(*Case summaries prepared by Alan Alexander and Jace Ferraez, Law Clerks to Judge Selene D. Maddox).*

***In re Tony and Melisa Easter*; 19-12063-SDM Dkt. #318, Memorandum Opinion and Order Overruling Objections, Denying Motions to Strike, and Allowing Debtors to Proceed under Subchapter V of Chapter 11; October 9, 2020.**

The Debtors, who are individuals operating a trucking and/or hauling business, filed for bankruptcy protection under Chapter 11 on May 16, 2019. Because of the lack of consensus and Creditors' objections to the Debtors' proposed plan, the Court denied confirmation. After the Small Business Reorganization Act (the "SBRA") became effective in February of 2020, the Debtors amended their voluntary petition on April 29, 2020 (almost a year after filing of their voluntary petition) and elected to proceed under the newly created subchapter V of Chapter 11. The Debtors argued that the "absolute priority rule" was the main impediment to plan confirmation and the impetus for their decision to amend their voluntary petition to proceed under subchapter V. The Court was faced with the following legal question(s): Whether the Debtors, who commenced a Chapter 11 case before the SBRA went into effect, may amend a voluntary petition to elect to proceed under subchapter V. That question had a few moving parts. Specifically, whether it is procedurally permissible make a belated subchapter V election when their Chapter 11 case was pending at the time the SBRA was enacted and whether a belated subchapter V election results in impermissible retroactivity.

Held: The Court found (1) that the Debtors were allowed to proceed under subchapter V, (2) there was a procedural mechanism under Federal Rules of Bankruptcy Procedure 1009(a) to make a belated subchapter V designation, and (3) no vested or substantive property rights were infringed, i.e., sufficient prejudice to the parties, by applying the new SBRA provisions retroactively. To begin, the Court considered arguments by the United States Trustee (the "UST") that the UST or the Debtors could not comply with procedural requirements imposed under the SBRA. Following a majority of courts that have decided the issue, the Court found that nothing in the Bankruptcy Code prohibits the Court from extending any procedural deadlines under 11 U.S.C. §§ 1188 and 1189. The Court also noted that the Debtors could not have complied with procedural deadlines in the SBRA because it was not in effect at the time the Debtors' case was filed. The Court held that those circumstances warranted an extension of the applicable deadlines.

The Court also considered arguments by the UST and two Creditors that applying the provisions of the SBRA (provisions which eliminated the absolute priority rule) amounted to or impaired vested property interests of creditors. The Court rejected that argument on its face by finding that the application of the new SBRA provisions do not, generally, impair vested property rights of Creditors. Next, the Court adopted a standard to review whether there was an impairment of vested property rights in this case by considering "the extent to which the parties in interest have invested in the case and whether the court has entered orders that create sufficient vested property interests or post-petition expectations such that the application of subchapter V to those rights or

expectations would offend elementary considerations of fairness." Answering that question in the negative, the Court found that the only prejudice argued by the Creditors was the Debtors' failure to turnover information concerning the Creditors' collateral in a timely manner. The Court held that those circumstances do not amount of a taking or infringement of property rights.

***In re Barbaria Thomas*; Case No. 16-11178-SDM; Dkt. #119, Memorandum Opinion and Order Granting in Part and Denying in Part Trustee's Notice and Motion to Modify Plan (Re: Dkt. #112); September 18, 2020.**

After Debtor was awarded a net balance of $18,616 from a personal injury settlement, Trustee filed Notice and Motion to Modify Plan so as to claim award for benefit of unsecured creditors who had filed timely proofs of claim. Debtor responded that she needed entirety of net balance for medical bills and other post-confirmation expenses.

Held: The Court considered the parties' requests under 11 U.S.C. § 1325(a), which requires *inter alia* that the proposed modifications to any plan must be proposed in good faith, must satisfy the liquidation analysis requirement of §1325(a)(4) *as of the date of the proposed modification*, and must be feasible. The Court concluded that under a straightforward liquidation analysis, the case would be easy, with the entirety of the settlement going to unsecured creditors. But after hearing testimony from Debtor, the Court concluded that the feasibility requirement of §1325(a)(6) justified an exercise of the Court's discretion to award half of the settlement to the Debtor, minus the deduction of an amount sufficient to bring Debtor's deficiency in plan payments current.

***Greenwood Leflore Hospital v. Gramling*; 19-AP-01016-SDM (*In re Robert Edselle Gramling III*; Case No. 18-13020-SDM); Dkt. # 39. Sua Sponte Order Granting Partial Summary Judgment, August 18, 2020;**

In 2007, Greenwood Leflore Hospital ("the Hospital") loaned the Debtor money for a student loan to pursue a nursing degree. The Debtor defaulted and filed for Chapter 13 bankruptcy in *Gramling I*, during the pendency of which Judge Woodard declared the student loan debt to be nondischargeable. After dismissal of *Gramling I*, the Debtor filed the instant Chapter 11 case (*Gramling II*). The filings in *Gramling II* failed, however, to identify the student loan debt as non-dischargeable, and the Hospital duly filed another adversary proceeding. During the pretrial conference, the Court noted that the issues of issue and claim preclusion had not been addressed and directed both parties to brief the issue.

Held: The Court on its own motion granted partial summary judgment to the Hospital pursuant to Rule 56(f). After considering the facts in light of claim preclusion, issue preclusion, and judicial estoppel, the Court concluded that the matter of the student loan's nondischargeability was fully litigated in the Hospital's favor during *Gramling I*, and the Debtor failed to satisfy his burden of showing that the nature of the obligation had changed since the prior court's findings or that the student loan had become an undue hardship that might be grounds for discharge under § 523(a)(8).

***Jackson v. Guaranty Bank and Trust Co.*; 19-AP-01001-SDM (*In re Willie Jackson*, Case No. 17-12602-SDM); Dkt. #121, Order Granting Defendant's Motion for Summary Judgment (Re: Motion for Summary Judgment, Dkt. #92), August 12, 2020.**

During protracted bankruptcy proceedings, the Debtor filed this Adversary Proceeding against Guaranty Bank and Trust ("Guaranty") seeking to enjoin Guaranty from foreclosing on Debtor's rental properties. After dismissal of all other pending bankruptcy matters (including the lifting of the stay so that the foreclosure could proceed), the only remaining issue for consideration was whether Guaranty's original attempt to foreclose on the subject property violated the automatic stay in a manner that caused the Debtor to suffer unspecified damages.

At issue were two contradictory provisions of the Chapter 11 plans from both the Debtor's individual Chapter 11 case and his separate corporate bankruptcy. One general provision stated that in the event of a delinquency in direct payments to any secured creditor that lasted more than sixty (60) days, an aggrieved creditor could then file a motion to lift the automatic stay. However, another provision incorporated by reference an agreed order between Guaranty and the Debtor which would have lifted the automatic stay as to Guaranty immediately upon the Debtor being more than thirty (30) days delinquent as to that creditor. There was no apparent dispute that the Debtor was delinquent more than 30 days but less than 60.

Held: The existence of the two different automatic stay provisions which were present (if only incorporated by reference) created an ambiguity in the Chapter 11 plans which must be construed against the drafter, i.e. the Debtor. Accordingly, the provision which lifted the automatic stay after 30 days was controlling, at least as to Guaranty. Because there was a 30-day delinquency, the automatic stay had already been lifted when Guaranty initially began foreclosure proceedings, and thus, Guaranty was entitled to summary judgment.

***In re Rogers Morris*, 18-10964-SDM; Dkt. #149, Opinion and Order Granting Motion for Relief of Automatic Stay to Offset (Re: Dkt. #129), March 16, 2020.**

The Debtor enrolled corn and soybeans in USDA crop insurance program. Pursuant to the contract, "[o]ffsets for debts owed to agencies of the U.S. Government shall be made prior to making any payments to participants or their assignees." The Debtor admitted during his testimony that he was aware of the offset provision when he entered into the contract. Subsequently, the USDA sought to exercise its offset rights with regard to a 2017 payment in the amount of $3,426.00 which was owed to the Debtor and filed a motion to lift the automatic stay so that it could claim those funds (for which a check had been cut but not yet delivered to Debtor).

