SURVEY OF RECENT DECISIONS

OF

THE HONORABLE PAUL J. KILBURG

U.S. Bankruptcy Court
Northern District of Iowa

October 15, 2005 – October 23, 2006

Prepared by

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The case summaries are categorized to correlate with the Key Number Classification of West's Bankruptcy Digest. West's key numbers are included in the topic headings below. Summaries of prior decisions (April 23, 1993 to present) are available on our web site, www.ianb.uscourts.gov.

I. IN GENERAL, 2001-2120

C. Jurisdiction, 2041-2080

Wade v. Solon State Bank (In re Patrick and Cerina Wade) — 28 U.S.C. § 1334(c)
No. 03-01568, Adv. 05-9164, 2006 WL 167830, Ch. 7, 1/19/06

The Bank moves to dismiss Debtors' adversary complaint. It argues the Court should decline to exercise jurisdiction over the complaint. Debtors assert this is a core proceeding and involves interpretation of the Bankruptcy Code. HELD: Permissive abstention is not appropriate. This is a core proceeding in substance and in form. State law foreclosure issues would arise if the Court finds the Bank's mortgage interest survived Debtors' bankruptcy discharge. At this stage, however, state court foreclosure proceedings can be easily bifurcated from this Court's decision on the effect of the discharge. The Bank's motion to dismiss is denied.

D. Venue; Personal Jurisdiction, 2081-2100

Browner v. Kaizen Co. (In re John and Shirley Browner) — 28 U.S.C. § 1452
No. 05-08146, Adv. 05-30206, 2005 WL 3465560, Ch. 7,
S.D. Iowa, 12/12/05

Debtors have an action pending in Scott County Iowa District Court concerning identity theft and forgery relating to a 1995 deed. They assert they cannot get a fair trial in Scott County and filed a Notice of Removal to move the action to Bankruptcy Court. Defendants resist removal and assert a Motion to Remand. They assert the case is not a core proceeding. HELD: There are equitable grounds for remand. These matters have already been extensively litigated in Iowa District Court. Allowing further litigation in this Court would be a waste of judicial resources. The issues in the litigation are exclusively state law issues, best left to the state courts.

II. COURTS; PROCEEDINGS IN GENERAL, 2121-2200

B. Actions and Proceedings in General, 2151-2180

Smith v. American General Finance, Inc. et al (In re Beth Smith) — Rule 7026
No. 00-02375, Adv. 05-9085, Ch. 7, 10/17/06

Debtor seeks orders compelling discovery materials from American General and Washington Mutual and requests attorney's fees and costs. American General responds it has fully complied with discovery and asserted proper and substantiated objections. Washington Mutual responds it has legitimate grounds for objections. HELD: Debtor's discovery requests are sufficiently specific and not unduly burdensome. Defendants have failed to comply with the Rules of Procedure regarding discovery by delaying responses and making broad, repetitive, boilerplate objections. Debtor's Renewed Motions to Compel should be granted. Furthermore, grounds exist to impose sanctions on

these Defendants under Rule 26(g). The Court sanctions American General and Washington Mutual $2,000 each as attorney fees and costs for their violations of the Rules governing discovery.

In re Eric Stamps — Rule 55(c)
No. 05-03724, 2006 WL 2604604, Ch. 7, 9/6/06 — Rule 7004

Defendants/Creditors seek to set aside default and request dismissal for improper service of the complaint. HELD: Good cause exists to set aside defaults. Creditors are dismissed as parties based on Debtor's failure to properly serve them with the complaint.

Quad City Bank v. Chapman (In re Chapman Lumber Co., Inc.) — 28 U.S.C. § 157(b)
No. 05-00408, Adv. 06-9068, 343 B.R. 217, Ch. 7, 6/12/06 — 11 U.S.C. § 544, 547

Creditor brought adversary proceeding to set aside allegedly preferential or fraudulent transfers, as well as to recover on state law theories for injuries to its collateral. HELD: Creditor did not have standing to pursue preference and fraudulent transfer avoidance claims. Remaining state law claims asserted by creditor to recover for loss of collateral or other injuries to it, following dismissal of its preference and fraudulent transfer claims for lack of standing, were not claims over which bankruptcy court could exercise even "related to" jurisdiction.

Bliss v. Bliss (In re Susan Bliss) — 11 U.S.C. § 523(a)(2)(A)
No. 05-03349, Adv. 05-30150, 2006 WL 88750, Ch. 7 — Rule 15(a)
S.D. Iowa, 1/11/06

Plaintiff filed a complaint to except debt from discharge under § 523(a)(15) and later moved to amend to add a count of fraud under § 523(a)(2)(A). Debtor objects to the motion to amend the complaint, asserting the § 523(a)(2)(A) count is untimely. She also requests $1,000 in attorney fees under § 523(d). HELD: Because the deadline to file a § 523(a)(2) complaint expired prior to the motion to amend was filed, Plaintiff's newly asserted count of fraud could only be heard if it was capable of relating back under Rule 15(c). An amendment will relate back if the allegation arises from the same conduct, transaction, or occurrence set forth in the original complaint. Plaintiff asserted no facts relating to fraud or false pretenses under § 523(a)(2)(A) in the original complaint. Thus, Debtor was not on notice that fraud would be a basis Plaintiff would assert to except the debt from discharge. Plaintiff's amended complaint does not relate back to the original complaint. Further, Debtor is not entitled to a judgment for costs and attorney fees under § 523(d).

