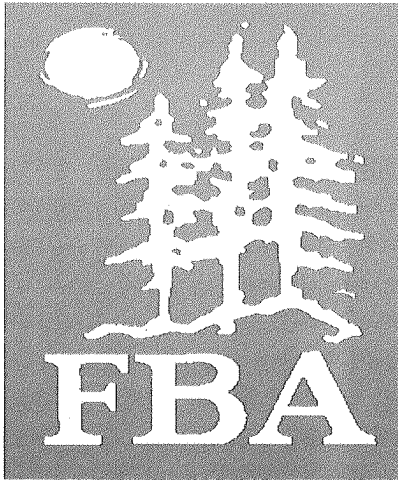


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BANKRUPTCY LAW NEWSLETTER

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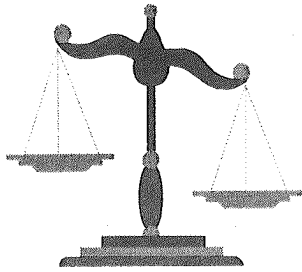
October, 1998

BANKRUPTCY REFORM BILL APPARENTLY DIES IN CONGRESS.

As of late October, it appears that the Consumer Bankruptcy Reform Bill has died in Congress as the congressional leaders and White House failed to produce a mutually agreeable compromise.

The original Senate bill (S. 1301) had passed on September 23, by a vote of 97 to 1. This bill was supported by the administration because of its apparent debtor protections against unfair creditor practices and new disclosure requirements for creditors. The Republican-backed conference committee reduced many of these provisions, resulting in the administration's promise to veto the reform bill. While the House voted on October 9 to adopt a conference committee report and the Senate voted to take the bill under consideration, there was strong opposition from Senate Democrats. The bill was therefore never brought up for a final vote in the Senate. While the legislation failed, an agreement was reached to include a 6-month's extension of Chapter 12 into the omnibus appropriations bill. Therefore, once that bill is signed, Chapter 12 shall continue on. Despite the efforts of the previously appointed Bankruptcy Review Commission and this year's efforts by various parties to reform bankruptcy legislation, practitioners and continuing legal education sponsors will have to wait for the next Congress to see what, if any, changes are made to the Code.

revised



CASE NOTES

SECTION 1322(b)(2) - A WHOLLY UNSECURED MORTGAGE CLAIM CAN BE TREATED AS AN UNSECURED CLAIM DESPITE §1322(b)(2)'s ANTI-MODIFICATION LANGUAGE

In the matter of Gail Ann Phillips, Judge Stevenson held that a Chapter 13 Debtor may treat a mortgage claim that is not "secured" by equity in the property, as an unsecured claim. While §1322(b)(2) prohibits modification of the rights of holders of secured claims in real property that is the Debtor's principal residence, the Court ruled that a Creditor must hold a secured claim in both the literal and code sense to come within this protection. In other words, the claim must be supported by a lien and must also be supported by some equity in the property.

In Phillips, the amount of the first mortgage exceeded the value of the property. The holder of the second mortgage objected to its treatment as an unsecured creditor in the proposed Chapter 13 Plan. The Court found, interpreting the Nobleman decision, 508 US 324 (1993) that a creditor must first qualify under §506(a) to receive the protection of §1322(b)(2). Since the creditor did not qualify as a secured creditor under §506(a), the unsecured

creditor treatment was proper. The Court found authority for this result in the majority of reported cases on this issue as well as policy reasons.

In re Gail Ann Phillips, Case No. SG 97-07593, Hon. Jo Ann C. Stevenson. Decided September 21, 1998.

SECTION 544 - NOTICE OF SECURITY INTEREST ON VEHICLE TITLE IS SUFFICIENT TO PERFECT SECURITY INTEREST, EVEN IF IT FAILS TO PROPERLY REFLECT NEW LENDING ARRANGEMENT.

SECTION 547 - TRUSTEE'S FAILURE TO ESTABLISH "UNDER-SECURED" STATUS OF LENDER NEGATES POTENTIAL PREFERENCE RECOVERY.

The Debtor and another party borrowed funds to purchase a motor vehicle. The two were listed as owners on the Certificate of Title, and the Bank was listed as the first secured party. Later, the Debtor refinanced the vehicle by herself and requested the co-owner be deleted from the Title. The Bank released its lien on the Certificate of Title, and on the reverse side noted its status as the new lien-holder. A new application for title was prepared, and the Bank instructed the Debtor to file the old Certificate of Title and the new application with the Secretary of State. This was not done, and the Debtor filed Chapter 7. At the time of the filing, the Secretary of State's records showed the Debtor and her former boyfriend as the joint owners, and the Bank as the first secured party.

taking on new cases after April 1, 1999. It appears uncertain as to whether or not a separate Chapter 13 Trustee will be appointed to replace him for Kalamazoo bankruptcy cases.

