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Sent: Thursday, June 25, 2009 4:00 PM
To: Marcia Meoli
Subject: Federal Bar Association - Bankruptcy Section

Federal Bar Association

Bankruptcy Section Newsletter
June 2009

This newsletter is published by the Federal Bar Association, Bankruptcy Section, for the Western District of Michigan. Prepared by lawyers with busy practices, every effort is made to publish on a quarterly basis. For your records, here are the dates of newsletters for the recent past: March 2009, October 2008, July 2008, April, 2008, January 2008, October 2007, August 2007, April 2007, January 2007, October 2006, July 2006, February 2006, October 2005, June 2005, February 2005, October 2004, May 2004, January 2004, October 2003, July 2003, April 2003 and January 2003.

To view this email in its best format (green and tan background, with the tree logo at the top), we suggest that you set your internet software to "HTML" view. On versions of INTERNET EXPLORER, click "tools" then "options" then "environment". Under the "views" tab, click "default read view" and set to "HTML", instead of "plain text".

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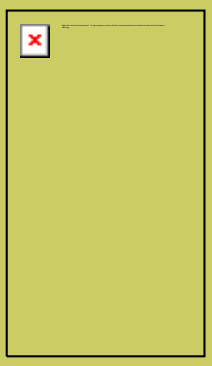
Review by the outgoing editor

Review by the outgoing editor

This is my last newsletter for the FBA Bankruptcy Section. In anticipation of this I pulled out the newsletters which were published while I was editor, since the first one in April 2002.



Upcoming dates:

1. 21st Annual FBA Summer Seminar: July 23-25, 2009, Crystal Mountain, Michigan. See link below for the brochure, to view recreational activities, lodging options and other choices you could make to prepare for the seminar.

2. FBA Steering Committee will meet the 3rd Friday of each month for lunch at the University Club in downtown Grand Rapids. Check in advance with Chair A. Todd Almassian

I noticed that electronic filing was in the works even then, although the only part of it which was active at that time was PACER and RACER, which allowed us to view documents electronically. In the first issue, we presented photos of the previous Summer Seminar and these showed the participation of the now late Judge Howard, Judges Stevenson, Gregg, Hughes and Judge Spector, who used to serve in the Eastern District.

In the January 2003 newsletter, I see an article by Michael Maggio of the US Trustee office on 11 USC 707 (b). I also see information from the court about the upcoming implementation of the electronic filing system. John Piggins and Jeff Moyer were just selected to by chapter 7 trustees and Judges McIvor, Shefferly and Tucker were just selected to be new judges in the Eastern District of Michigan. These items gave me an idea of how long ago it was that I have been preparing the newsletter.

In the newsletter in April 2003, I see that we mourned the passing of Judges Howard and Nims. We started a process to recognize these wonderful judges then. This continues to the present day, as many will see in our upcoming Summer Seminar in July of this year.

Our bankruptcy bar has gone through many transitions during this time period. We went "electronic" (I will not say paperless). Toward that end, we published a number of articles about how the system would work, updates on the process of implementing the system, training sessions and even provided tips on equipment to obtain to help you use the electronic filing system.

The 2005 legislation passed and we covered this transition in a number of editions during 2005 and 2006. I see the various educational seminars that were available to practitioners to learn the new law. I see changes in rules, forms an other procedures. I see an article about the huge numbers of cases filed just prior to the effective date of the new law and how that affected us.

The Bankruptcy court moved to its present location, from the Federal Courthouse Building, in the Fall of 2005.

The newsletter went "electronic" in July 2006.

In the Fall of 2007, Judge Stevenson retired. We were honored with a great interview of her in anticipation of that. Of course, she was replaced by our present Judge Dales, who, by all accounts "hit the ground running" and fit in as if he had been hearing cases for years.

With all the transitions, I believe that we adjusted admirably and professionally in so many ways. Through these years, we have

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Bankruptcy Section Steering Committee:

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Norm C. Witte

Quick Links...

United States Bankruptcy Court, Western District of Michigan

Local filing statistics

United States Trustee Program, including means test tables and other BACPA data

United States Bankruptcy Courts

Chapter 13 Trustee Brett N. Rodgers

Chapter 13 Trustee Mary K. Viegelahn Hamlin

been so fortunate to be able to attend well organized and informative summer seminars, other special seminars, best practices workshops, and occasional social gatherings within our bar. Recognition should go to the FBA steering committee with chairs Rob Wardrop, Mary Viegelahn, Hal Nelson, Dan Kubiak and our present chair, Todd Almassian. Seminar chairs were Mary Viegelahn, Lori Purkey and our present chair Fran Ferguson. Judge Gregg contributed in so many ways, particularly in his tireless efforts on the summer seminar.

