Opinion Summaries for the Honorable Katharine M. Samson

In re Hill, No. 19-50821-KMS, 2019 WL 7580121 (Bankr. S.D. Miss. Dec. 17, 2019).

Chapter 13: On creditor FirstBank's objection to confirmation and valuation, asserting that Debtors' plan impermissibly proposed to pay FirstBank less than replacement value of its collateral, a manufactured home ("Home"). Held: Objection sustained. It was undisputed that the Home was to be valued as personal property under § 506(a)(2), which specifies replacement value. Accordingly, FirstBank's expert valued the Home as personal property, calculating replacement value using the National Appraisal System (NAS) with the National Automobile Dealers Association (NADA) price guide. But Debtors' expert valued the Home as real property, calculating market value using comparable local sales. Because FirstBank held a security interest in the Home as personal property and there was no evidence that the Home had become part of real property under Mississippi statute, Court accepted valuation of FirstBank's expert, reduced by amounts necessary to offset error in calculation of square footage and to replace roof as estimated by Debtors' expert.

Lewis v. Massachusetts Higher Educ. Assistance Corp. (In re Lewis), Adv. Proc. No. 17-06060-KMS, 2019 WL 489222 (Bankr. S.D. Miss. Jan. 29, 2020).

Chapter 7: Trial on complaint to determine dischargeability of student loan debt. Plaintiff/Debtor owed approximately $288,000 on consolidated student loans on which she had never made a payment, either because the loans were in forbearance or because Debtor was in an income-sensitive repayment program in which her monthly "payment" was $0. Although Debtor earned only $42,546 the year she and her unemployed husband filed their bankruptcy case, at the time of trial, she earned $92,000 a year. Held: The debt was non-dischargeable under the three-prong test set out in *Brunner v. New York State Higher Education Services Corp.*, 831 F.2d 395 (2d Cir. 1987) and adopted by the Fifth Circuit Court of Appeals in *United States Department of Education v. Gerhardt (In re Gerhardt)*, 348 F.3d 89 (5th Cir. 2003). Debtor did not satisfy the first prong of the test, having failed to prove that if forced to repay the loans, she could not maintain a minimal standard of living for herself and her dependents. Comparing Debtor's income to the federal poverty guidelines and her expenses to the Collection Financial Standards issued by the IRS, the Court found that Debtor could maintain a minimal standard of living and repay the loans in full in thirty years under one of the creditor's standard repayment programs. Addressing Debtor's alternative argument for partial discharge, the Court recognized that courts disagree on whether partial discharge may be granted under § 523(a)(8) through the court's equitable powers under § 105(a). But the Court did not reach the question of whether partial discharge was permitted, because if it was, the Court would agree with the majority rule that the debtor must prove undue hardship as to the portion of the loan to be discharged. Accordingly, if partial discharge was permitted, it was not available to Debtor, who could repay the entire debt without undue hardship.

Lentz v. Parkland Legal Group, PL (In re Gaughf), Adv. Proc. No. 19-06031-KMS, 2020 WL 1271595 (Bankr. S.D. Miss. Mar. 12, 2020).

Chapter 7: One of three remaining Defendants sued by chapter 7 trustee moved for dismissal under Rule 12(b)(6) or, in the alternative as to only the non-core count, to compel arbitration. Complaint alleged wrongdoing related to Debtor's pre-petition participation in consumer debt settlement program. Three counts were core under 11 U.S.C. §§ 542 and 548 and one was non-core, aiding and abetting breach of fiduciary duty ("Aiding and Abetting Count"). Held: Aiding and Abetting Count must be referred to arbitration. Arbitration agreement was valid and binding on Trustee and included valid delegation clause. Court observed that ordinarily, in considering arbitrability of adversary proceeding that includes both core and non-core counts, court would determine whether underlying nature of the proceeding derived exclusively from provisions of Bankruptcy Code and, if yes, whether the nonbankruptcy count was implicated only peripherally. But with arbitrability of only non-core count at issue, there was no reason to determine proceeding's underlying nature or the relationship between core and non-core counts. Only question was whether arbitration of Aiding and Abetting Count would conflict with purpose of Bankruptcy Code. Trustee, as party opposing arbitration, bore burden of proof that arbitration would conflict with purpose of Code, and Trustee failed to carry burden.

In re Adkins, No. 19-50936-KMS, 2020 WL 1670257 (Bankr. S.D. Miss. Mar. 30, 2020).