6. New Bankruptcy Judge: Mr. Van Allsburg announced that the Court has been informed that Judge Howard's replacement will likely not be installed until some time after August 1, 1999. This means that in the interim, Judges Gregg and Stevenson will be sharing Judge Howard's case load resulting in less court time and longer delays for trials of adversary proceedings. The Committee discussed a variety of proposals to help expedite Motion Day hearings and make more efficient use of the Court's time on Motion Days. Robert Wright made a motion that the Committee officially recommend that the Court consider adopting a "no contest call" at the beginning of each hour on Motion Day in order to quickly dispose of all non-contested matters or matters which can be handled in less than two minutes. It was acknowledged that in order to accommodate such a request, attorneys will have to appear promptly for their scheduled cases and should consult with the clerk prior to the call in order to let them know their case should be pulled and placed on the "no contest call." In addition, Brett Rodgers will be discussing methods to streamline Motion Day hearings in Chapter 13 cases with debtors' attorneys and reviewing innovations which he learned about from other courts.

7. Debtors' Bankruptcy Coalition: There will be a debtors' bankruptcy coalition meeting on Friday, November 20, at 9:00 a.m. No location for the meeting was given, but David Andersen can provide information to anyone who is interested in attending

8. The next meeting of the Steering Committee is scheduled for Friday, November 20, 1998 at 12:00 noon at the Peninsular Club.

LOCAL BANKRUPTCY STATISTICS

CHAPTER	SEPTEMBER 1998	YTD - 1998
Chapter 7	666	6,403
Chapter 11	6	35
Chapter 12	0	13
Chapter 13	244	2,232
TOTALS	916	8,683

STEERING COMMITTEE MINUTES

The October meeting of the Bankruptcy Steering Committee was held on October 16, 1998 at the Peninsular Club in Grand Rapids, Michigan. Present were: Hal Nelson, Dean Rietberg, Michael V. Maggio, Mark Van Allsburg, Thomas P. Sarb, Robert F. Wardrop, David Andersen, Brett N. Rodgers, Peter Teholiz and Bob Wright.

1. Annual Retreat for 2000: A general discussion was held regarding future seminars. Because it appears that Congress will not pass new bankruptcy legislation this fall, the need for an immediate seminar on the new bill is alleviated. However, the consensus was that Congress will again attempt to pass new legislation next spring, so the Committee needs to be watchful to see whether a spring seminar will be needed, or whether the summer seminar will need to be revamped. A quick discussion was held regarding the coordination of the 2000 seminar with the Federal Bar Association's seminar to be held in Cleveland that fall. The sentiment of the Committee was to hold our seminar separately. Brett Rodgers, Robb Wardrop, and Tom Sarb volunteered to serve on the site selection committee for the 2000 seminar.
2. Judge Howard's Retirement Party: Plans for Judge Howard's retirement party on February 26, 1999 are proceeding. The event will take place at the Egypt Valley Country Club and will commence with cocktails at approximately 6:00 p.m. followed by dinner and a presentation ceremony. All members of the FBA and their guests are welcome to attend and should reserve the date.
3. Membership: The current members of the Steering Committee whose terms expire this year are: Peter Teholiz, Tim Hillemonds, Pat Mears, Tom Sarb, and Steve Rayman. All but Tim and Pat indicated that they would be willing to serve another term. Tim suggested that the Committee appoint Gordon Toering in his stead. After a brief discussion regarding the method of selection and appointment as well as persons interested in serving on the Committee, the matter was tabled until the next meeting in order to allow additional interested parties to respond to the Chair's solicitation of new members.
4. New Clerk of Bankruptcy Court: Mr. Van Allsburg reported that the Judges will continue to accept applications and resumes through November 6, 1998 and will likely appoint a new clerk prior to December 1, 1998.
5. Retirement of Joseph A. Chrysler: The Committee briefly discussed the impending retirement of Joseph A. Chrysler, who has announced that he will not be

The Trustee sought to set aside the lien since the Certificate of Title did not accurately reflect the refinancing. The Court found that under the Michigan Vehicle Code, the lender was not required to file a termination statement and an application for a new title. Since the records of the Secretary of State put all potential parties on notice of the Bank's security interest, the Trustee's effort to avoid the lien was denied.

The Trustee also sought to recover as a preferential transfer, three payments the Debtor made on the loan within 90 days of the filing. The Court acknowledged that payments to a fully secured creditor are not preferences, since the creditor

would receive full value on a liquidation, while payments to an unsecured or under-secured creditor may be preferential. Here, the Trustee failed to establish the value of the vehicle. The Court could not determine, therefore, whether the Bank was under-secured, and whether the payments enabled it to receive more than it would in a Chapter 7 liquidation. Having failed to meet the burden of proof, the Trustee's preference claim was also dismissed.

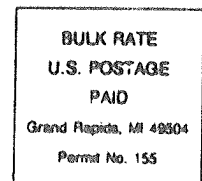
In re Elizabeth M. Fleming, Case No. GG 98-00459, Bruinsma vs. Citizen's Banking Corp. Adversary Proceeding No. 98-88200, Hon. James D. Gregg. Decided October 16, 1998.

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