

First Circuit Bankruptcy Case Summaries

9.17.10

In re Fuller, Chapter 13 debtors, Case No. 08040791, (D. Mass. 8/31/10)(Melvin S. Hoffman, Bankruptcy Judge)[unreported cases on Court's web site].

Court granted debtor's motion for reconsideration as to granting relief from the automatic stay to Ocwen Loan servicing on behalf of Deutsche Bank. Debtors argued that the Court was divested of jurisdiction by virtue of a pending appeal regarding the validity of the Deutsche loan the debtor sought unsuccessfully to rescind. Court found that per the First Circuit test in *Whispering Pines*, 369 B.R. 752 (1st Cir. 2007) the matter was so closely related as to interfere with the debtor' appellate rights, and thus vacated the stay relief order.

In re Corridori, Chapter 7 Debtors, 10-41645 (D. Mass. 9/1/10)(Melvin S. Hoffman, Bankruptcy Judge)[unreported cases on Court's web site].

Bankruptcy Court granted U.S. Trustee's motion to dismiss under 11 U.S.C. §707(b)(3) as an abuse, with the debtor given 14 days to consider converting to Chapter 13, as these below-median debtors would have positive cash flow but for the fact that they voluntarily deduct a portion of their paychecks to fund a retirement account. There was no reason these debtors could not continue funding an account for eventual retirement after a Chapter 13 plan was concluded.

In re Maiorino, Chapter 7 Debtor, Case No. 10-41750, (D. Mass. 9/1/10)(Melvin S. Hoffman, Bankruptcy Judge)[unreported cases on Court's web site].

Bankruptcy Court denied U.S. Trustee's motion to dismiss under 11 U.S.C. 11 U.S.C. §707(b)(2 or 3) because even though on paper the debtor appeared to be "above median", the payments made for his children's school were ordered by the Probate Court and thus were required support obligations, as well as related court expenses. Factoring these school related expenses and Court costs back in, the debtor would fall below the median. Court also factored in a recent post-petition development where the debtor entered into an agreement for monthly payments to pay a non-dischargeable tax obligation. Further, debtor had a child who would soon start school as well. As such, if this were a Chapter 13 case, the debtor would have no disposable income with which to fund a plan.

In re SW Boston Hotel Venture, LLC, Case No. 10-14535-JNF (jointly administered), (Bankr. D. Mass. 8/27/10)(Joan N. Feeney, Bankruptcy Judge)[unreported cases on Court's web site].

Debtor owns a luxury building with condominium units that have not all sold, so moved to lease many of the empty units under 11 U.S.C. §363(b) as an exercise of reasonable business judgment, out of the ordinary course of business, which the Court approved over the lender's objection. Lender asserted it had the right to approve this. Court found that since it was the debtor's reasonable business judgment to do so, to withhold consent was unreasonable by the lender. Court also directed counsel for the lender and debtor to first communicate prior to further filings to avoid unnecessary costs and fees.

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