled "The Deadbeat Drummer" with musical accompaniment. As a side note, the drum which was wonderfully played by Mr. Keating, was made in the good ole US of A by Native Americans (Ah yes, we are politically correct). "The Deadbeat Drummer" is reproduced in its entirety elsewhere in this newsletter.

If there are any attempts to use this musical number without permission, Mr. Keating advises that this masterpiece is copyrighted . . . you have been duly warned!

CORPORATE SPONSOR

Our president, who will remain nameless, has spent our association into near bankruptcy. As a result, we are seek-

ing corporate sponsors to help defray our expenses and put needed funds into our empty coffers. Our first corporate sponsor that has assisted us is Extreme Wheelchair Rental (This is a joke - ok).

In exchange for financial support, our sponsor was allowed a free commercial spot at our luncheon as well as in our newsletter. The advertisement appears elsewhere in this newsletter under the title - - "And now a word from our sponsor."

SERIOUS BUSINESS

As many of you know, a Bankruptcy Working Group has been formed for the purpose of assisting in streamlining court procedures and promote efficiency in court hearings. Our first meeting took place on Wednesday, February 7, 2007. The minutes of that meeting were reviewed at our Luncheon with the Judge and are reproduced in this newsletter for your review.

OTHER MATTERS

Due to time constraints, a brief summary was given of the working group meeting which was held on March 8, 2007. The topics of discussion at the March working group meeting were:

1. Motions to Lift Stay with a suggesting that an attachment to the motion be included setting forth the post-petition payments in very simple format;
2. Valuation hearings with an eye toward shortening testimony;

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3. An adequate protection order to use as a form; and
4. Creating a guide to practice for Chapter 13.

We will reproduce the minutes of the Bankruptcy Working Group for March 8, 2007, in our next newsletter.

NEW OFFICERS ELECTED

Lisa Thomas is our new Secretary and Chane Menard is our new Treasurer. Hopefully, you do not believe that they were actually elected in a democratic process. You all know that no election took place and upon threat of violence and sanctions, they happily agreed to become officers. Seriously, thanks to both of you for agreeing to serve.

RECENT RULINGS

On March 14, 2007, we had a significant ruling on an objection to the proof of claim in case 06-50401, Melinda Irene Sloan.

The Deadbeat Drummer

D. Patrick Keating

Come they ordered me	crowded	The Judge just stared at me
Pa rum pum pum pum	Pa rum pum pum pum	me
The Trustee I must see	No money did I bring	Pa rum pum pum pum
Pa rum pum pum pum	Pa rum pum pum pum	My attorney hid from view
I have no money to bring	No payments did I make	Pa rum pum pum pum
Pa rum pum pum pum	Pa rum pum pum pum	I played my drum for him
To lay before the King	Dismissal is at stake	Pa rum pum pum pum
Pa rum pum pum pum	Pa rum pum pum pum	I played by best for him
rum pum pum pum	rum pum pum pum	Pa rum pum pum pum
rum pum pum pum	rum pum pum pum	rum pum pum pum
So I traveled there	Then it dawned on me	rum pum pum pum
Pa rum pum pum pum	Pa rum pum pum pum	Then Ham frowned at me
Me and my drum	I'll play my drum	Pa rum pum pum pum
The courtroom is		and seized by drum

** And yes, this was actually performed live at our last luncheon accompanied by a tiny little drum! Don't miss the next luncheon, for more free entertainment!*

THE BANKRUPTCY WORKING GROUP
MINUTES OF MEETING HELD ON FEBRUARY 7, 2007

The organizational meeting for the working group took place on Wednesday, February 7, 2007, in the Chambers of Judge Summerhays. Present were Judge Robert Summerhays, Alice Dukes, Ham Chauvin, Keith Rodriguez, Betsy Andrus, Rick Keating, Greg deKeyzer, Jerry Breaux, Fred Rogers and Sim Sandoz.

Organizational Issues

The first item on the agenda was organizational issues. The group agreed to meet on a monthly basis (as needed) on a Thursday in the Judge's Chambers in Lafayette after the confirmation hearing in Lake Charles (at approximately 3:00 p.m.). The next meeting is scheduled for Thursday, March 8, 2007, at 3:00 p.m. in the Judge's Chambers in Lafayette. The name of our working group will be "The Bankruptcy Working Group."

Immaterial Modifications

The next item on the agenda was immaterial modifications. The group agreed that the issue of plan immaterial modification was really a notice issue. As a general rule, modifications should be noticed but the issue will be who gets notice: The Chapter 13 Trustee, affected creditors and/or the entire mailing matrix. Cost of mailing is a consideration. The term "immaterial modification" with its vague meaning and prior use is probably not a good term to use. In fact, the term "immaterial modification" is not used in the code. Amended plan with limited notice would be better. When an amended plan is ordered, as opposed to asking is the plan immaterial, perhaps the better inquiry is: Who gets notice or may notice be limited to certain parties? The determination will be on a case by case basis. A conservative approach will be taken.

