

Cincinnati Bar Association
Bankruptcy Committee Minutes
October 15, 2019

Jeffrey Pfirman, president, called the meeting to order.

1. Business Meeting: General Announcements

The next meeting is Tuesday, November 19th– business meeting (still working on topic/presenter)

December Seminar – Thursday, December 12th

January meeting – Joint meeting with Real Property Committee – Hamilton County Auditor presenting regarding tax valuation process

The committee is looking for new members for the CBA Bankruptcy Practice Group.

2. Subcommittee Reports: Case Summaries Attached

A. Judge Buchanan by Mike Debbeler:

In re Scott, No. 19-10104 (Bankr. S.D. Ohio September 12, 2019) Judge Buchanan held that a Chapter 13 plan cannot modify a secured creditor's rights against a non-filing co-debtor. The Court has authority and the obligation to deny confirmation pursuant to United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260 (2010). The failure of a creditor to object does not allow the Court to confirm a plan that does not meet the requirements of the Code.

B. Judge Hopkins by Brian Flick:

No report

C. Bankruptcy Appellate Panel:

Dean v. Lane (In re Lane), Case nos. 18-8038/8040 (August 30, 2019). The BAP held there was no error in granting either sanctions motion. Deans raised arguments on appeal not brought forth below. The adversary proceeding simply mimicked arguments already made and denied.

Smith v. U.S. Bank, N.A. (In re Smith), Case No. 19-8021 (September 10, 2019). The 6th Circuit has described a two-step approval which follows: a bankruptcy court's order may be immediately appealed if it is (i) entered in a proceeding and (ii) final – terminating that proceeding. See Ritzen Group, 906 F.3d 494 (6th Cir. 2018) (cert. granted). Here, the Debtor sought dismissal, which was granted. The creditor filed a motion to vacate the dismissal so it

could proceed with in rem relief. The bankruptcy court analyzed the Debtor's conduct and granted the motion. The BAP found neither order to be final as the proceeding is not complete. The BAP denied the motion to withdraw the motion for leave to appeal. The BAP denied leave to appeal finding no controlling question of law and dismissed the appeal.

D. Sixth Circuit by Paul J. Minnillo:

No report

E. Legislative Watch:

No report

F. Clerk's Office:

No report

G. Office of the U.S. Trustee:

No report

H. Chapter 13 Trustee:

Reminder to sign up for the CBA December Seminar scheduled for Thursday, December 12th from 8:30 am – 4:30 pm.

I. CARE

No report

3. New Business

Presentation: Laura Faulkner – *Chief Deputy Clerk, United States Bankruptcy Court, Southern District of Ohio.*

1. Case redistribution
2. Proposed Orders
3. Attorney Advisory Committee

Thank you to all presenters and all those of you who provide monthly updates for the benefit of our members. Thank you to our Chair who directs the meeting and provides speakers of various topics for our members.

Next meeting is: November 19, 2019

Respectfully submitted,
/s/ Tammy E. Stickley
Secretary of the Committee

JUDGE BUCHANAN SUMMARY

Prepared by: J. Michael Debbeler

October 15, 2016

In re Scott, Case no. 19-10104 (Sept. 12, 2019) (Buchanan)

Facts: Debtor filed a Chapter 13 and included in an Amended Plan a provision to modify a secured claim held by a creditor on a 910 car. The debtor listed the estimated claim amount at \$4,000 and provided there would be in rem, co-debtor protection whereby the amount would satisfy the claim of the creditor who upon release of said funds shall release its lien. Under the mandatory district-wide Chapter 13 Plan the proof of claim controls subject to the claims objection process. The creditor filed a claim for in excess of \$19,000. Creditor was served with the Amended Plan and did not object. The Trustee objected and stated the treatment was ambiguous and that the creditor's rights against the co-debtor should not be affected as proposed.

Issue: Can a Chapter 13 debtor confirm a plan which pays a creditor an estimated amount, regardless of its proof of claim, insulate a co-debtor from liability, and demand the lien of the creditor be release upon receipt of the payment of the secured claim, on the grounds that the creditor's failure to object allows such treatment?

Analysis: No, the Chapter 13 Amended Plan cannot be confirmed. After examining relevant case law, the Court concluded that a Chapter 13 plan cannot modify a secured creditor's rights against a non-filing co-debtor. The Court has the authority and the obligation to deny confirmation pursuant to United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260 (2010). The failure of a creditor to object does not allow the Court to confirm a plan that does not meet the requirements of the Code.

BANKRUPTCY APPELLATE PANEL SUMMARY

Prepared by: J. Michael Debbeler

October 15, 2019

Dean v. Lane (In re Lane), Case nos. 18-8038/8040 (August 30, 2019)

Judges: Buchanan, Dales, and Wise

Facts: Debtor sold her home to the Deans who discovered mold. Deans filed suit and obtained a state court judgment and obtained a lien against Debtor's new residence. Debtor filed a Chapter 13 and Deans commenced a war against her. Debtor's Chapter 13 plan was confirmed which paid Deans in full, with interest, over the life of the plan. Deans' objection to the plan was denied. Deans filed an adversary raising issues about the mold, which was dismissed. Deans filed a motion to dismiss which was denied. Deans appealed and the appeal was denied as the order was not final. Debtor offered Deans a settlement and Deans filed a copy of the letter with the clerk's office notwithstanding the letter contained FRE 408 language. Debtor sought sanctions against Dean which were granted for filing the letter. Deans appealed. Deans filed an adversary proceeding seeking revocation of the order confirming the plan. Debtor filed another sanctions motion which was granted for the filing of the adversary proceeding, which was dismissed on the grounds that it repeated the objections to the plan. Deans appealed second sanctions.

Issue: Whether the bankruptcy court erred in granting the motions for sanctions.

Analysis: No error in granting either sanctions motion. Deans raised arguments on appeal not brought forth below. The purpose of the filing of the letter was to hurt the Debtor. Court properly considered the Deans ability to pay. They refused to cash the checks from the Chapter 13 Trustee. The adversary proceeding simply mimicked arguments already made and denied.

BANKRUPTCY APPELLATE PANEL SUMMARY

Prepared by: J. Michael Debbeler

October 15, 2019

Smith v. U.S. Bank, N.A. (In re Smith), Case no. 19-8021 (September 10, 2019)

Judges: Buchanan, Opperman and Wise

Facts: Debtor appealed a bankruptcy court order vacating the dismissal of his Chapter 13 case and reinstating the case and a second order denying his motion to alter or amend the earlier order. The Debtor requested expedited consideration of the appeal. Debtor concluded the orders were not final and then filed a motion for leave to appeal, which motion he later withdrew.

Issue: Were the orders properly final orders from which an appeal of right can be taken or interlocutory orders for which leave to appeal is needed.

Analysis: Citing Ritzen Group, 906 F. 3d 494 (6th Cir. 2018) (cert. granted) (dealt with finality of order denying a motion for relief from stay) from the 6th Circuit, the 6th Circuit has described a two-step approach which follows: a bankruptcy court's order may be immediately appealed if it is (i) entered in a proceeding and (ii) final – terminating that proceeding. A proceeding under Section 158(a) is a discrete dispute within the overall case, resolved through a series of procedural steps. The Court looked at whether the order alters the status quo and fixes the rights and obligations of the parties.

Here, the Debtor sought dismissal, which was granted. The creditor filed a motion to vacate the dismissal so it could proceed with in rem relief. The bankruptcy court analyzed the Debtor's conduct and granted the motion. The BAP found neither order to be final as the proceeding is not complete. The BAP denied the motion to withdraw the motion for leave to appeal. The BAP denied leave to appeal finding no controlling question of law and dismissed the appeal.