III. THE CASE, 2201-2360

C. Voluntary Cases, 2251-2280

In re Chester and Cynthia Batzkiel — 11 U.S.C. § 707(b)(1)
No. 06-00355, ___ B.R. ___, 2006 WL 2597904, Ch. 7, 8/7/06

U.S. Trustee moves to dismiss case as an abuse of Chapter 7 of the Bankruptcy Code. HELD: Debtors, who faced unusually high vehicle operating expenses, established "special circumstances," thereby rebutting the presumption of abuse. Motion to dismiss denied.

In re James Stout — 11 U.S.C. § 707(b)
No. 05-01999, 336 B.R. 138, Ch. 7, 1/9/06

U.S. Trustee moved to dismiss debtor's case as "substantial abuse" of provisions Chapter 7. HELD: Home schooling expense of $700 per month for Chapter 7 debtor's twelve-year-old daughter and skating expense of $500 per month were not "reasonably necessary" expenses. Chapter 7 case dismissed as "substantial abuse" based on debtor's ability to pay.

D. Involuntary Cases, 2281-2310

In re Tichy Electric Co. Inc. — 11 U.S.C. § 303
No. 05-00453, 332 B.R. 364, Ch. 7, 10/31/05

Creditors moved to dismiss involuntary Chapter 7 case, and hearing was scheduled to consider propriety of involuntary filing. HELD: Employee benefit funds that joined in filing involuntary Chapter 7 petition against employer that was delinquent in making contributions to funds could each be treated as separate creditors, for purpose of deciding whether involuntary petition was filed by requisite number of creditors. Creditors, however, acted in "bad faith," for improper purpose of collecting debt, so as to permit award of actual and possibly punitive damages against them.

IV. EFFECT OF BANKRUPTCY RELIEF; INJUNCTION & STAY, 2361-2490

B. Automatic Stay, 2391-2420

In re Duane and Kelley Miglia — 11 U.S.C. § 330(a)(1)
No. 05-06850, 345 B.R. 919, Ch. 7, 6/29/06 — Iowa Code § 602.10116(3)

Chapter 7 trustee objects to secured claim filed by attorney who represented debtors in prepetition legal malpractice action. HELD: Attorney, whose services concerned an action unrelated to the bankruptcy proceedings, was entitled to a prepetition claim against the estate. Under Iowa law, attorney did not retain a valid charging lien against the settlement proceeds at issue. Attorney's postpetition receipt and possession of client funds did not fall within the "ministerial act" exception to the automatic stay, and so the claim was unsecured.

In re William and Julie Root — 11 U.S.C. § 362(h)(1)(A)
No. 06-00090, 2006 WL 1050687, Ch. 7, 4/11/06

Creditor filed a motion for relief from the automatic stay to repossess and sell collateral farm equipment. It argued that the stay has terminated pursuant to § 362(h)(1)(A) because Debtors have

failed to timely file their Statement of Intention regarding this collateral. HELD: Through the amendment to § 362(h), the BAPCPA added a new provision under which the automatic stay terminates with respect to personal property in cases involving individual debtors if the debtor does not file a timely statement of intention as to secured personalty and does not redeem or reaffirm in a timely manner. Section 521(a)(2) states the time within which to file a statement of intention is 30 days after the petition date or before the meeting of creditors, whichever is earlier. The statement of intention must indicate whether the debtor intends to surrender or retain property, and if retaining property, whether the debtor will redeem the property or reaffirm the debt. Debtors are not entitled to an enlargement of time to file a Statement of Intention regarding this collateral under Rule 9006(b)(2). Debtors' other filings in this case do not constitute compliance with the requirement of a timely-filed Statement of Intention. Creditor's motion is granted as the automatic stay has already expired under the Code.

D. Enforcement of Injunction or Stay, 2461-2480

In re Donald and Pamela Tuecke — 11 U.S.C. § 362(h)
No. 06-00399, Ch. 7, 10/10/06

Debtors assert Discover Card violated the automatic stay by pursuing garnishment postpetition. Discover Card has not appeared or responded. HELD: Debtors are entitled to damages of $1,500 and attorney fees of $400. Also, Discover Card's blatant disregard of the rights of Debtors justifies an award of punitive damages of $1,500.

Schnittjer v. Allied Property & Casualty Ins. Co. (In re Jessica Huebbe) — 11 U.S.C. § 362(h)
No. 05-01067, Adv. 05-9140, Ch. 7, 9/22/06

Trustee is suing Allied to recover $1,412.20, the amount paid by Allied directly to Debtor in an insurance settlement agreement concluded after Debtor had filed for Chapter 7 bankruptcy. Trustee alleges Allied's violation of the automatic stay was willful and seeks to recover damages and attorneys' fees. HELD: Trustee has established that Allied willfully violated the automatic stay, § 362(a)(3), and is therefore subject to sanctions pursuant to § 362(h).

V. THE ESTATE, 2491-2760

C. Property of Estate in General, 2531-2570

In re Joseph and Cae Sullivan — 11 U.S.C. § 541(a)(1)
No. 02-03073, 2006 WL 1686168, Ch. 7, 6/13/06 — Rule 9019

Debtors filed a lawsuit against Dubuque Racing Association involving prepetition business activities of the Association. Trustee claims the lawsuit as property of the bankruptcy estate and seeks Court approval of a proposed settlement with Dubuque Racing Association covering the claims raised by Debtors in the lawsuit. Debtors claim that the lawsuit is not property of the estate. HELD: The Court concludes the proposed settlement agreement between Trustee and Dubuque Racing

Association should be approved. Since the claim belongs to the bankruptcy estate, Trustee has acted appropriately in seeking to secure a reasonable settlement for the benefit of the creditors. Since the claim is property of the estate and not one for Debtors to make in the first place, the Court declines to award reimbursement for Debtors' unauthorized expenses

Hanrahan v. Walterman (In re Walterman Implement Inc.) 11 U.S.C. § 362(a)
No. 05-07284, Adv. 06-9067, 2006 WL 1562401, Ch. 7, 5/22/06 § 549
(appealed to District Court)

Trustee's motion for summary judgment asks the Court to find that the right to revoke Debtor's subchapter S election is property of the bankruptcy estate, and the revocation of the election violated the automatic stay. She also asserts that the revocation of the election may be avoided as a post petition transfer of property of the estate. Defendant asserts that Subchapter S status is not property of the bankruptcy estate, and Trustee does not have standing to avoid the revocation of Debtor's Subchapter S election on behalf of the estate. HELD: The postpetition revocation of Debtor's subchapter S election is void as violating the automatic stay. The revocation is also voidable under § 549. It occurred postpetition. Debtor's subchapter S status is property of the estate. The revocation was a transfer of Debtor's subchapter S election which was not authorized by the Court or by statute.

VI. EXEMPTIONS, 2761-2820

VII. CLAIMS, 2821-3000

B. Secured Claims, 2851-2870

Vantiger-Witte v. MERS (In re Mary Vantiger-Witte) Iowa Code § 558.41
No. 05-02931, Adv. 06-9080, Ch. 12, 9/14/06
(appealed to B.A.P.)

Debtor seeks a determination of the priorities of two mortgages on her homestead. Each Defendant asserts that its mortgage lien is superior to the lien held by the other Defendant. HELD: The doctrine of equitable subordination is applicable here. MERS is equitably subordinated to the priority of the lien held by Option One which Debtor refinanced through MERS. MERS' rights in this regard are limited to the extent of Option One's. Although FSA recorded its mortgage first, its lien is junior to MERS' mortgage lien.

VIII. TRUSTEES, 3001-3020

IX. ADMINISTRATION, 3021-3250

B. Possession, Use, Sale, or Lease of Assets, 3061-3100

In re CRI Inc. — 11 U.S.C. § 363(b)
No. 04-01349, Ch. 7, 9/13/06

Trustee proposes to sell Debtor's interest a wholly-owned subsidiary, including its title to real estate. The real estate is encumbered by mortgages and taxes and by interests of residents. Fiegen Law Firm objects on its own behalf, asserting it is a party-in-interest. Fiegen is Debtor's Chapter 7 attorney of record, and Debtor is now defunct. Fiegen objects to Trustee turning over accounts receivable, unpaid management fees and stock transfer interests. It believes these are valuable assets of the bankruptcy estate. HELD: Trustee's motion should be granted. The evidence shows Trustee was diligent in efforts to market the property. She received no other offers. Based on the record as a whole, Trustee's proposed sale is in the best interests of the bankruptcy estate. There is no indication of bad faith on the part of Trustee or of the purchaser. Considering the type of assets being sold and possible difficulties with clearing title, the amount offered is fair and reasonable.

In re Christian and Sherry Kjeld — 11 U.S.C. § 363(b)
No. 04-04303, 2005 WL 2850412, Ch. 7, 10/26/05

The issue for determination is whether the Court should approve the $5,000 sale to Gewinn Corporation as being in the best interests of the estate, or whether the Court should reject the sale and allow the trial to proceed in Allamakee County, Iowa on November 2, 2005 with a potential award substantially in excess of $5,000 but also with the risk of the passage of more time and the potential for no remuneration to the estate of any kind. HELD: The lawsuit involving AAA Electric and Agriprocessors is ready for trial in all respects. It is scheduled for trial within two weeks. The amount of money which is offered is minimal in light of the numerous claims. The potential for a more substantial return is possible. The Court ultimately concludes that, in this case, the risk of reward outweighs the certainty of this modest sum.

E. Compensation of Officers and Others, 3151-3250

In re David and Nancy Sherrets — 11 U.S.C. § 330(a)(4)(B)
No. 05-07276, 2006 WL 1806351, Ch. 13, 6/27/06

Attorney for Debtors, applies for an additional $1,663.08 in compensation for additional legal services provided in this Chapter 13 case. Trustee objects that the amount requested is excessive. HELD: The attorney provided Debtors with the basic services required in a Chapter 13 case. This Court has determined by Local Rule that the value of such services, at the time of the confirmation hearing in this case, was presumptively $1,250. In this case, the issues were not novel or complex and did not require special skills or experience of Debtors' attorney. The quality of representation and the results obtained are no more and no less than what is customary in Chapter 13 cases in this district. Applying the lodestar analysis, including consideration of the fees typically charged in Chapter 13 cases, the Court concludes allowing additional attorney fees to be paid through Debtors' Chapter 13 plan is not appropriate in this case. Application for Additional Compensation is denied.

In re Ann Ashby — 11 U.S.C. § 328(a)
No. 05-05779, 2006 WL 1582407, Ch. 7, 5/31/06

Subsequent to the sale of the bankruptcy estate's interest in a real estate contract, Trustee seeks authority to pay liens on the property and to pay attorney fees and expenses. The attorney for Trustee requests fees based on a one-third contingent fee agreement. Creditors object to payment of contingent fees to the attorney for Trustee. HELD: In these circumstances, the one-third contingency fee agreement is not improvident under § 328(a). No developments have arisen which were not capable of being anticipated at the time Trustee applied to employ the attorney and the Court approved the employment. The Court believes, however, that the amount of fees requested should be reduced based on the attorney performing some of the duties statutorily required of Trustee. The attorney's contingent fee request should be reduced by 50 percent for his performance of trustee duties as contrasted with legal services.

X. DISCHARGE, 3251-3440

A. In General, 3251-3270

In re Jorge Martinez — 11 U.S.C. § 727(a)(11)
No. 05-07309, 2006 B.R. 681068, Ch. 7, 3/13/06

Debtor seeks additional time to file a Certificate of Completion of Financial Management Course until after attending a course scheduled for a later date. HELD: Pursuant to § 727(a)(11), a debtor who fails to complete an instructional course concerning personal financial management does not receive a discharge. Failure to file the certification results in the case being closed without an entry of discharge. The debtor can subsequently move to reopen the case to file a Certificate of Completion of the financial management course and request that the discharge be granted. On filing a Motion to Reopen the Case, the debtor must pay the reopening fee. The Court will not delay closure of a case to await a speculative date on which Debtor may have completed the course and filed a certificate of completion.

B. Dischargeable Debtors, 3271-3340

Lohff v. Paxton (In re Ken and Jill Paxton) — 11 U.S.C. § 727(a)
No. 04-03517, Adv. 04-9221, 2006 WL 1528366, Ch. 7, 5/31/06

Plaintiffs seek denial of discharge. They claim to be creditors of OLS and assert that Debtor, while an officer of OLS, violated his fiduciary duty to the company by entering into an agreement with a competitor to undermine OLS. Debtor asserts that he did not breach his fiduciary duty to OLS and that he owed no duty to Plaintiffs. HELD: Plaintiffs do not have standing to initiate a derivative proceeding. Further, Plaintiffs have failed to prove by a preponderance of the evidence that Debtor made a false oath or account under § 727(a)(4)(A), gave money for forbearing to act under § 727(a)(4)(C), or committed improper acts in connection with another Bankruptcy case concerning an insider under § 727(a)(7).

Fokkena v. Hippen (In re Kevin Hippen) 11 U.S.C. § 727(a)
No. 04-04116, Adv. 05-9037, 2006 WL 1120411, Ch. 7, 4/17/06

U.S. Trustee seeks denial of Debtor's discharge under §§ 727(a)(2) and (a)(4). U.S. Trustee claims that Debtor attempted to transfer or conceal property and gave a false oath or account. HELD: For a false oath to bar a discharge, the false statement must be both material and made with intent. Debtor was not present at the hearing. No evidence was presented to contradict the U.S. Trustee. Deposits were made into Debtor's bank account, and it is unlikely that he was unaware of them. Additionally, Debtor signed a warranty deed on September 23, 2004 which transferred his interest in property to a third party. Debtor's failure to disclose all sources of income and his denial of transferring property materially impairs the Chapter 7 Trustee's ability to effectively administer the bankruptcy estate. The Court concludes that Debtor's false statements were material and were made with intent. U.S. Trustee's Objection to Discharge is granted.

Dunkerton Cooperative Elevator v. Bakker 11 U.S.C. § 523(a)
(In re Ryan and Lisa Bakker) § 727(a)
No. 04-01036, Adv. 04-9098, 2006 WL 240519, Ch. 7, 1/27/06

Plaintiff supplied feed to Debtors. Debtors signed a Judgment of Confession for Plaintiff's benefit prepetition. Plaintiff asserts Debtors entered into the Judgment of Confession with the intent to defraud, hinder, or delay and to induce Plaintiff to continue supplying feed. Debtors assert they made payments according to the payment schedule listed in the Judgment of Confession, and their debt should be discharged. HELD: Plaintiff has failed to prove by a preponderance of the evidence that Debtor intended to deceive or that he made false representations under § 523(a). Further, Plaintiff has failed to prove its claim by a preponderance of the evidence that discharge should be denied based on allegations that Debtor made a false oath or account under § 727(a)(4)(A), had fraudulent intent under § 727(a)(4)(C), hid assets under § 727(a)(5), or committed an improper act in connection with another bankruptcy case under § 727(a)(7). Plaintiff is barred by the plain language of § 523(d) from receiving attorney's fees. Debtor has failed to prove that Plaintiff brought this action in bad faith and is therefore not entitled to recover attorney's fees.