Chapter 13: On objection to confirmation by creditor Edgefield Holdings LLC based on plan's treatment of its claim and on other grounds, all of which were premised on value of Debtors' home ("Home"), which partially secured claim. Neither expert could find sales of properties as large as the Home in the immediate area, and their valuation methods differed in how they compensated for lack of traditional comps. Held: Objection sustained, with Court forming own opinion as to value. Debtors' expert looked at sales in other subdivisions to find three comps that were approximately the same age as the Home. Edgefield's expert looked at sales within a few miles of the Home to find four comps that were much newer than the Home. Debtors' expert adjusted each comp individually to account for the Home's larger size. Edgefield's expert calculated the "effective ages" of the Home and the comps and applied a $100,000 across-the-board adjustment to account for updating. The experts agreed that the Home needed extensive repairs. Court rejected across-the-board adjustment and concept of effective age, believing that comps based on actual age more accurately aligned with true market value in this instance, but also rejected valuation by Debtors' expert. Court determined value of Home by averaging cost per square foot of comps chosen by Debtors' expert, multiplying average by Home's square footage, and subtracting amount Debtors' expert estimated for repairs.

Barkley v. Santander Consumer USA Inc. (In re Martin), Adv. Proc. No. 19-00041-KMS, 2020 WL 1670254 (Bankr. S.D. Miss. Mar. 30, 2020).

Ch. 13: On motion by creditor Santander Consumer USA Inc. to dismiss Trustee's complaint under Rule 12(b)(1) for lack of standing or, alternatively, mootness; and Rule 12(b)(6). Dispute centered on allegation that Santander filed proof of claim for debt that under Mississippi law was not merely time-barred but extinguished. Claim had been disallowed on Trustee's objection to claim. Complaint pleaded five counts: I - Violation of Bankruptcy Rule 9011; II - Violation of the Fair Debt Collection Practices Act (FDCPA); III - Declaratory Judgment under 11 U.S.C. § 105(a) that filing of proof of claim was abuse of process; IV – Injunctive relief under § 105(a) to enjoin Santander's future conduct; and V – Fraud on the court under § 105(a). Held: All counts dismissed, but Trustee would be permitted to amend complaint.

- Rule 9011 count: Rule 9011 count duplicated Trustee's Rule 9011 motion filed in the underlying case. Because relief under Rule 9011 is properly sought by motion, Court would decide Rule 9011 questions in underlying case.
- FDCPA count: Fact that debt was extinguished was apparent from face of claim, so relief was unavailable under *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407 (2017) (holding that filing proof of claim that on its face is time-barred does not violate FDCPA).
- Declaratory judgment count: Although abuse of claims process is actionable under § 105(a), Trustee had no standing to seek such relief by a declaratory judgment, because declaratory judgment is a future-oriented remedy and Trustee could not allege facts showing any likelihood the chapter 13 estate would suffer future injury from fraudulent proof of claim filed by Santander, because claim had been disallowed.
- Injunctive relief count: Trustee sought to enjoin Santander's future conduct, which Court interpreted as request for relief for unidentified future plaintiffs. Trustee had no standing to seek this relief.
- Fraud on the court count: Fraud on the court is a remedy under Civil Rule 60(d)(3) that allows a court to set aside a judgment. Because claim had been disallowed, there was no judgment to set aside.

Lentz v. Donald Norris Assocs. PLLC (In re Jackson), Adv. Proc. No. 19-06027-KMS, 2020 WL 3737677 (Bankr. S.D. Miss. June 9, 2020).

Ch. 7: On motion to dismiss under Rule 12(b)(6) by defendant Donald Norris, managing member of defendant Donald Norris Associates PLLC d/b/a Stonepoint Legal Group, a Nevada company. Complaint alleged wrongdoing related to Debtor's pre-petition participation in consumer debt settlement program. Held: Motion granted. Under Nevada law, as under Mississippi law, membership in or management of a PLLC, without more, does not support an action against the member individually. Although PLLC does not shield members from liability under laws that apply to relationship between a person furnishing a professional service and the person receiving the service, Trustee pleaded no facts showing that Norris himself furnished any professional service to Debtor. Complaint did not even allege any contact between Norris and Debtor.

In re Dillon, No. 16-01682-KMS, 2020 WL 4004886 (Bankr. S.D. Miss. July 14, 2020).

Ch. 13: On Debtor's objection to claim by former wife. Debtor argued that claim was (1) untimely filed and (2) based on a property settlement, not a domestic support obligation as wife contended. Held: Objection sustained. Although wife herself did not receive notice of bankruptcy case until after claims deadline, her divorce attorney knew of the filing approximately two-and-a-half months before deadline. Imputing attorney's knowledge to client, Court held that wife had reasonable time in which to file claim. Wife was not without recourse, however. Holding that claim was based on a DSO, Court stated that wife could enforce underlying debt either after completion of case or on its dismissal.