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From: Morgan King's Law Letter # 12 <morgan@morganking.com>
To: <milavetz@bankruptcybooks.com>
Cc:
Subject: Proposed rule changes - comments sought
Date: 7/5/2016
Time: 10:30 AM

Attachments: None

News for Tax, Bankruptcy, and Consumer Professionals

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The King Law Letter

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LAW LETTER NO. 12 July 1 2016

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EXCERPT FROM

Christine Kingston's

DISCHARGING STUDENT LOANS
In Consumer Bankruptcy Cases
Release 2016 # 2
KingLawPublishing.com

KINGSTON'S DISCHARGING STUDENT LOANS

¶ 5.6 PARTIAL DISCHARGE

b. Equitable powers

The Saxman Court ruled that it is now generally recognized that an all-or-nothing approach to the dischargeability of student debt contravenes Congress' intent in granting bankruptcy courts equitable authority to enforce the provisions of the Bankruptcy Code. See *Sequeira v. Sallie May Servicing Corp* (In re Sequeira), 278 B.R. 861, 863-64 (Bankr. D.Or. 2001); *East v. Educ. Credit Mgmt. Corp* (in re East), 270 B.R. 485, 493 (Bankr. E.D. Cal. 2001); *Yapuncich v. Mont. Guaranteed Student Loan Program* (In re Yapuncich), 266 B.R. 882, 893-94 (Bankr. D.Mont.2001); *England v. United States* (In re England), 264 B.R. 38, 50 - 51 (Bankr.D.Idaho 2001). *"*Dunlop v. Educational Credit Management,* _ B.R. _ (Bankr.W.D.N.C. 2016).

The Saxman Court determined *Hornsby, Tennessee Student Assistance Corp. v. Hornsby* (In re Hornsby), 144 F.3d 433 (6th Cir. 1998) Id. At 1123-24, is the better reasoned opinion, and conclude that bankruptcy courts may exercise their equitable authority under 11 U.S.C. 105(a) to partially discharge student loans. *Saxman v. Educ. Credit Mgmt. BJR Corp*. (In re Saxman), 325 F.3d 1168 (9th Cir. 2003).

The District Court for the Southern District of California holds the bankruptcy courts may partially discharge student loans based upon a debtor's undue hardship. *Great Lakes Higher Education Corp. v. Brown* (In re Brown) 239 B.R. 204, 212 (S.D.Cal. 1999).

"In weighing each of the three factors, should the court find that the Debtor is incapable of repaying the entire loan, the court may determine how much repayment a Debtor can afford, and structure such a reduced payment in order to accomplish some return on the indebtedness. *Saxman v. Educ. Credit Mgmt. BJR Corp*. (In re Saxman), 325 F.3d 1168 (9th Cir. 2003).

The court in Conway fashioned a kind of hybrid approach to partial discharge. In that case the court held that there was no authority allowing a court to "partially" discharge a loan, but where the debtor had multiple loans the court could discharge some of them, and not the others.

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THE LAW & CASE HOTWIRE

King, *Fundamentals of Consumer Bankruptcy Practice,* at ¶ 5.6(b)

HELD: FAILURE TO DISCLOSE IN THE SOFA A BENEFICIAL INTEREST IN A TRUST RESULTS IN A PRISON SENTENCE

U.S. v. Stoller 7th Cir. July 2016

Debtor set up a trust that holds a residence which generates rental income. He assigned his

beneficial interest in the trust to his daughter, but included a qualification that he retain a "power of direction" that gave him the right to take out loans on the property. He subsequently took out three personal loans secured by the trust property, and directed the rental income from the property to himself.When he filed Chapter 7 bankruptcy, he did not disclose his interest in the trust, notwithstanding that question no. 14 on the Statement of Financial Affairs requires disclosure of property owned by another person that the debtor holds or controls. The debtor attempted to blame the omission on his attorney. The court acknowledged that reasonable reliance on an attorney's advice is sufficient to relieve the debtor of the omission, but found no negligence on the attorney's conduct, and did not take the attempt to blame his attorney seriously.The court held that the debtor had committed fraud and upheld the lower court's conviction._____

HELD: FAILURE TO ANSWER 12 OUT OF 15 QUESTIONS ON THE SOFA WITH FULL DISCLOSURE CONSTITUTED "RECKLESS DISREGARD" AND DISCHARGE DENIED