Fokkena v. Juehring (In re David and Anita Juehring) 11 U.S.C. § 727(a)
No. 04-02966, Adv. 04-9191, 332 B.R. 587, Ch. 7, 10/31/05

U.S. Trustee brought adversary proceeding to deny Debtors' Chapter 7 discharge. HELD: Conduct of Mrs. Juehring, in secretly withdrawing funds from her benefit plan and depositing them into accounts of which her husband had no knowledge, and in failing to disclose these accounts on their joint bankruptcy petition, did not support denial of Mr. Juehring's discharge. Mrs. Juehring's conduct warranted denial of her discharge based on her fraudulent prepetition transfer or concealment of property. Also, her false statements warranted denial of her discharge under "false oath" discharge exception.

C. Debts and Liabilities Discharged, 3341-3410

Brokaw v. McSorley (In re Andrew McSorley) — 11 U.S.C. § 523(a)(6)
No. 05-05911, Adv. 05-30213, Ch. 7, 10/18/06

Plaintiffs, Jeremy Brokaw and his parents, contend that Debtor is not entitled to discharge their personal injury claim for physical harm and damages pursuant to § 523(a)(6). The Brokaws allege that on January 13, 2004, Debtor struck Jeremy with his elbow or fist during a high school basketball game. They allege that such action was willful and malicious, thereby precluding discharge. HELD: Plaintiffs have met their burden to satisfy the elements of their nondischargeability claim by a preponderance of the evidence. The evidence demonstrates that Debtor acted willfully and with malice. Therefore, Plaintiffs' personal injury claim is excepted from discharge under § 523 (a)(6).

In re Michael Donohue — 11 U.S.C. § 523(a)(7)
No. 05-01561, Ch. 7, 10/16/06 — § 727(b)

Debtor seeks a determination that Linn County improperly made attempts to collect a debt postdischarge. Linn County asserts its claim, based on jail room and board fees, was not discharged in Debtor's Chapter 7 case. HELD: Linn County's claim for room and board reimbursement is excepted from discharge. The claim is a fine or penalty that is not compensation for actual pecuniary loss. As the claim is excepted from discharge, Linn County's attempts to collect the debt postdischarge did not violate the discharge injunction.

RMJ Leasing Inc. v. Laughlin (In re Donald Laughlin) — 11 U.S.C. § 523(a)(2)
No. 05-05417, Adv. 05-30186, Ch. 7, S.D. Iowa, 10/13/06

Plaintiff seeks a determination of the dischargeability of a portion of its claim, alleging that Debtor obtained money from it, under the parties' factoring agreement, through fraud. Debtor denies the commission of any fraudulent acts. HELD: Plaintiff has failed to meet its burden to satisfy the five elements of a nondischargeability claim. The evidence demonstrates both a lack of intent to deceive by Debtor and lack of justifiable reliance by Plaintiff. Therefore, the Court holds Plaintiff's claim is not excepted from discharge under § 523 (a)(2)(A).

Hardin v. Hardin (In re Karla Hardin) — 11 U.S.C. § 523(a)(15)
No.05-09029, Adv. 06-30037, 2006 WL 2662707, Ch. 7,
S.D. Iowa, 8/21/06

Debtor's ex-husband seeks to except dissolution debt from discharge. HELD: Debtor has met her burden to establish she has the inability to pay the debt based on her foreseeable income. Also, the benefit to her of discharge of the debt exceeds the detriment to Plaintiff.

Ridgeway v. Ridgeway (In re Carrie Ridgeway) — 11 U.S.C. § 523(a)(15)
No. 05-04969, Adv. 05-30202, 2006 WL 2662627, Ch. 7
S.D. Iowa, 8/21/06

Debtor's ex-husband seeks to except dissolution debt from discharge. HELD: Debtor has not met her burden of proving that she has an inability to pay her dissolution debt based, in part, on unreasonably high mortgage expenses. Both parties are in fairly similar financial circumstances relative to their household size and obligations. Discharging the § 523(a)(15) debts is not more beneficial to Debtor than detrimental to Plaintiff.

Herz v. Steil (In re Roger and Jacalyn Steil) — 11 U.S.C. § 523(a)(6)
No. 05-02079, Adv. 05-9108, 2006 WL 2662694, Ch. 7, 8/14/05

Creditor seeks exception from discharge for willful and malicious injury. He asserts Debtors wrongfully liquidated the convenience store business, collateral and fixtures they were purchasing from him. HELD: Debtors testified that when they discontinued the convenience store business they knew their agreements required them to turn over proceeds to Plaintiff. This satisfies the requirement of "willfulness" in that they deliberately breached the Lease and Sale agreements. Despite Plaintiff's assertions to the contrary, the Court does not believe Debtors attempted to conceal their discontinuation of the business. Rather, it appears that Debtors expressed their need to get out of the business and, with Plaintiff refusing to accept it, they went ahead without his permission. The facts undermine Plaintiff's assertion that Debtors' conduct was "malicious," or targeted at injuring him. The debt is not excepted from discharge under § 523(a)(6).