The Debtor argued that offset in this case was improper because the Government did not file its motion until nearly a year post-confirmation and because allowing post-confirmation offset would be inequitable to the other creditors and to Debtor. The Debtor also argued that the Government had waived its offset rights by allowing confirmation to proceed over its objections.

Held: In order to establish a valid setoff right under § 553, the Government must prove: (1) the debt owed by the creditor to the debtor arose prepetition; (2) the claim of the creditor against the debtor arose prepetition; and (3) the debt and claim must be mutual obligations. The Government in this case has met those requirements. The Court adopted the majority rule that setoff rights survive plan confirmation and declined to find that the Government had waived any setoff rights due to dilatory behavior. Indeed, because of the nature of farm loans which are typically disbursed on an annual basis, the Court concluded that waiting ten months to begin a setoff action does not

represent a knowing, voluntary and intentional relinquishment of the right to setoff. Finally, the Court held that the Debtor had failed to show principles of equitable subordination apply in this case.

***Potts v. Pott*, 18-AP-01052-SDM (*In re Potts*, 18-11882-SDM); Dkt. #24, Memorandum Opinion and Order, January 29, 2020.**

Debtor ("Chad") was previously married to Catherine Potts ("Catherine"). During their marriage, Chad conveyed real property ("the Property") of which he had been sole owner to both himself and Catherine, with each of them receiving a one-half (1/2) undivided interest in the Property as joint tenants with rights of survivorship and not as tenants in common. Chad and Catherine later divorced, and the Chancellor entered a Final Corrected Judgment of Divorce which, *inter alia*, (1) identified the Property as marital property; (2) divested title of the Property from Catherine and Chad as joint tenants with rights of survivorship and vested sole ownership in Chad; (3) ordered Catherine to execute a Warranty Deed conveying her one-half undivided interest to Chad; and (4) awarded Catherine a judicial lien on the Property in the amount of $25,491.25.

The Chancellor specifically concluded that Catherine was entitled to recompense for the loss of her interest in the Property, which was to be satisfied by direct payments from Chad and secured by the judicial lien. Pursuant to the Chancellor's order, Chad was to make monthly payments of $212.43 to Catherine to be applied towards the lien (principal only), with four percent (4%) per annum interest to accrue on any balance not paid in full on or before September 30, 2015. However, Chad failed to make his required monthly payments, and after multiple contempt actions brought against Chad, the balance he owed to Catherine ballooned to $40,017.46 (including attorney's fees) pursuant to an order entered by the Chancellor on October 3, 2017.

Chad subsequently filed for Chapter 13 and later filed an objection to Catherin's proof of claim, denying that the debt owed to Catherine should be considered domestic support, denying that it was entitled to priority treatment, and denying that it should be exempted from discharge. In response, Catherine filed an objection to confirmation of the Chapter 13 plan challenging Chad's attempt to avoid the judicial lien.

Held: Debts arising from divorce proceedings which can be characterized as Domestic Support Obligations ("DSOs") are presumptively entitled to nondischargeability under Chapter 13. Applying the *Sheffield* factors articulated by Judge Houston in *In re Sheffield*, 349 B.R. 484, 489 (Bankr. N.D. Miss. 2006), the Court concluded that Catherine had failed to show by preponderance of the evidence that the Chancellor's order represents a DSO entitled to both nondischargeability and priority (as opposed to a property settlement lien that may normally be discharged in Chapter 13.

The Court's finding, however, that the order was not a true DSO was not dispositive of the case. Rather, the Court considered the facts of the case sub judice in light of the Supreme Court's holding in *Farrey v. Sanderfoot*, 500 U.S. 291 (199), which also involved a judicial lien imposed by a property settlement. The *Sanderfoot* Court held that to avoid a lien under § 522(f), the debtor must already have an interest in the property at the time the court attaches the lien onto that interest. Where a divorce decree vests the entire, jointly-owned property with one spouse (who later seeks

to discharge the debt in bankruptcy) while simultaneously creating a lien in favor of the other spouse, the debtor's interest in the property was not preexistent but rather was created simultaneously with the lien through judicial decree.

Applying the Sanderfoot reasoning to the case sub judice, the Court found that the Property was owned jointly and as tenants in the entirety at the time the divorce decree vested sole ownership in Chad while simultaneously creating a judicial lien in favor of Catherine. Accordingly, the Court overruled Chad's objection to Catherine's proof of claim, sustained Catherine's objection to confirmation, and gave Chad fourteen (14) days in which to modify his Chapter 13 plan to provide for Catherine's allowed proof of claim.

***In re Dennis and Brenda Wester*, 19-13140-SDM; Dkt. #45, Opinion and Order Denying Debtors' Motion to Convert Case to Chapter 13, January 14, 2020.**

The Debtors listed as an asset on Schedule B a "[p]ossible inheritance from recently deceased mother" (the "inheritance") with an unknown value. They also listed the inheritance on Schedule C as an exempt asset with a claimed exemption of $100,000.00. The Debtors improperly claimed the exemption because Miss. Code Ann. § 85-3-13 is inapplicable to this type of asset. After being advised that the inheritance was not exempt, the Debtors filed a motion to convert their Chapter 7 case to one brought under Chapter 13. The Debtors also admitted at the hearing that the decision to convert was made in response to learning that the inheritance was not exempt and that the Trustee wished to claim it for the benefit of unsecured creditors. The Debtors also admitted their desire to use the inheritance to pay off their secured creditors at the expense of their unsecured creditors.

Held: The Motion to Convert was denied. The Court found bad faith in the Debtors repeated inconsistencies regarding the value and exemption status of the inheritance. The Court also took issue with the timing of the motion. Although the Debtors had notice for months of the issues with the inheritance, they waited until November 26 to file the motion to convert 112 days after filing the petition and one day before the deadline for filing non-government proofs of claim against them. The Court also noted that the Debtors, who are on a fixed income, have no disposable income for filing a feasible Chapter 13 plan and there is no arrearage to be cured which might justify a Chapter 13 repayment schedule. Based on the foregoing, the Court concluded that allowing conversion would be an abuse of the bankruptcy process.

***Netterville v. Planters Bank et al*, 19-AP-01017-SDM (*In re Netterville*, 19-10710-SDM). Dkt. #14, *Memorandum Opinion and Order Granting Summary Judgment*; July 24, 2019.**

The Debtor was the sole owner of Netterville Properties LLC ("NP") which, in turn, was the owner of several rental properties ("the Properties") at issue in this adversary proceeding. In a prior individual Chapter 13 case ("the 2017 case"), the Debtor did not list any of the Properties as being owned by him personally. Additionally, NP listed the Properties as being owned by NP in fee simple when NP filed for Chapter 11 in 2018 ("the 2018 case"). Both of those cases were dismissed without obtaining a discharge.

In 2019, in response to imminent foreclosure on the Properties, the Debtor filed a second personal Chapter 13 bankruptcy. However, Planters Bank (one of the creditors) proceeded with the foreclosure on the grounds that the Debtor did not own the Properties personally, and so his latest bankruptcy did not impose an automatic stay against foreclosing upon them. In response, the Debtor amended his Schedule A to assert an "equitable interest" in the Properties. He then filed an adversary proceeding against the Defendants: Planters Bank and the real estate agency that handled the foreclosure sale on the bank's behalf.

The Defendants then filed a motion for summary judgment which the Debtor did not oppose. In addition to the prior filings, the Defendants also submitted references to the written discovery they propounded to which the Debtor did not respond. Most notably, Request No. 14 stated: "*Please admit that Netterville Properties, LLC is the real party in interest and was the fee simple owner of the properties foreclosed upon*." In the absence of any response from the Debtor, the Defendants argue that Request No. 14 should be deemed admitted.

Held: The motion for summary judgment was granted. No legal evidence before the Court supported the inference that the individual debtor was the actual owner of the Properties as opposed to the LLC he owned solely. All evidence before the Court established that the Properties were owned completely by NP. While the Debtor was the sole shareholder of NP, the existence of the corporate veil separated the Debtor from the Properties as far as the Bankruptcy Code and the application of the automatic stay were concerned. While the Debtor *could* have used his control over NP to transfer the Properties to himself after NP's dissolution, he chose not to do so. Consequently, the Court found that the Properties were not protected by the imposition of the automatic stay, and the Defendants were entitled to judgment as a matter of law.