

First Circuit Bankruptcy Case Summaries

8.6.10

Premier Capital, Inc., v. Pagnini (In re Pagnini), 2010 Bankr. Lexis 2233 (BAP 1st Cir. 7/23/10)(Before Judges Haines, Lamoutte, Tester, Opinion by Judge Tester).

Bankruptcy Appellate Panel affirmed the Bankruptcy Court's avoidance of appellant/creditor's lien as impairing the debtor's Massachusetts homestead exemption. Debtor and her daughter owned property, joint tenants each having an undivided ½ interest in the property. Applying the formula in 11 U.S.C. §522(f)(2)(A), the sum of the liens and the amount of the exemption the debtor could claim if there were no liens exceeded the value of her interest in the property in the absence of liens. Thus, the Bankruptcy Court did not err in concluding that the debtor could avoid the creditors' lien in its entirety. Creditor had argued that the debtor's homestead did not protect her daughter's ½ interest in the property because the daughter was an adult who did not reside in the property. The Court need not address this argument because the creditor's lien encumbered only the debtor's interest in the property.

US v. Foley, 2010 U.S. Dist. Lexis 77755, (D. Maine 8/2/10)(George Z. Singal, District Judge).

US moved for summary judgment regarding defendant's default of her student loan, which was then withdrawn due to her bankruptcy filing. Upon receipt of her discharge, which did not include this loan, US moved again and the motion was granted. Although the non-moving party did not respond, summary judgment is still based upon the same legal and factual criteria had she responded. Court evaluated the evidence, noting record was devoid of any evidence relevant to debtor seeking discharge of the student loan due to undue hardship in the bankruptcy case.

In R&D Development, LLC, Chapter 11 Debtor, Case. No. 09-21771-FJB, (Bankr. D. Mass. 8/3/10)(Frank J. Bailey, Bankruptcy Judge)[unreported cases found on Court's web site].

Court denied bank's motion for relief from the automatic stay of 11 U.S.C. §362(d)(3) in this single-asset real estate case. Debtor had commenced post-petition interest payments, but had not yet filed a plan of reorganization. Bank contended the debtor had only tendered 3 of the 5 payments to date, and was not adequately protected. Court held an evidentiary hearing on the value of the property. Both debtor and bank agreed that the debt exceeded the value of the property and was a first priority lien. As such, the value to protect was the fair market value of the property itself. Although the burden is ultimately on the debtor to prove value, if the bank asserted that the value was higher than the debtor's then the burden was on the bank to come forward with evidence of the higher value. The land at issue was a combination golf course and residential development for which the debtor had not yet obtained all necessary permits nor acquired all necessary land. Debtor's value was presented through the debtor's manager; the bank's through an appraiser who opined value based on *inter alia* assumptions that necessary permits and land was acquired – erroneously assumptions, per the Court. As such, the bank's higher value was rejected. As for payments, the debtor had initially proffered the interest payments, which the bank had rejected as inadequate because the bank had wanted interest payments based on the property's alleged higher value, the debtor tendering interest payments based on the debtor's lower value of the land. Since the Court found in favor of the debtor's lower valuation, the interest payments were calculated correctly, the debtor was directed to submit them again to the bank and stay relief was denied.

In re Ridley, Chapter 13 Debtor, Case. No. 08-17589-JNF, (Bankr. D. Mass. 8/4/10)(Joan N. Feeney, Bankruptcy Judge)[unreported cases found on Court's web site].

Debtor objected to fee application of approximately \$5000, from his counsel, which was over ruled. Massachusetts precedent establishes that in Chapter 13 or 12 cases, the standard of reasonableness in compensation is the benefit to the debtor, without proof of benefit to the estate or creditors. Debtor's counsel had expended considerable time in pleadings and document review to ascertain issues of collateral estoppel or *res judicata* due to the debtor's multiple prior bankruptcy filings to avoid asserting unfounded defenses regarding the claim he was retained to resolve, which the Court found reasonable and ethically required. Debtor's counsel withdrew due to health reasons and the claim at issue was resolved by new counsel. Debtor asserted that prior counsel should have engaged in discovery, which the Court rejected as new counsel settled the claim at issue without taking any discovery.

N2N Commerce, Inc., et. al., v. Navisite, Inc., et. al. (In re N2N Commerce, Inc.), 2010 U.S. Dist. Lexis 78523 (D. Mass. 8/4/10)/(Joseph L. Tauro, District Judge).

District Court affirmed the Bankruptcy Court's opinion; the appellants were apparently aggrieved by the brevity of the opinion in relation to their voluminous briefing of the issues decided.

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