Schoppe v. Schoppe (In re Susan Schoppe) — 11 U.S.C. § 523(a)(15)
No. 05-05820, Adv. 05-30217, 2006 WL 2605603, Ch. 7,
S.D. Iowa, 8/2/06

Debtor's ex-husband seeks to except dissolution debt from discharge. HELD: Debtor's ability to pay is measured in terms of the amount she can pay within a reasonable time. She should be able to pay off the debts within a 75- month time frame. Thus, Debtor has not met her burden of proof in establishing an inability to pay her debts. Discharging the § 523(a)(15) debts is not more beneficial to Debtor than detrimental to Plaintiff. Both parties left their marriage with debt. Both parties are earning roughly equal incomes, and both have significant expenses to cover out of their respective incomes. Debtor has failed to meet her burden of establishing that the benefit to her of discharging these debts would outweigh the detriment that would be shouldered by Plaintiff.

McDonough v. Iowa Dep't of Revenue — 11 U.S.C. § 507(a)(8)
(In re Shamus and Leona McDonough) — § 523(a)(1)(A)
No. 05-03410, Adv. 05-330230, 346 B.R. 492, Ch. 7,
S.D. Iowa, 7/24/06

Debtors filed adversary complaint against the Iowa Department of Revenue (IDOR), seeking determination that sales tax liabilities for which they were personally liable were dischargeable. HELD: On the parties' cross-motions for summary judgment, the Court held that at the time in question, the sales tax was imposed upon consumers and collected by retailers, and as such, was a nondischargeable trust fund tax, not an excise tax, even if debtors failed to collect the tax from their customers. Debt excepted from discharge.

Nelson v. TG Collections (In re Maria Nelson) 11 U.S.C. § 523(a)(8)
No. 05-03134, Adv. 05-30131, 343 B.R. 919, Ch. 7,
S.D. Iowa, 6/22/06

Debtor, a disabled veteran with a chronic health condition, seeks discharge of her student loan debt of approximately $55,000.00. HELD: Debtor failed to demonstrate that she would suffer an "undue hardship" in repaying her student loans. She has sufficient monthly disposable income and stable employment to repay the loans. The student loan debt is excepted from discharge.

DeJong v. Verschuure (In re Juli Verschuure) 11 U.S.C. § 523(a)(15)
No. 05-05069, Adv. 05-30160, 2006 WL 1582365, Ch. 7,
S.D. Iowa, 5/31/06

Plaintiff alleges that debts arising in the course of dissolution proceedings of approximately $12,768.41 should be excepted from discharged under § 523(a)(15). Debtor alleges that the debt is dischargeable. Additionally, she asserts that the debts were not incurred in the course of a dissolution of marriage. HELD: The Iowa District Court, in dividing up the parties' assets and obligations, very carefully allocated property and debt to each party. Debtor has now been able to dispose of all of her obligations with the exception of two credit card debts of approximately $12,000 which were joint obligations of the parties during their marriage. With little or no alteration of Debtor's lifestyle, she has the capacity to pay these debts which are relatively minor in comparison to her present family assets. Debtor has failed to establish that she would benefit more from discharging the debt than Plaintiff would suffer a detriment. Dissolution debt is excepted from discharge.

Benderson v. Clayton (In re Sonya Clayton) 11 U.S.C. § 523(a)(2)
No. 05-06599, Adv. 06-6027, 2006 WL 1542383, Ch. 7, 5/22/06

Plaintiff leased rental property to Debtor under a written rental agreement. Plaintiff asserts Debtor entered into the rental agreement with the intent to defraud and induced Plaintiff to rent her the property. Debtor denies any fraud and asserts that the debt, if any, to Plaintiff should be discharged. Alternatively, Debtor denies she caused any damages asserted by Plaintiff. HELD: Debtor made a false representation on her residential rental application by intentionally substituted the name of another individual rather than her landlord. Plaintiff is entitled to unpaid rent plus clean-up costs, minus the amount of Debtor's deposit.

Keller v. Cale (In re Joseph Cale) 11 U.S.C. § 523(a)(5)
No. 05-03912, Adv. 05-30156, 2006 WL 897655, Ch. 7,
S.D. Iowa, 3/28/06

Plaintiff asserts that Debtor is not entitled to discharge a debt for funeral expenses for the parties' deceased child. Plaintiff seeks summary judgment. Debtor asserts that there are genuine issues of material fact as to whether the funeral costs at issue are in the nature of alimony, maintenance, or support. HELD: Under Missouri law a parent's obligation to pay child support ends when the child dies. In analyzing the plain language of the statute, this Court must conclude that Debtor's

obligation to pay child support for the parties' son ended when he died. Plaintiff has not proven the elements § 523(a)(5) by a preponderance of the evidence and is not entitled to summary judgment as a matter of law.

Chapman v. Fuget (In re David and Mary Fuget) 11 U.S.C. § 523(a)
No. 05-01764, Adv. 05-30059, 339 B.R. 702, Ch. 7,
S.D. Iowa, 3/14/06

Creditor filed adversary complaint against pro se Debtors, asserting they fraudulently acquired over $50,000.00 in cash, two automobiles, and her home from her. HELD: Creditor established that the debt fell within the discharge exception for false pretenses, a false representation, or actual fraud. She failed to demonstrate that Debtors committed embezzlement or that debtors acted maliciously. Debt is excepted from discharge under § 523(a)(2)(A).

In re Mary Gomez 11 U.S.C. § 523(a)(8)
No. 05-04716, 2006 WL 213705, Ch. 7, 1/25/06 Rule 4007

Debtor filed a Second Application for Extension of Entry of Discharge Order asking the Court to extend the deadline for filing an adversary complaint to give her time to file a complaint to determine dischargeability of student loan debt. HELD: The plain language of Rule 4007(c) states that the 60 day time limit only applies to a determination of dischargeability of debt under § 523(c). Debtor's future adversary action under § 523(a)(8) does not fall under the restraints imposed by § 523(c). Therefore, Rule 4007(c) does not apply. Debtor is not prohibited from filing a complaint to obtain a determination on the dischargeability of her student loan debt under § 523(a)(8). Extension of the deadline is not necessary.

Gallagher Langlas & Gallagher, P.C. v. Clair (In re Edwin Clair) 11 U.S.C. § 523(a)(5)
No. 05-05091, Adv. 05-9156, 2006 WL 213704, Ch. 7, 1/25/06

Plaintiff seeks summary judgment declaring that approximately $2600.00 in attorney's fees are excepted from discharge under § 523(a)(5). Debtor asserts that there are genuine issues of material fact as to whether the attorney's fees at issue are in the nature of alimony, maintenance, or support. HELD: This Court cannot conclude, on the record presented, the parties' intent regarding this obligation. Whether a particular debt is a support obligation or part of a property settlement is a question of federal bankruptcy law, not state law. Issues of fact exist as to whether the attorney's fees were intended as alimony, maintenance, or support, precluding the grant of summary judgment.

Balm v. Sallie Mae Servicing Corp. (In re Michelle Balm) 11 U.S.C. § 523(a)(8)
No. 04-00576, Adv. 04-9077, 333 B.R. 443, Ch. 7, 11/14/05

Debtor asserts she is entitled to "undue hardship" discharge of student loan obligations. HELD: Psychiatrist that Chapter 7 debtor had called to testify to her psychological problems, as bearing on whether it would impose "undue hardship" on debtor and her dependent not to discharge her student loan debt, was also competent, as qualified medical doctor, to give expert testimony on debtor's physical ailments. Debtor was entitled to an "undue hardship" discharge of her more than $30,000

in student loan debt, notwithstanding her alleged failure to do all she could to maximize her income by seeking child support payments from daughter's father.

Peoples State Bank v. Knowles — 11 U.S.C. § 523(a)(2,4,6)
(In re William and Christina Knowles)
No. 04-01737, Adv. 04-30156, 337 B.R. 680, Ch. 7,
S.D. Iowa 10/24/05

Bank brought adversary proceeding to except from discharge a debt arising from Chapter 7 debtor's alleged misuse of line of credit established for his farming operation. HELD: Genuine issues of material fact precluded entry of summary judgment in nondischargeability proceeding. These include whether debtor, in using line of credit that he obtained for his farming operation to support his gambling, had acted with intent to cause financial injury to bank or had at all times intended to pay bank back.

D. Effect of Discharge, 3411-3440

Wade v. Solon State Bank (In re Patrick and Cerina Wade) — 11 U.S.C. § 727
No. 03-01568, Adv. 05-9164, Ch. 7, 2006 WL 1989678, 6/30/06 — Rule 7056

Debtors' complaint asserts the Bank violated the discharge injunction by attempting to foreclose on their homestead post-discharge. Debtors argue the discharge voided the Bank's mortgage and assignment. The Bank, seeking summary judgment, argues that the prepetition mortgage and assignment are valid post-discharge as consensual liens which passed through bankruptcy unaffected by the discharge. HELD: Several disputed issues of fact preclude summary judgment. The amount of mortgage debt is not established. Whether the Bank waived rights to execute on Debtors' homestead raises issues of intent.

Foels v. Countrywide Home Loans (In re Mark and Traci Foels) — 11 U.S.C. § 506(a)
No. 04-04594, Adv. 05-9093, 2006 WL 1985582, Ch. 7, 6/28/06

Debtors' complaint asserts that Countrywide has violated both the automatic stay during the administration of the case as well as the post-discharge injunction from the entry of the discharge until the present time. Countrywide argues that its contacts with Debtors are fair under all the circumstances and requests summary judgment in its favor as a matter of law. HELD: Creditors with partially discharged claims may initiate minimal contact with the debtor to the extent necessary to service the surviving secured debt. A determination requires a finding by the Court as to the appropriateness of the contacts made applying a subjective test. It is impossible to evaluate and make this subjective determination based on this record. This case is inappropriate for summary judgment at this time.