Patrice Nichol at the court was out front on the transition to electronic filing. Judge Hughes spear-headed the search and set-up for the new courtroom. Judge Stevenson advocated for the pro bono program and Hal Nelson recently re-invigorated that program. David Anderson did substantial work on encouraging civility in the practice.

These are the items that come to mind easily for how our bankruptcy section contributed to practice of bankruptcy law for our bar while I worked on the newsletter. There are any number of other events, contributors and other things that make practicing bankruptcy law in Western Michigan a very fulfilling experience.

I viewed the newsletter as more of a newspaper than a scholarly journal. Part of this comes from necessity. It is always difficult to get articles from busy attorneys who are balancing the demands of law firms and the needs of their home life. But some of this comes from my view that people need to know what is going on and how to represent their clients effectively in the practice of bankruptcy law. We all can do our legal research and draft our documents. Hopefully, the newsletter has assisted you in finding out about changes, new procedures, new technology and other things that sometimes are not apparent from the other written materials that come your way.

I wish the best to our new editor, John Gregg. I know that he will make changes, breathe some fresh air into the newsletter and that he will do a great job. His email address is: John.Gregg@btlaw.com and you should send materials to him for future newsletters.

Thank you all for the opportunity to have been of some service to you.

Marcia Meoli, editor

For future newsletters

1. If you have information regarding any professional award, achievement or other event regarding a member of our bar or

Federal post judgment rate of interest

State Bar of Michigan

American Bankruptcy Institute

National Association of Bankruptcy Trustees

National Conference of Bankruptcy Judges

National Association of Consumer Bankruptcy Attorneys

National Association of Chapter 13 Trustees

Federal Bar Association of Western Michigan

Pro bono procedures and client retainer agreement

New dollar amounts in bankrutpcy

Information on reporting bankrutpcy fraud

FBA 2009 Summer Seminar

other person involved in our practice, or regarding you, please let us know. Please supply sufficient information for us to report it, or to find the information to do so. You may email it to the new editor. Thank you.

2. To attorneys: if you have ideas for articles, please submit them to the new newsletter, John T. Gregg @ www.btlaw.com .

Summaries of recent cases

Thank you to Dan Bylenga for his wonderful work in drafting these summaries.

Bankruptcy Cases: January 1, 2009 to May 31, 2009

Sixth Circuit

In re Moran, --- F.3d ----, 2009 WL 1478707 (6th Cir. May 28, 2009) - Does a co-shareholder ("Stark") have standing to appeal decision that affects debtor's ownership of stock in closely held company? Trustee moved to reopen case based upon debtor's undisclosed ownership of stock in a closely held business corporation, arguing that the stock was property of the estate. After reopening the case, trustee chose to deal with debtor instead of Stark, whose offer it refused. The Court then granted trustee's motion for approval of an agreement under which debtor would pay enough to cover all filed claims and trustee would treat the stock as abandoned. Stark appealed, the BAP affirmed, and Stark again appealed. The Sixth Circuit held that Stark did not have standing to appeal because the order did not directly harm Stark's interests. Simply being a co- owner is not enough, nor was the fact that Stark sued debtor in state-court. Finally, Stark lacked standing as a frustrated bidder for the stock because his interests did not align with those of the estate's creditors. Remanded with instructions to dismiss for lack of standing.

In re Patel, --- F.3d ----, 2009 WL 1286426 (6th Cir. (Mich.) May 12, 2009) - Is debtor who is a corporate officer, 50% shareholder, and day-to-day administrator of a "contractor" under Michigan law a fiduciary so that § 523(a)(4) precludes discharge based on breach of fiduciary duty? Unpaid subcontractor ("Shamrock") filed adversary proceeding to except debt from discharge. Bankruptcy Court ruled in favor of debtor, Patel, reasoning that his company - not Patel himself - had a fiduciary relationship with Shamrock. The District Court reversed after Shamrock appealed. On appeal, the Sixth Circuit held that (1) under the Michigan Builders Trust Fund Act, contractors stand in "fiduciary capacity" to subcontractors as the bankruptcy discharge exception uses that term; (2) Patel was a contractor and owed Shamrock fiduciary duties to use funds to

pay subcontractors; and (3) Patel acted in objectively reckless manner and was guilty of defalcation where he used construction funds to pay his own operating expenses - including payroll, utilities, taxes and wages to himself - before he paid Shamrock. Affirmed.