Korner v. Korner, (Bankr.N.D.Ill. 2013)

This case is a caveat to debtors and their attorneys too not treat the schedules in a cavalier manner. The debtor had just come through a complicated divorce proceeding, which ostensibly assigned items of community property to the respective spouses, including agreements to pay certain debts, and the ostensible right to receive payments from the husband.The case is a litany of mistakes made on the schedules, including such things as listing only one bank account when their were two (because she said she was going to close the other account), failed to disclose that the alimony was scheduled to increase in a few months (because she didn't really believe her ex-spouse would pay any of the alimony), didn't list property falling within question no. 14 of the SOFA that she had in her possession property owned by another, because the items had been awarded to her husband in the divorce but she figured he was picking it up any day now, so need not be listed, and failing to disclose a payment of $1,000 to her mother within the preceding year.In her mind, she answered the questions logically. However, it is obvious she did not really understand what information was being elicited in the forms, or the vocabulary on some of the schedules. The court acknowledged that one or two of such omissions could be written off as minor mistakes by an honest debtor, but the pattern of many such omissions could not be ignored. "The key factor in this case is the existence or cumulative effect of the pattern or course of conduct." The court rejected a finding of fraud, but found that the debtor had engaged in conduct described as negligent disregard for the truth, and on that basis denied a discharge._____

HELD: NO EQUITABLE TOLLING FOR SECTION 727(a)(2)

Posted by NCBRC AND NACBA NEWS- June 30, 2016

The one-year look-back period for fraudulent transfers is not subject to equitable tolling. DeNoce v. Neff (In re Neff), No. 14-60017 (9th Cir. June 9, 2016).

In October, 2008, Douglas DeNoce obtained a $310,000.00 dental malpractice judgment against Robert Neff. Neff filed a chapter 13 bankruptcy petition in March, 2010, and the following month he quitclaimed property he owned to a revocable living trust that he had created. His bankruptcy was dismissed, and he filed a second chapter 13 petition in June, 2010, listing the revocable trust on his schedules. In August, 2010, he transferred the property back to himself. Neff subsequently voluntarily dismissed that bankruptcy case. In October, 2011, Neff filed a third bankruptcy petition, this time in chapter 7. DeNoce filed an adversary complaint under section 727(a)(2) arguing that the 2010 quitclaim of the property to the trust was a fraudulent transfer.**CLICK FOR MORE STORY**

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IN OTHER NEWS

Bankruptcy - Taxes - Consumer Protection

Proposed Amendment to Bankruptcy Rule 3015 and new Rule 3015.1 Published for Public Comment

On July 1, 2016, the Judicial Conference Advisory Committee on Bankruptcy Rules published a proposed amendment to Bankruptcy Rule 3015 and a new Rule 3015.1 and requested that they be circulated to the bench, bar, and public for comment.

Rule 3015: Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 12 Family Farmer's Debt Adjustment or a Chapter 13 Individual's Debt Adjustment Case.

Proposed New Rule 3015.1: Requirements for a Local Form for Plans Filed in a Chapter 13 Case

The proposed amendments, rules committee reports explaining the proposed changes, and instructions on how to submit comments are
posted on uscourts.gov

The public comment period ends October 3, 2016.

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_____N.J. forces mom to pay son's student loans: Murder 'does not meet threshold for loan forgiveness'

Tom Boggioni 03 Jul 2016

"Please accept our condolences on your loss," explained a letter from the Higher Education Student Assistance Authority of New Jersey. "After careful consideration of the information you provided, the authority has determined that your request does not meet the threshold for loan forgiveness. Monthly bill statements will continue to be sent to you."

That is the response Marcia DeOliveira-Longinetti received when she attempted to get student loan forgiven after her 23-year-old son was murdered last year, reports the New York Times.

Welcome to the world of what bankruptcy attorney Daniel Frischberg calls, "state-sanctioned loan-sharking."CLICK FOR MORE STORY

_____Wells Fargo Will Pay $16.3 Million to End TCPA Suit

Tim Bauer June 30, 2016

According to filings yesterday in Georgia federal court, Wells Fargo Bank, N.A. (Wells) will pay approximately $16.3 million to end a proposed class action alleging it illegally used an Automatic Telephone Dialing System (ATDS) to call customers' cellphones without their consent.CLICK FOR MORE STORY

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The Morgan King Company, Box 2952, Dublin, CA, CA 94568