Oral Modification

As a general rule, there will be no more oral modifications. In a rare instance, they will be allowed (i.e. forgetting to pledge tax refunds).

Trustee's Motions to Dismiss

Keith Rodriguez suggested that many of the motions to dismiss are used to prod debtors into

action and not generally aimed at case dismissal. The Chapter 13 Trustee's office writes to the debtors suggesting that certain things be done. If no response is obtained, a second letter is sent. If no response is forthcoming, a motion to dismiss follows.

Income Tax Refunds not Turned Over in a Prior Case

In the circumstances where the debtor (in a prior case) fails to turn over an income tax refund and subsequently files a second case, the Court will maintain its position that the refunds must be paid back to the Trustee up front over a very short period of time. As a general rule, the refund repayment will not be allowed over the life of the Chapter 13 plan.

Delinquent Plan Payments

When the Debtor become delinquent, Judge Summerhays preferred Debtors to catch up the payments by making double payments if possible as opposed to catching the payment up in an amended plan. These double payments reflect the dedication and resolve of the Debtor to make the plan work. A double payment in hand is better than a promised plan payment in the future.

First Plan Payment Critical

Judge Summerhays stressed the importance of the first plan payment being made on time. This, more than anything else, reflects the good faith of the Debtor.

Bankruptcy Bar Website

A suggestion was made that the SLBBA sponsor a website to include such items as forms for pleadings, orders and notices. The website could also be used for the newsletter and announcements. Alice has agreed to look into obtaining a website and will report back to the group.

Orders needing Chapter 13 Trustee Approval

Problems occurred in certain adequate pro-

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tection orders whereby the Trustee is ordered to make adequate protection payments and the Trustee was not a party to the order. The problems may be that the Trustee doesn't have any money or sufficient money to make the payment. Perhaps the order may be silent as to the amount to be paid, where the money should be sent or possibly is deficient in other respects. It would be mandatory in all circumstances where an order directs the Trustee to do something that he be allowed to review and consent to the proposed order prior to submission to the court.

Adequate Protection Order Require House Notes in the Plan

This is becoming an increasingly difficult problem because the proposed order does not set forth what month the house note will begin to be paid in the plan. Keith suggested that the attorneys for debtors calculate enough time to allow the plan to be confirmed in projecting when the funds will be paid to the mortgage holder. Keith with help from others will be working on a proposed order. He suggested that if the house note was in the plan from the beginning it would alleviate many of the problems of the APOs. Keith Rodriguez suggested putting in two post-petition house notes to allow the mortgage holder of the home to receive money as quickly as possible. Judge Summerhays is supportive of this position.

Orders Regarding Use of Insurance Proceeds (Cash Collateral) from Wrecked Vehicles

The Judge is comfortable with the procedures we have been following regarding the use of insurance proceeds to purchase a substitute vehicle. The order should be modified to keep the Trustee out of the loop as far as handling the money. A proposed order will be circulated for review.

910 Vehicle Hearings - Stipulations

Judge Summerhays has ruled in previous cases that going to and from work is personal use. Therefore, in a "to and from work" situation it is a waste of everyone's time to re-litigate that issue. If the vehicle is truly a tool of the trade and was purchased for that intended purpose then the vehicle would not be for personal use. The evidence

needed would be the same evidence presented to prove the exemption for tool of the trade. Judge Summerhays made it very clear that the Louisiana state law exemption under 13:3881 has nothing to do with the personal use issue. It is just coincidental that the evidence presented is similar. He reiterated that the test for personal use is and has always been totality of the circumstances.

Mixed Use

The real dilemma occurs when the vehicle is used for both business and personal use (mixed use).

The following factors (although not necessary exclusive) will be considered at 910 vehicle hearings:

At time of purchase

Debtor granted a purchase money security interest to Secured Creditor with 910 days of the date of the bankruptcy filing

Sales contract language - primary use of vehicle

Was debtor employed

Mileage

At date of purchase

Present mileage

Total miles on vehicle from date of purchase

Any mileage logs

Personal miles used with percentage of use

Business miles used with percentage of use

Use

How is the vehicle used at work to carry out employment duties?

How is the vehicle used personally?

Does the debtor have the exclusive use of the vehicle or do other family members use the vehicle, and for what purpose?

Tax Issues

Vehicle expense deductions claimed on tax returns

Is any mileage reimbursed from employer?

Prior Court Rulings