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BANKRUPTCY LAW NEWSLETTER

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WESTERN DISTRICT OF MICHIGAN CHAPTER

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REAFFIRMATION AGREEMENTS: CURRENT ISSUES

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I. THE BANKRUPTCY REFORM ACT OF 1994

As all bankruptcy practitioners are aware, on October 22, 1994, the Bankruptcy Reform Act of 1994 (the "Act") became effective. The Act revised a number of the sections of the Bankruptcy Code ("Code"), 11 U.S.C. Section 101 et seq. of importance to consumer bankruptcy practitioners. Among the major changes for consumers debtors and creditors are changes in Section 524 of the Code. There are three major changes in Section 524 with respect to reaffirmation agreements:

a) Section 524(d) has been amended to make it clear that a reaffirmation agreement will be enforceable without a court hearing on the reaffirmation if the debtor was represented by an attorney "during the course of negotiating such agreement."

b) To make sure that the debtor is adequately represented, Section 524(c)(3)(C) has been added, requiring the reaffirmation agreement to state that the debtor's attorney fully advised the debtor of the legal effect and consequences of reaffirmation and any default thereunder.

c) Section 524(c)(2)(B) adds a second clear and conspicuous statement to the one previously required as to the debtor's right of rescission. The new statement advises the

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debtor that reaffirmation is not required under the Code, under non-bankruptcy law or under agreements not in conformity with Section 524.

For consumer bankruptcy practitioners in the Western District of Michigan, the amendment to Section 524(d) will have some impact upon bankruptcy procedure. In the Western District, the pre-Act procedure did not require a reaffirmation hearing in a pre-discharge reaffirmation filing where the debtor was represented by an attorney. Likewise, the pre-Act procedure with respect to a debtor who was not represented by counsel required a reaffirmation hearing. The Act did not change either of these requirements, although it did resolve a split of opinion on these matters in the various districts. The Act did, however, change the requirements with respect to a post discharge reaffirmation where the debtor was represented by an attorney. The Act provides the Court need not conduct a reaffirmation hearing in that circumstance.

All consumer bankruptcy practitioners should be aware that the Act makes old reaffirmation forms obsolete. New forms reflecting the disclosure of the requirements of the Act are required for an enforceable reaffirmation agreement. Particular attention should be placed on the "clear and conspicuous" language contained in Section 524(c)(2)(A) and 524(c)(2)(B). If these required statements are not clear and conspicuous, (such as by underlining, or bold print), the reaffirmation agreement will, arguably, not be enforceable. Likewise, amendments to Section 524(c)(3) provide mandatory language for enforceable agreements. These are significant changes from prior practice, and all consumers' bankruptcy practitioners should pay careful attention to the new requirements.

II. WHAT ARE THE DEBTOR'S OPTIONS?

Section 521(2) was added to the Code by the Bankruptcy Amendments of 1994. It requires consumer debtors to file a Statement of Intentions as to all secured property and to perform that intention with respect to such property within a stated time-frame. If the debtor's statement of intention is to retain secured property, what are the debtor's options with respect to retention of the property? Obviously, the debtor can reaffirm the indebtedness under the provisions of Section 524 or can elect to redeem the collateral under the provisions of Section 722 of the Code. However, there are a surprising number of debtors and debtor's counsel who contend that Section 521(2) provides a Chapter 7 debtor with the option to retain the collateral and keep current on the obligation under the existing contract without reaffirming or redeeming if the debtor continues to perform according to the repayment provisions of the contract. These are so called "informal reaffirmations."

The Circuit Courts of Appeal are split on this issue. The Sixth, Seventh and Eleventh Circuits hold that a debtor must choose between reaffirmation, redemption or surrender of secured property, and deny a right to an "informal reaffirmation". See In Re Edwards, 901 F.2d 1383 (7th Cir. 1990); In Re Bell, 700 F.2d 1053 (6th Cir. 1983); In Re Taylor, 3F.3d 1512 (11th Cir. 1993).

The Tenth and Fourth Circuits hold that the provisions of Section 521(2) do not make redemption or reaffirmation the exclusive means by which the Bankruptcy Court can allow a debtor to retain secured property. Lowry Fed Credit Union v West, 882 F.2d 1543 (10th Cir. 1989) and In Re Belanger, 962 F.2d 345 (4th Cir. 1992).

Perhaps it is the split in the circuits that causes the confusion among consumer

bankruptcy practitioners as to debtor's options. However, if there is any doubt as to whether a debtor can retain collateral without reaffirming or redeeming in the Western District of Michigan, consumer practitioners are advised to read the Opinion of the Sixth Circuit in the Bell case, and the Opinion penned by the Honorable David E. Nims, Jr. in In Re Schmidt, 145 B.R. 543 (Bankr. W.D. Mich, 1992). Judge Nims' followed Bell and held that a debtor in a Chapter 7 case can retain secured property solely by either redemption or reaffirmation. Despite the opinions in Bell and Schmidt, this issue comes up surprisingly frequently. There should be no question that in the Western District of Michigan that "informal reaffirmation agreements" are not permissible.

III. DOES THE DEBTOR HAVE A RIGHT TO "REAFFIRM?"

A. Suppose a debtor follows the requirements of Section 521(2) and files a statement of his intention to reaffirm a debt with a creditor. Must the creditor then reaffirm with such debtor? Section 524(c) speaks in terms of "agreement" between a holder of a claim and a debtor. Accordingly, the Code assumes some type of meeting of the minds between the debtor and the creditor. The Bankruptcy Court for the Eastern District of Michigan, in a 72 page opinion, In Re Briggs, 143 B.R. 438, (Bankr. E.D. Mich, 1992), considered this issue. Briggs held that neither the creditor nor the debtor is under an obligation to reaffirm a debt: "While the Code emphasizes that a reaffirmation agreement must be 'voluntary' on the debtor's part, (see Section 524(c) and (d)), it is also clear that a creditor need not consent to such an agreement unless the terms are acceptable to it." 143 B.R. at 460.

Other courts have held that the reaffirmation process is but another potential lender/borrower relationship, and both parties are free to negotiate, or to not negotiate. See In Re Jefferson, 144 B.R. 620 (Bankr. R.I., 1992) and In re Aguirre, 174 B.R. 273 (Bankr. E.D. Mich, 1994). In Re Brady, 171 B.R. 635 (Bankr. N.D. Ind, 1994). The "right" of either party to a reaffirmation is summarized in In Re Brady, supra: The Court agrees ". . . [R]eaffirmation is an 'invitation to negotiate' and either party may decline to reaffirm for any reason." 171 B.R. at 639.

The Sixth Circuit in the Bell case, also held that Section 524(c) facially contemplates that the creditor, for whatever reason, may reject any and all tendered reaffirmation offers. "Section 524(c) envisions execution of an 'agreement' which, by definition, is a voluntary undertaking." In Re Bell, supra at 105. Accordingly, there should be no question that a debtor cannot foist a reaffirmation agreement upon a creditor if the creditor chooses not to reaffirm.

IV. HOW FAR CAN A CREDITOR GO IN ITS NEGOTIATIONS FOR A REAFFIRMATION?

A. Since a reaffirmation is an invitation to negotiate between debtor and creditor, in negotiating a reaffirmation with a debtor what conditions can be put on a reaffirmation? In the previous section we discussed a situation where a creditor may elect not to reaffirm with a debtor. In the vast majority of cases, a creditor will elect to reaffirm with a debtor on a secured debt when a debtor is current in his payments. However, I am aware of cases where secured creditors have elected not to reaffirm such debts. This is primarily in situations where the debtor also has other unsecured indebtedness with the same creditor which they elect not to reaffirm and which they seek to discharge. In these cases, creditors have advised debtors that they will not reaffirm the secured indebtedness

unless the debtor also reaffirms the unsecured indebtedness. Is this proper?

The court in Briggs, considered this very issue and determined that a creditor has the right to make reaffirmation on unsecured indebtedness a prerequisite for permitting the debtor to reaffirm a secured loan. Citing the necessity of an "agreement" between the parties, and citing the creditor's right to rescind any and all reaffirmation offers, the court found nothing unfair about such policies. In Re Briggs, supra at 460. The court in Brady, agreed "with those decisions holding that a creditor has a right to condition its acquiescence to reaffirmation agreements upon the reaffirmation of other indebtedness." In Re Brady, supra at 739.

B. Could a creditor insist upon the reaffirmation including creditor's attorneys fee be paid? Can the creditor restructure the repayment of the debt? Can the creditor put on more stringent default provisions? Can charged off interest be added back on? Can the creditor increase the interest rate?

It would appear that the answer to all these questions would be yes, since the issue seems to be well settled that a debtor does not have a "right" to reaffirm. See In Re Bell; In Re Briggs; In Re Brady; and In Re Jefferson, supra. These are matters of free negotiation between debtors and creditors and "[i]f a Chapter 7 debtor feels that the creditor is making unfair demands, he or she may elect to redeem the collateral, return it to the creditor, or convert to Chapter 13 . . . " In Re Edwards, supra at 1387. Also see In Re Brady, supra at 639.

C. In my experience negotiating reaffirmations for my clients, on terms that may have seemed onerous for debtor's, I have been advised by debtors' counsel that such reaffirmation agreements would not be approved by the court. However, it appears that all matters pertaining to reaffirmation agreements are the subject of free negotiation between debtors and creditors. The amendments to Section 524 make it clear that, where debtor has counsel, judicial intervention into the reaffirmation process is impermissible. This section of the Code was amended to make sure that debtors were fully represented by their counsel in the negotiation of such agreement. As pointed out in Edwards, the debtors do have other options if they do not wish to meet the creditor's demands with respect to reaffirmation. The Court, in In Re Edwards, citing In Re Pendlebury, 94 B.R. 120 (Bankr. Tenn, 1988) pointed out that not only is judicial intervention in the reaffirmation procedure not sanctioned by Section 524(c), but the court declined to become involved as the "Chief Architect of all future reaffirmation agreements" for the reason that the terms of reaffirmation agreements are the proper subject of negotiation under Section 524(c).

V. ABSENT A REAFFIRMATION CAN COLLATERAL BE REPOSSESSED FROM A DEBTOR WHO IS *CURRENT* IN HIS LOAN PAYMENTS?

As previously discussed, a debtor cannot simply retain collateral and pay for it absent a reaffirmation agreement. If either the debtor or the creditor choose not to enter into a reaffirmation, and the debtor remains in possession of the collateral post-discharge, what actions may a creditor take? Under the contractual language of most security agreements, there must be some default before a creditor can repossess the collateral. If a debtor is current in the loan payments, the creditor is precluded from claiming a default on those grounds. However, many consumer loan documents contain a clause providing that Creditor is entitled to possession of the collateral upon the filing of a bankruptcy petition (ipso facto clause). Is such a clause sufficient grounds for Creditor to repossess collateral?

The Sixth Circuit, in Bell, has held that an ipso facto clause in a security agreement concerning a vehicle, became effective upon abandonment of the vehicle under Section 554 of the Code. A debtor who would not reaffirm the indebtedness was therefore in default of the security agreement and no longer entitled to a possessory interest in the collateral. In Re Bell, supra at 1058.

This position has been followed by other courts as well. In Re Whittaker, B.R. 778 (Bankr. E.D. Tenn, 1988), In Re Gerling, 175 B.R. 295 (Bankr. W.D. Mo, 1994).

VI. EXPANDING USE OF REAFFIRMATIONS.

In my practice I have seen an expansion of the use of the reaffirmation agreement beyond the traditional reaffirmation of a secured loan. As an interested observer at numerous 341 meetings, I have seen a boom in the following situations:

A. Friendly Old Bank advises the debtor that it will not reaffirm the debtor's car loan, upon which the debtor is current, unless the debtor also reaffirms the debt on an unsecured line of credit and on a credit card.

B. Credit Union XYG advises a debtor that if the debtor does not reaffirm an unsecured indebtedness, the debtor will no longer be eligible for credit union services, such as the right to use an ATM Machine, check cashing privileges, etc.

C. ABC Department Store advises debtor that if an unsecured charge account is reaffirmed, the debtor will be entitled to obtain a new charge account once the current balance is satisfied.

D. BIG Card advises that if the unsecured credit card debt is reaffirmed, debtor will retain the existing line of credit.

Under the reasoning of Brady, Briggs, etc. these reaffirmation agreements are acceptable if the statutory requirements of Section 524(c) and Section 524(d) are met. In these cases, provided debtor is represented by counsel, these agreements are not subject to scrutiny. Section 524(c) envisions that all reaffirmation agreements and all terms of reaffirmation agreements are the proper subject of negotiation between the parties and that the court should not be called upon to determine the propriety of any reaffirmation agreements except in cases when the debtor is not represented by an attorney.

VII. CONCLUSION.

The conclusion to be drawn from the authorities cited in this article indicate that reaffirmation agreements are intended to be the result of negotiations between debtors and creditors. Issues of reaffirmation are left solely up to the parties without judicial intervention and creditors are granted great latitude in formulating the conditions under which they will reaffirm. The contents and conditions of such agreements are to be dictated by the needs of the parties and their attorney's skills at negotiation.

RECENT BANKRUPTCY COURT DECISIONS

Sixth Circuit and Supreme Court decisions are summarized by John A. Potter, Western District cases are summarized by Vicki S. Young and the Eastern District cases are summarized by Jaye Bergamini.

In Re: Grand Traverse Development Company Limited Partnership, (Bankr. WD Mich August 22, 1995) Case No.: ST 92-83818. Judge Stevenson denied a motion filed by the Grand Traverse Water Company and Paul and Susan Nine to reopen the Grand Traverse Development Company Limited Partnership's (the "Debtor") Bankruptcy case in order to determine if the findings made by the Court at the Debtor's confirmation/lift to stay hearings are res judicata concerning the issue of who is the true owner of the Grand Traverse Water Company.

During the Debtor's Bankruptcy case, the secured lender, General Retirement System of the City of Detroit (the "Retirement System") obtained relief from the automatic stay. The Retirement System formed two new companies, the GRS Grand Hotel Corp. and Grand Personalty (collectively, the "Plaintiffs"), which took over the management and ownership of the Grand Traverse Resort. The Plaintiffs filed a lawsuit in the Circuit Court for the County of Grand Traverse against the Grand Traverse Water Company, Michigan Water Company and Paul and Susan Nine (collectively, the "Movants"), to determine ownership of the Grand Traverse Water Company. The Plaintiffs want to develop the Grand Traverse Resort, but are unable to do so until it has been determined who owns the Water Company. The Movants filed this motion to reopen the Debtor's Bankruptcy case for the limited purpose of determining the res judicata effect of findings made by the Court in confirmation and lift of stay hearings concerning ownership of the Water Company.

A motion to reopen a Chapter 11 Bankruptcy case is controlled by 11 U.S.C. §350, which permits a case to be reopened, in order to "administer assets, to accord relief to the debtor, or for other cause". The Court held that as a rule, the rendering court does not determine the res judicata of its own judgment. Rather, it is always the second court, that determines the preclusive effect of the first court's decision. The Court noted that it is within the sound discretion of a Bankruptcy Judge to reopen a Bankruptcy case under §350(b). Citing Urbanco v Urban Systems Streetscape, Inc., 111 BR 134 (Bankr. WD Mich 1990) the Court also noted that a motion to reopen the Bankruptcy case should only be granted where "a compelling reason for reopening the case is demonstrated", and that "a case should not be reopened to relieve a party of its neglect or mistake". The Court held that the Movants had not persuaded the Court that equity, compelling reason, or the existence of a particularly complex controversy supported their request.

* * * * *

Larry and Margaret Storer, Debtors v Bruce French, Trustee, 1995 Fed. App. 0206P (6th Cir.), File Name 95a0206p.06, Case No. 94-3295 (July 13, 1995). On October 7, 1992, Plaintiffs/Debtors, Larry and Margaret Storer, filed a Chapter 7 Petition in the United States Bankruptcy Court for the Northern District of Ohio. In their Schedules, Debtors listed real property with a value of $22,000.00 with a mortgage of $7,800.00. Plaintiffs also claimed a homestead exemption of their equity in this property of $14,200.00, pursuant to 11 U.S.C. §522(d)(1), which then entitled Debtors to a homestead exemption of $15,000.00 in the case of joint Debtors. Defendant, Bruce C. French, the Chapter 7 Trustee in the case, objected to Debtors claim of the Federal Exemption. Moreover, the Ohio statute allows only a $10,000.00 homestead exemption in a joint case. Debtors then filed a memorandum to the Bankruptcy Court, arguing that 11 U.S.C. §522(d)(1) and Ohio Revised Code §2329.662 were unconstitutional under the Privileges and

Immunities class of the 14th Amendment of the United States Constitution, since it denies the citizens of Ohio the right to Federal Bankruptcy Exemptions. The Bankruptcy Court ruled that both provisions were constitutional and the District Court affirmed.

The Court of Appeals affirmed the lower court decision. In its decision, the Court stated that Ohio Revised Code §2329.662 was enacted pursuant to 11 U.S.C. §522(b)(1). Since Ohio Revised Code §2329.662 was enacted pursuant to Congressional authority, the privileges and Immunities Class of the 14th Amendment affords Debtors no protection. Shapiro v Thompson, 394 U.S. 618 (1960). Debtors also argued that Ohio Revised Code §2329.662 is invalid under the Supremacy Clause of the U.S. Constitution, in that State law cannot modify or abridge federal law and Congress cannot delegate authority to promulgate exemption law. The Court disagreed, stating that Congress expressly authorized the States to "preempt" Bankruptcy exemptions, since it vested in the States the ultimate authority to determine their own Bankruptcy exemptions. Rhodes v Stewart, 705 F.2d 159 (6th Cir. 1983).

The Court also rejected Debtors assertion that 11 U.S.C. §522(d)(1) and Ohio Revised Code §2329.662 violate the 5th Amendment of the Constitution by denying Ohio citizens due process and equal protection of the laws. Because, under these circumstances, the 5th Amendment has no application to the States, Ohio Revised circumstances, the 5th Amendment has no application to the States, Ohio Revised Code §2329.662 cannot violate the 5th Amendment. The Court also concluded that 11 U.S.C. §522(d)(1) does not violate the equal protection clause of the 5th Amendment. It reasoned that Bankruptcy legislation is in the nature of economic and social welfare. Accordingly, the applicable standard in measuring the propriety of Congress' classification is the rational justification. United States v Kras, 409 U.S. 434 (1973). It was rational for Congress to want "to preserve the prerogative of the States to set exemptions for Debtors, as had been the practice under the old Bankruptcy Act.

* * * * *

Rally Hill Productions v Jack Wayne Bursack, Debtor, 1995 Fed. App. 0261P (6th Cir.), File Name 95a0261p.06, Case No.: 94-5620 (August 25, 1995). In May of 1993, Defendant Debtor, Jack Wayne Bursack, filed a Chapter 7 Bankruptcy petition. One of Debtor's creditors was Rally Hill Productions, who had previously filed a fraud complaint in Tennessee State Court and obtained a Judgment against Debtor, *inter alia*, for $570,098.25. This trial began without Debtor and Rally Hill presented evidence. The Court presented the fraud claim to the jury, which returned a fraud verdict against Bursack and another Defendant in the case.

Rally Hill then brought a dischargeability complaint against Debtor in the Bankruptcy case pursuant to 11 U.S.C. §523(a)(2)(A)-(B), making nondischargeable debts obtained by fraud or false financial statements. Rally Hill subsequently filed a motion of summary disposition, attaching a transcript of the State Court proceeding as an exhibit. The Bankruptcy Court granted Rally Hill's motion, stating the Tennessee law would give preclusive effect to the Judgment at issue and Federal Courts must give full faith and credit to State Court Judgments. Moreover, the Judgment at issue satisfies the federal estoppel standard. The District Court affirmed the Bankruptcy Court decision.

The Court of Appeals affirmed the District Court decision. It found that the State Court decision raised the issues of fraud and use of false financial statements. These issues

were actually litigated to the extent that the Debtor obtained an attorney, filed an answer, asserted cross-claims, and participated in discovery, including his depositions. Moreover, even though Debtor chose not to participate in the trial, evidence of fraud was presented at trial. Thus, Debtor's failure to appear does not alter the preclusive effect of the State Court Judgment. Finally, the jury instructions, and the record of the State Court proceeding clearly indicate that each element necessary to prove fraud for purposes of nondischargeability under 11 U.S.C. §523(a)(2) was pleaded, argued and considered by the jury in State Court.

* * * * *

In Re: Tai v Charfoos, 183 BR 131 (Bankr. ED Mich 8/1/95). Debtor/Defendant, a prominent Detroit attorney, was a guarantor on a Note between the Plaintiff Tai, one of his clients, and Gazelle International, Inc., a corporation which was associated with Debtor's wife. The corporation defaulted on payment of the Note and sued Debtor to determine the dischargeability of the guarantee. Judge Shapero held that the Debtor's attorney/client relationship with Tai was sufficient to find the debt a nondischargeable defalcation under §523(a)(4).

Debtor represented Tai in litigation with a former partner of Tai, involving the dissolution of a medical partnership. In addition to his medical practice, was also a registered investment advisor who dealt with venture capital.

Debtor, through his wife, was involved with Gazelle, a cosmetics company. The Debtor asked Tai to invest $150,000.00 in Gazelle on a short term basis, which loan he promised to personally guarantee. Tai agreed, and shortly after the money was given to Gazelle, the Debtor presented with simple Promissory Notes for $150,000.00 at 10% interest, due one year from the date of making. The statement of guarantee simply said "I hereby personally guarantee said payment", with the Debtors signature. The Plaintiff did not ask for, and the Debtor made no disclosure to the Plaintiff of the company's financial status. As to his own circumstances, he merely said that he earned a healthy income and has a net worth of $1,000,000.00. The Debtor failed to advise the Plaintiff that he should seek the assistance of independent counsel with regard to the transaction.

The corporation defaulted in October 1988. Plaintiff and Debtor continued in their attorney/client relationship. Plaintiff's litigation was concluded in October 1989 and the Debtor's fees for representing the Plaintiff were approximately $150,000.00. Plaintiff asked the Debtor to use the fee to settle the note, which the Debtor declined. Debtor filed Chapter 7 in 1993. Plaintiff filed an Adversary Proceeding seeking a declaration that the guarantee was non-dischargeable under §523(a)(4), as a debt incurred by "fraud or defalcation while acting in a fiduciary capacity".

The Court held that the failure of the Debtor to make a full and complete disclosure of the financial condition of the company and of his own circumstances, coupled with the failure to advise the Plaintiff to seek independent legal advice and the drafting of a Promissory Note devoid of the terms and conditions usually present in a commercial loan, constituted a violation of the Michigan Rules of Professional Conduct. Further, the Plaintiff testified that he did not geel comfortable declining Debtor's request for the loan, because of their professional relationship. The Court concluded that the parties were in a fiduciary relationship even though the representation of the Plaintiff by the Debtor did not directly involve the loan.

Judge Shapero held that proof of

defalcation does not require that there be any intentional misconduct on the part of a fiduciary. There is an objective standard for defalcation and therefore misconduct alone is sufficient. The procurement of the loan without the required full disclosure, in a situation where the relationship between the parties was a fiduciary one constitutes the misconduct or defalcation necessary to be found under the statute.

The debt was held to be non-dischargeable.

* * * * * *

In Re: Katherine Honey, 93-54012R (Bankr. ED Mich 9/20/95). Judge Rhodes held that where a Debtors' Chapter 13 Plan was confirmed and property of the estate vested in the Debtor, the automatic stay of action against such property was no longer in effect, and a lien creditor could move against the property without the necessity of filing a motion for lift of stay.

Debtor had a confirmed Chapter 13 Plan, which provided for vesting of the property of the estate in the Debtor. She fell behind in her payments. The secured creditor made motion for lift of stay. At the hearing on lift of stay, the Court determined that lift was not necessary because, under §362(c)(1) the stay of an act against property of the estate continues until such property is no longer property of the estate. The Court reasoned that when the property was vested in the Debtor on confirmation, it was no longer property of the estate.

Debtor's counsel argued that even if the stay terminated upon confirmation, §362(a)(5) would still apply. §362(a)(5) provides for a stay of any act to enforce against property of the Debtor any lien to the extent that the lien secures a claim that arose before commencement of the case.

Judge Rhodes rejected this reasoning, and stated that the stay of §362(a)(5) never applied to the property in question, because at the time of filing, that property was property of the estate, not of the Debtor. He cites 2 Collier on Bankruptcy §362.04[5] and says that the subsection applies primarily to exempt property.

Judge Rhodes held that the stay was not in effect and no lift of stay was necessary before the creditor could proceed.

LOCAL BANKRUPTCY NOTICE

The Educational Committee has asked that the enclosed 1996 F.B.A. Bankruptcy Seminar Survey RE Possible Educational Topics be submitted to all members of the F.B.A. Please complete the survey and return it to Patrick Mears, Esquire, 200 Oldtown Riverfront Building, Grand Rapids, MI 49503. The Seminar is for the benefit of the attorneys and it is helpful to know what topics are of most interest to the attorneys.

STEERING COMMITTEE MINUTES

Meeting was held October 13, 1995 and was chaired by Steven L. Rayman. The following members were present: Gordon Toering (for Tim Hillegonds), John Grant, Pat Mears, Tom Sarb, Peter Teholiz and Janet Thomas.

Pat Mears gave a report on the 1996 Seminar. The program will tentatively include the following commercial topics:

a. Duties of Debtors-In-Possession.
b. Valuation in Chapter 11 cases.
c. Individuals in Chapter 11.
d. Relief from Stay Matters in Chapter 11.
e. Sales under §363.

The program will tentatively include the following consumer panels:

a. Chapter 13 business matters.
b. Chapter 7 administrative matters.
c. Chapter 7 "Hot Topics".
d. Chapter 13 Plan matters.
e. Nondischargeability matters.

Peter Teholiz reports that he and Rod Wardrop have been working on changes on the Local Rules and that they intend to submit their report to Mark Van Allsburg.

LOCAL BANKRUPTCY STATICS

The following is a summary of the number of bankruptcy cases commenced in the United states Bankruptcy Court for the Western District of Michigan (Lower Peninsula) during the months of September of 1995. These figures are compared to those made during the same period one year ago and two years ago.

Bankruptcy Chapter	September of 1995	September of 1994	September of 1993
Chapter 7	426	297	407
Chapter 11	3	8	7
Chapter 12	3	1	4
Chapter 13	160	143	132
Totals	592	449	550

Bankruptcy Chapter	January - September of 1995	January - September of 1994	January - September of 1993
Chapter 7	3204	2764	3021
Chapter 11	46	64	76
Chapter 12	13	12	25
Chapter 13	1193	1088	963
§304	1	0	0
Totals	4457	3928	4085

STEERING COMMITTEE MEMBERS

Dan Casamatta (1996)	(616) 456-2002
John Grant (1997)	(616) 732-5000
Tim Hillegonds (1995)	(616) 752-2132
Mary Hamlin, Editor (1996)	(616) 345-5156
Jeff Hughes (1996)	(616) 336-6000
Pat Mears (1995)	(616) 776-7550
Hal Nelson (1997)	(616) 459-9487
Steven Rayman, Chair-elect (1995)	(616) 345-5156
Brett Rodgers (1997)	(616) 732-9000
Tom Sarb (1995)	(616) 459-8311
Bob Sawdey (1996)	(616) 774-8121
Tom Schouten (1997)	(616) 538-6380
Peter Teholiz (1995)	(517) 886-7176
Janet Thomas (1996)	(616) 726-4823
Rob Wardrop (1997)	(616) 459-1225
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