In re Reinhardt, 563 F.3d 558 (6th Cir. (Ohio) April 29, 2009) - Does § 1322(b)(2) forbid the modification of secured claim in an unattached mobile home if a secured creditor also holds a security interest in the property under the home? Chapter 13 debtors scheduled their mobile home as personal property, the land under it as real property, and proposed a plan with a cramdown of creditor's secured claim, proposing that a third of it - the estimated value of the home and land - be secured. The bankruptcy court confirmed the plan over objection, finding that the mobile home did not fall within the anti-modification exception because it was not "real property." The mobile home was not "real property" under Ohio law because it was not attached to the land under it, and because the debtors still had their certificate of title to it. Creditor appealed. The Sixth Circuit affirmed, holding that § 1322(b)(2) required two things: (1) that the property be real property, and (2) that it be the debtor's principal residence. Ohio law was clear that an unattached mobile home is not real property, and the Code's anti-modification provision did not preempt Ohio law. Affirmed.

U.S. Bank Nat. Ass'n. v. U.S. E.P.A., 563 F.3d 199 (6th Cir. (Ohio) April 20, 2009) - Is debtor who acquires real property liable for cleanup costs under CERCLA? United States filed a claim in Chapter 11 proceeding against debtor to recover cleanup costs under CERCLA. U.S. Bank (the trustee for a trust that held debtor's assets pursuant to a reorganization plan) objected, arguing that debtor did not assume liability for contamination that happened before it incorporated. The Court granted the government's motion on liability for cleanup costs, finding that debtor assumed its predecessor's liabilities under CERCLA and rejecting arguments that debtor was not liable for certain contamination. After a hearing the court found that future cleanup would cost $8.7 million. U.S. Bank appealed. The District Court affirmed, and U.S. Bank appealed. The Sixth Circuit first held that debtor assumed its predecessor's CERCLA liability where the agreement between those entities expressly provided that debtor assumed all liabilities relating to the business. The Sixth Circuit next held that debtor failed to submit evidence to create a factual question regarding division of the harm and apportionment of liability. Finally, the Sixth Circuit held that the bankruptcy court did not abuse its discretion by excluding certain testimony at the hearing on clean-up costs. Affirmed.

In re Wells, 561 F.3d 633 (6th Cir. April 10, 2009) - Are payments to one credit card company using convenience checks

from another credit card company preferential transfers under § 547(b)? Chapter 7 trustee filed adversary proceeding to avoid prepetition payments that debtor made to MBNA using convenience checks from Chase Bank. The Bankruptcy Court for the Western District of Michigan, Judge Hughes, granted summary judgment against MBNA, and MBNA appealed. The BAP affirmed, and MBNA again appealed. The Sixth Circuit held that the payments were avoidable preferential transfers, and that the earmarking doctrine did not apply. The transfer fell under § 547(b) because the debtor had complete control over the funds drawn, in which she had an ownership interest, and was free to use the checks for any reason she wanted. Earmarking did not apply because Chase did not restrict the funds to be paid only to MBNA. Affirmed.

Lindsay v. Covenant Management Group, LLC, 561 F.3d 601 (6th Cir. (Mich.) April 7, 2009) - Did the court properly overrule debtor's objections to a proof of claim? Individual Chapter 11 debtor objected to proof of claim by secured creditor, arguing that creditor improperly charged interest on discount fee paid at beginning of loan and failed to apply an extension fee to principal reduction. The bankruptcy court overruled the objection, and debtor appealed. The district court affirmed, and the debtor appealed. The Sixth Circuit held that debtor could not overcome the presumptive validity of the proof of claim. Michigan law allowed debtor, who expressly agreed to pay interest on the discount fee, to be charged interest on the discount fee. Also, debtor failed to show that creditor acted illegally or breached contract by not applying an extension fee to reduce the principal. Affirmed.

