

First Circuit Bankruptcy Case Summaries

7.30.10

Maali v. USA, 2010 Bankr. Lexis 2093 (BAP 1st Cir. 7/16/10).

Bankruptcy Appellate Panel affirmed the Bankruptcy Court's grant of summary judgment to the IRS. Debtor claimed tax claims were untimely, and that Court did not consider the hardship of repaying them. There is no statutory "hardship" test for determining whether certain tax liabilities are excepted from discharge under 11 U.S.C. §523(a)(1). The classification of tax claims as priority claims under 11 U.S.C. §507(a)(8) and as non-dischargeable under §523(a)(1) is driven by time deadlines. Either the tax claims fall within the deadlines or they do not; there is no room in the plain reading of these provisions to deviate from this time-line analysis.

In re Wunderlich, 2010 BNH 23 (Bankr. D.N.H. 7/2/10)(Mark W. Vaughn, Chief Bankruptcy Judge).

Creditor holding 90% of the claims of the estate, brought significant assets into the Chapter 7 bankruptcy estate on his own efforts. Based on this, and an examination of the Chapter 7 trustee's efforts, the Court awarded the trustee only 2/3 of the allowable commission.

Ong v. Ong-Maguire (In re Ong-Maguire), 2010 BNH 24, 2010 Bankr. Lexis 2076 (Bankr. D.N.H. 7/13/10)(J. Michael Deasy, Bankruptcy Judge).

Debtor's sister sued to prevent her discharge, alleging that the debtor violated her fiduciary obligations pre- and post-petition regarding her handling of the family real estate trust. Debtor moved to dismiss the complaint: Count I survived dismissal re 11 U.S.C. §727(a)(2)(B), because the sister pled that the debtor (1) transferred, removed, destroyed, mutilated, or concealed (2) property of the estate (3) post-petition (4) with the intent to hinder, delay or defraud a creditor, intent being actual and not constructive. Court rejected debtor's argument that the trustee abandoned the property - the fact that there was no distribution in the Chapter 7 case was not the equivalent of abandonment or case closure. As for Count II re §727(a)(4)(A) regarding the debtor's false oath to the registry of deeds, that Count was dismissed because the false oath was made pre-petition and not made in connection with the bankruptcy case. As for Count III re §523(a)(2)(A) money or property obtained by false pretenses, a false representation or actual fraud, sister sufficiently pled an intent by the debtor to deceive. As for Count IV re fraud or defalcation while acting as a fiduciary, the complaint was pled sufficient to sustain dismissal; debtor possessed the fiduciary capacity under an express or technical trust.

In re Sewall & Co., 2010 Bankr. Lexis 2107(Bankr. D. Maine 7/16/10)(James B. Haines, Jr.

Bankruptcy Judge). Maine Lottery Bureau moved for relief from stay to collect lottery receipts from the debtor, which was denied. Pivotal issue was the relationship between the parties: The relationship was debtor/creditor not trustee/beneficiary or conduit/destination. The debtor bought the lottery tickets pre-petition; debtor had the ability to do with the lottery ticket sale receipts as it pleased, agreeing only that a designated account in which the receipts were commingled with other cash would hold sufficient funds to pay the bureau what it was owed when the Bureau electronically swept the account at specified intervals.

Robert vs. Household Finance Corp,II, (In re Robert)2010 Bankr. Lexis 2059 (Bankr. D. Mass. 7/7/10)(Henry J. Boroff, Chief Bankruptcy Judge). Defendant moved to dismiss Chapter 13 debtors' claims against them, having failed to disclose such claims in a prior Chapter 7 case. The claims, if viable, arose prior to the Chapter 7 case and thus would have belonged to the Chapter 7 trustee, the debtor having no standing to bring them now.

In re Buck, In re Groccia , 2010 Bankr. Lexis 2110 (Bankr. D. Mass. 7/9/10)(Henry J. Boroff, Chief Bankruptcy Judge). Court disallowed fee application of debtor's counsel and ordered disgorgement in two separate, but related (debtors were mother and daughter) Chapter 7 cases. Debtors were unable to pay a Chapter 7 fee "up front", so the attorney filed Chapter 13 cases for both for his fees to be paid over 36 months in a Chapter 13 plan. The debtors voluntarily converted to Chapter 7 and the Court allowed the attorney only to recover the \$299 Chapter 7 filing fees. An "attorney fee only" Chapter 13 case does not pass the test of good faith.

In re Cormier, Chapter 13 debtors, Case No. 09-44865 (Bankr. D. Mass. 7/15/10)(Henry J. Boroff, Chief Bankruptcy Judge)[unreported case on court's web site].

Although debtors abandoned collateral to the secured creditor, Court ruled the creditor could not be compelled to physically take the collateral and thus take on financial responsibility for the collateral. Surrender simply provided the creditor with the opportunity to exercise its rights.

Submitted by:

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