National City Mortgage Co. v. Wiese (In re Allen Wiese) — Contract interpretation
No. 04-00217, Adv. 05-9058, 337 B.R. 206, Ch. 7, 12/21/05

After Chapter 7 debtor-mortgagor, on the date he filed his bankruptcy petition, sent mortgagee a $50,000.00 cashier's check to pay toward the $110,506.94 balance due on his mortgage, mortgagee, in response to trustee's turnover demand, paid that sum to the trustee and reversed the $50,000.00 reduction of principal on debtor's note. In the meantime, debtor executed the reaffirmation agreement that mortgagee had sent to him, which indicated that the balance due on the note was $60,716.15. Mortgagee then filed adversary complaint against debtor and trustee and moved for partial summary judgment, seeking declaration that trustee was required to disgorge the $50,000.00 or, alternatively, that debtor owed the original principal balance of $110,506.94. Debtor filed cross-motion for summary judgment, seeking determination that he owed the amount stated in the reaffirmation agreement. HELD: In light of the mutual mistake made in the execution of the reaffirmation agreement, namely, the assumption that the $50,000.00 payment would be permanent and not reversed, the court declined to treat the balance due in the agreement as binding on mortgagee. Mortgagee did not breach a fiduciary duty by paying over the $50,000.00 on trustee's demand without notifying debtor.

Smith v. American General Finance Inc. (In re Beth Smith) 11 U.S.C. § 524
No. 00-02375, Adv. 05-9085, 2005 WL 3447645, Ch. 7, 12/12/05

Debtor's complaint asserts Defendants violated the discharge injunction of § 524 by placing notes in her credit file with the intent to collect debts. Defendants American General Finance and Premier Auto Finance filed Motions to Dismiss the Complaint. They assert that the acts of which Debtor complains are not acts to collect a debt. American General further argues Debtor has no right to damages and there was insufficient service of process. HELD: Debtor has sufficiently pled a contempt action under § 524(a). Likewise, the Court finds that Debtor has sufficiently explained why she failed to serve copies of exhibits with the Complaint, in that the reference to exhibits in the Complaint was inadvertent. The main argument for dismissal is that Defendants' "Past due" or "Charge off" notations in Debtor's credit files do not constitute acts to collect debts. Viewing the allegations of the Complaint in the light most favorable to Debtor, the Court concludes that dismissal is not appropriate. Debtor's Complaint contains sufficient allegations of Defendants' intent to collect. The Motions to Dismiss must be denied.

XI. LIQUIDATION, DISTRIBUTION, AND CLOSING, 3441-3460

XII. BROKER LIQUIDATION, 3461-3480

XIII. ADJUSTMENT OF DEBTS OF A MUNICIPALITY, 3481-3500

XIV. REORGANIZATION, 3501-3660

C. Conversion or Dismissal, 3591-3620

In re Gary Lenz 11 U.S.C. § 1112(b)
No. 05-02802, 2005 WL 2850399, Ch. 11, 10/26/05

Three matters were set for hearing: Motion to Dismiss filed by the U.S. Trustee, Motion to Dismiss filed by Janice Lenz and a Motion for Relief from Automatic Stay filed by Janice Lenz. The U.S. Trustee's motion seeks dismissal for Debtor's failure to pay quarterly fees, turn over financial information and file monthly reports. Ms. Lenz seeks dismissal, asserting this is a bad faith filing, Debtor is wasting assets and schedules are inaccurate. She also seeks relief from the automatic stay to enforce rights arising in the dissolution decree. HELD: This case must be dismissed. It has been on file over four months. Debtor has been advised of his obligations as a debtor-in-possession on numerous occasions. He has not fulfilled the requirements of a Chapter 11 Debtor by failing to provide proof of insurance, establish a debtor-in-possession bank account, amend schedules, file complete monthly reports, and pay quarterly fees. The Court has also considered the impact of this case on Ms. Lenz, Debtor's only major creditor other than U.S. Bank, and on the dissolution proceedings in state court. Representations made on the record and the filings in this case convince the Court that dismissal is in the best interests of the creditors and the estate.

XV. ARRANGEMENTS, 3661.100-3661.999

XVI. COMPOSITIONS, 3662.100-3670

XVII. ADJUSTMENT OF DEBTS OF FAMILY FARMER, 3671-3700

XVIII. INDIVIDUAL DEBT ADJUSTMENT, 3701-3740

In re Raymond and Jacque Zirtzman — 11 U.S.C. § 1325(b)
No. 06-00015, Ch. 13, 10/4/06

Pursuant to the parties' stipulation, the unresolved issue for confirmation is whether the Plan length is three years, as proposed in the Second Amended Chapter 13 Plan, or five years, as indicated on the Form B22C and 11 U.S.C. § 1322 and § 1325. HELD: Because Debtors' income is above the applicable median income, the plan length must be five years under §1325(b)(1)(B).

XIX. REVIEW, 3741-3860

XX. OFFENSES, 3861-3863