In re Dilworth, 560 F.3d 562 (6th Cir. (Ohio) March 27, 2009) - Is a bank-to-bank transfer of funds by use of credit card convenience checks a preference under § 547? Chapter 7 trustee filed adversary proceeding to avoid as preferential transfer debtor's credit card balance transfer during preference period. The bankruptcy court granted the trustee's motion for summary judgment, and the credit card company, MBNA, appealed. The BAP affirmed, and MBNA appealed. The Court of Appeals held that the transfer diminished the debtor's interest in property of the estate, and that earmarking did not apply. The debtor had full control of the funds and decided what to do with them. Affirmed.

In re LTV Steel Co., Inc., 560 F.3d 449 (6th Cir. (Ohio) March 23, 2009) - Did defendants have standing to appeal bankruptcy court ruling and order? Bankruptcy court in Chapter 11 case appointed official committee of administrative claimants (ACC) and entered a standing order allowing the ACC to sue debtor's officers and directors, who moved to dissolve the ACC, while debtor's former CEO appealed the standing order. The bankruptcy court denied the motion, and defendants appealed.

The district court dismissed the former CEO's appeal and affirmed the bankruptcy court. Defendants appealed. The Sixth Circuit held that the debtor's former CEO did not have standing to challenge the bankruptcy court's standing order, and other officers and directors lacked standing to challenge the district court's dismissal of their appeal. Parties cannot appeal a bankruptcy order unless they have a direct financial stake in it that reduces their property, increases their burdens, or impairs their rights. The defendants lacked standing because they were not aggrieved by the standing order. The fact that it allowed the ACC to sue them was not enough. The dissent would have held that the former CEO had standing to appeal the standing order. Affirmed.

In re Gruseck & Son, Inc., 558 F.3d 482 (6th Cir. March 6, 2009) - Does the Court of Appeals have jurisdiction over the BAP's order remanding matter to bankruptcy court to determine if trustee met elements of preference action? Chapter 7 trustee filed adversary complaint to avoid a mortgage as a preferential transfer because a defective certificate of acknowledgment. The bankruptcy court granted summary judgment to creditor, and trustee appealed. The BAP reversed and remanded for a determination of whether the trustee met the elements of a preference action, and creditor appealed. The Court of Appeals held that it lacked jurisdiction over the BAP order because it was not a final order. Appeal dismissed for lack of jurisdiction.

In re Swegan, 555 F.3d 510 (6th Cir. February 10, 2009) - Does the Court of Appeals have jurisdiction over the BAP's order remanding matter to bankruptcy court? Judgment creditor filed adversary proceeding to deny Chapter 7 debtor discharge based on fraudulent concealment of assets. The bankruptcy court entered summary judgment for debtor, and creditor appealed. The BAP reversed and remanded, and debtor appealed. The Court of appeals ruled that it lacked jurisdiction because the BAP's decision was not a final order.

In re Trailer Source, Inc., 555 F.3d 231 (6th Cir. (Tenn.) February 6, 2009) - Does a creditor have standing to bring an action under §§ 544(b) and 550(a) on behalf of the bankruptcy estate to avoid fraudulent or preferential transfers? Creditor brought action on behalf of the bankruptcy estate to avoid fraudulent transfers. The district court granted creditor derivative standing and relief from the automatic stay so that it could proceed in district court with its fraudulent- transfer claims against the transferees, and transferees appealed. The Court of Appeals first held that the bankruptcy appellate-standing doctrine does not apply to the "second layer of appeal, from the district court to the court of appeals," when the party who appealed to the district court had appellate standing. It next reaffirmed the continued vitality of grating derivative standing

to creditors to bring avoidance actions on behalf of the bankruptcy estate in Chapter 7 proceedings when the trustee refuses to do so, after Hartford Underwriters Ins. Co. v. Union Plainters, 530 U.S. 1, 120 S.Ct. 1942, 147 L.Ed.2d 1 (2000), invoking § 503(b)(3)(B) as support and distinguishing Hartford Underwriters. Finally, the Sixth Circuit held that the creditor did not need relief from automatic stay to proceed in a separate district-court action because it had derivative standing. The dissent did not believe that the appellants had standing to appeal the order granting the creditor derivative standing or the order lifting the bankruptcy stay and would dismiss the appeal for lack of standing. Affirmed in part and reversed in part.

McMillan v. LTV Steel, Inc., 555 F.3d 218 (6th Cir. (Ohio) February 5, 2009) - Did the bankruptcy court improperly deny administrative expense claim that laid off employee of debtor filed? Debtor objected to administrative expense claim filed by a laid off employee, McMillan, the bankruptcy court denied the claim, and McMillan appealed. The district court affirmed, and McMillan again appealed. The Sixth Circuit held that McMillan's claim was not entitled to priority as an administrative expense. The defined contribution portion of the claim for pension benefits that vested before the Chapter 11 case was not entitled to priority as an administrative expense. "Retiree benefits" under the bankruptcy statute requiring a Chapter 11 trustee or debtor-in- possession to pay outstanding "retiree benefits" as an administrative expense pertains to healthcare benefits and the like, not to a claim for pension benefits that allegedly vested prepetition. Finally, a settlement which a labor union negotiated on behalf of laid off employees effectively waived McMillan's WARN Act component of administrative expense claim. Affirmed.

Shaw v. Aurgroup Financial Credit Union, 552 F.3d 447 (6th Cir. (Ohio) January 9, 2009) - Are the provisions in § 1325(a) mandatory or discretionary? Chapter 13 debtor who purchased a vehicle less than 910 days before filing bankruptcy proposed plan that reduced secured creditor's claim and the interest rate, and creditor objected. The bankruptcy court sustained the objection and refused to confirm the plan because it violated "910 creditor's" rights under "hanging paragraph." The debtor appealed, the district court affirmed, and the debtor again appealed. The Sixth Circuit held that the bankruptcy court did not have discretion to confirm the proposed plan because it violated the "hanging paragraph" by providing for bifurcation of purchase-money claim of creditor that provided financing within 910 days before debtor filed Chapter 13 case to allow debtor to purchase a vehicle for her personal use. The provisions in § 1325(a) are mandatory, and a court has no discretion to confirm a plan that does not conform to the statutory requirements. Affirmed.

Settembre v. Fidelity & Guar. Life Ins. Co., 552 F.3d 438 (6th Cir. (Ky.) January 7, 2009) - Does the Court of Appeals have jurisdiction over the district court's order remanding matter to bankruptcy court? Lender filed adversary proceeding against Chapter 7 debtor to deny discharge of business loan. The bankruptcy court granted summary judgment to lender, and debtor appealed. The district court reversed and remanded, and lender appealed. The Sixth Circuit dismissed the appeal, holding that it lacked jurisdiction for lack of a final order. The Sixth Circuit expressly adopted the majority rule regarding that a decision remanding a case to the bankruptcy court is not final and appealable, unless the further proceedings purely ministerial in nature. Appeal dismissed.

Sixth Circuit B.A.P.

In re Dutkiewicz, 403 B.R. 472 (6th Cir. BAP April 13, 2009) - When is § 341 meeting concluded for purposes of triggering Fed. R. Bankr. P. 4003(b)? Bankruptcy court overruled trustee's objection to debtor's claimed exemptions as untimely, and trustee appealed. Debtor moved for certification for direct appeal to the Sixth Circuit. The BAP held that (1) even though debtor should have filed her motion with the bankruptcy court since her case was still pending there when she filed, it had jurisdiction to consider the motion upon the docketing of trustee's appeal; and (2) the appeal would not be certified on debtor's motion. Debtor's motion did not comply with Rule 8001(f)(3) (C). It provided no facts, there was no copy of the order complained of or the bankruptcy court's decision, and it failed to explain why a circumstance identified in 28 U.S.C. § 158(d)(2)(A) exists. Motion denied.

In re Omega Door Co., Inc., 399 B.R. 295 (6th Cir. BAP January 13, 2009) - Did the statue of limitations bar a fraudulent transfer claim; was a stock purchase an illegal stock redemption or dividend by debtor; and did "new value" defense apply to prepetition payments? Trustee filed adversary proceeding to set aside transfers as preferences, fraudulent transfers, and/or illegal stock redemptions. The bankruptcy court entered summary judgment against trustee on fraudulent transfer and illegal stock redemption claims, but allowed recovery on preference claim after trial. Both parties appealed. Buyers purchased debtor from creditor, debtor's sole shareholder, and gave a note for part of the purchase price. Debtor made payments on the note, and trustee filed adversary proceeding against creditor to recover payments. The BAP first vacated the order granting creditor summary judgment on fraudulent transfer claims. Even though trustee could not set aside a guaranty because more than four years had passed since the debtor guaranteed debt of purchasers to creditor, payments that debtor made less than four years before petition were in the nature of separate "transfers" under Ohio law, making the claim timely. