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First Circuit

DUBY v. UNITED STATES OF AMERICA, 2011 Bankr. LEXIS 2356 (BAP 1st Cir. 6/28/11). Appeal from the Bankruptcy Court. **PROCEDURAL POSTURE:** Plaintiff debtor and defendant United States of America, Department of Agriculture, appealed from a final judgment of the Bankruptcy Court awarding the debtor \$11,848.50 for attorney's fees for a violation of the automatic stay and \$3,000 as a sanction for a violation of the discharge injunction. **OVERVIEW:** The government violated the automatic stay and the discharge injunction by attempting to collect a debt from the debtor with knowledge of the bankruptcy and the subsequent discharge. The debtor appealed the denial of emotional damages. The court held that the bankruptcy court did not err in declining to award emotional damages to a debtor for the federal government's violation of the discharge injunction because the government has not waived sovereign immunity under [11 U.S.C.S. § 106](#) for emotional damages. The bankruptcy court did err, however, in awarding \$3,000 as a sanction for a violation of the discharge injunction because the government had not waived sovereign immunity under [§ 106](#) for punitive sanctions. The bankruptcy court did not err in awarding attorney's fees under [11 U.S.C.S. § 362\(k\)\(1\)](#) for the federal government's willful violation of the automatic stay, despite the fact the debtor was not entitled to other compensable damages, because, to the extent that the debtor incurred legal fees to stop the willful violation of the automatic stay, she suffered actual damages and was "injured" within the meaning of [§ 362\(k\)\(1\)](#). **OUTCOME:** affirmed in part and reversed in part. **JUDGES:** Before Bankruptcy Judges Hillman, Feeney and Bailey, Opinion by Hillman.

CORREIA v. DEUTSCHE BANK (In re CORREIA), 2011 Bankr. LEXIS 2461 (BAP 1st Cir. 6/30/11). Appeal from the Bankruptcy Court (Massachusetts, Hon. William C. Hillman, Bankruptcy Judge). **JUDGES:** Before Bankruptcy Judges Haines, Votolato, and Deasy, Per Curiam). **OVERVIEW:** Debtors appeal the bankruptcy court's decision awarding summary judgment to Deutsche Bank. Debtors had initiated an adversary proceeding seeking to set aside Deutsche Bank's post-petition foreclosure of their home. The Bankruptcy Court concluded that the Debtors were without standing to challenge Deutsche Bank's compliance with procedures set forth in the contractual arrangement between and among Deutsche Bank and others, not including the Debtors, governing the transfer of their note and mortgage. **OUTCOME:** AFFIRMED.

VERSUS TECHNOLOGY, INC., v. JALBERT (IN RE: RADIANCE, INC.), 2011 U.S. Dist. LEXIS 71235 (D. Mass. 7/1/11). **JUDGE:** Richard G. Stearns, District Judge. **AFFIRMED:** Order of the Bankruptcy Court granting summary judgment to the debtor. **OVERVIEW:** In this bankruptcy appeal, appellant unsuccessfully sought to reverse the Bankruptcy Court's determination on summary judgment that the debtor is not obligated to pay the appellant royalties pursuant to a third-party Reseller Agreement. In a ruling from the bench, Bankruptcy Judge Melvin S. Hoffman concluded that the transaction did not trigger a royalty obligation because it was not, at the time the money came in, a sale as contemplated by the license agreement.

HSBC BANK USA v. BANK OF NEW YORK MELLON TRUST CO. (IN RE: BANK OF NEW ENGLAND CORP.), 2011 U.S. App. LEXIS 12701 (1st Cir. 6/23/11). **APPEAL FROM THE DISTRICT COURT.** **PROCEDURAL POSTURE:** Appellant indenture trustee, as representative of the holders of the debtor's senior debt, challenged a decision of the District Court, which affirmed the Bankruptcy Court's authorization of a distribution of assets from the debtor's estate to holders of the debtor's junior debt. **OVERVIEW:** The dispute was between holders of the debtor's senior debt and holders of the debtor's junior debt. The parties agree that the holders of the senior debt were entitled to priority payment of their principal along with pre-petition interest, that is, interest that accrued up until the filing of the debtor's bankruptcy petition, before the holders of the junior debt could receive a distribution. At issue was

whether the senior priority also included payment of post-petition interest earned on the principal up until the principal was paid in full, as the indenture trustee contended. The bankruptcy court, relying on the testimony of several witnesses, both fact and expert, documentary evidence, and contemporaneous scholarly articles, concluded that the parties to the junior indentures did not intend to permit the holders of senior debt to receive post-petition interest prior to payment on the junior debt. The district court affirmed. On appeal, the court held that the bankruptcy court's factual findings as to the intent of the parties were sufficient in themselves to support the conclusion that the parties did not intend to subordinate the junior note holders to post-petition interest. OUTCOME: AFFIRMED the District Court's decision. JUDGES: Before Appellate Judges Stahl, Howard and Torruella. OPINON by Stahl.

In re YOUK-SEE, 2011 Bankr. LEXIS 2326 (Bankr. D. Mass. 6/16/11). PROCEDURAL POSTURE: A creditor of Chapter 13 debtor filed a motion for reconsideration of a court order granting the United States Trustee's (UST) motion for entry of an order authorizing the examination of and requiring the production of documents by the creditor pursuant to [Fed. R. Bankr. P. 2004](#) and also filed a motion to quash subpoena. OVERVIEW: The creditor held a under-secured first mortgage against the debtor's property. The creditor approved a loan modification, subject to court approval. The court approved the loan modification, but the debtor was unable to obtain an executed loan modification agreement from the creditor for over 100 days. In the meantime, the creditor continued to send account statements to the debtor reflecting the pre-modification monthly mortgage payment amount notwithstanding the approval of the loan modification. The UST sought to ascertain whether the conduct of the creditor in the debtor's case deviated from the standards established by the Bankruptcy Code, and whether its particular actions constituted an abuse of the bankruptcy system or its procedures. The court held that the UST had standing to conduct discovery pursuant to its motion and had established "good cause." The court found that the UST's discovery requests were tailored to the procedures for loan modifications relative to the debtor and the property. Because the requests were focused on the creditor's communications with the debtor or debtor's counsel, the scope of the discovery was neither intrusive or abusive. OUTCOME: The court denied the motion to reconsider in part and granted the motion in part. The court granted the motion to reconsider and quashed the subpoena to the extent the UST sought to examine any witness in Boston, Massachusetts who lived more than 100 miles of Boston, Massachusetts. JUDGE: Joan N. Feeney, Bankruptcy Judge.

In re: BRIAN PROVENCAL, 2011 Bankr. LEXIS 2395 (Bankr. D. Mass. 6/21/11). OVERVIEW: Chapter 7 trustee seeks an order reducing by 50% the priority claim for unpaid income taxes filed the Massachusetts Department of Revenue (MDOR). The trustee would force the taxing authority to look to the debtor's spouse, who is not in bankruptcy, for half the claim amount thereby freeing some cash in the bankruptcy estate to create a dividend to the lower priority general unsecured creditors. In opposing the trustee's request the MDOR sites to state law wherein a husband and wife may make a single return jointly of income taxes with such return known as a joint return and shall include the income, exemptions and deductions of both spouses. *Each spouse shall be jointly and severally liable for the entire tax.* The debtor requested a postponement of a ruling on the trustee's objection to the MDOR's claim pending the outcome of his wife's IRS administrative proceeding because the trustee conceded, should the debtor's wife attain innocent spouse status, that he will abandon his efforts to bifurcate the MDOR's claim. The debtor was keenly interested in making sure that every penny of his bankruptcy estate was devoted to paying the MDOR's claim since what remains unpaid survives his discharge. Because Massachusetts law is explicit and unambiguous as to the joint and several liability of spousal taxpayers, bankruptcy court has no authority to require the MDOR to split its claim between the debtor and his spouse. OUTCOME: The trustee's objection to the claim of the MDOR is overruled and the claim is allowed as filed. JUDGE: Melvin S. Hoffman, Bankruptcy Judge.

In re NICHOLAS J. FIORILLO, 2011 U.S. Dist. LEXIS 67879 (D. Mass. 6/24/11). OVERVIEW: Seeking to use the automatic stay provisions of the Bankruptcy Code to forestall foreclosure, a debtor filed a chapter 11 bankruptcy petition. After the case converted to Chapter 7, the debtor attempted to dismiss his case because he had not taken the financial management course required of debtors. Because creditors had relied on the debtor's initial representations that he was an eligible debtor and that he had complied with [§ 109\(h\)](#), the debtor was judicially estopped from arguing that he had not complied with [§ 109\(h\)](#). OUTCOME: AFFIRMED, the Bankruptcy Court's order denying the debtor's motion to dismiss. JUDGE: Douglas P. Woodlock, United States District Judge.

Submitted by:

PATRICIA S. GARDNER, ESQ.

THE GARDNER LAW FIRM

PO Box 453, Newmarket, NH 03857

Phone: (603) 766 - 4933

Fax: (603) 292 - 5207

email to: GardnerBusinessLaw@gmail.com

web site: www.GardnerBusinessLaw.com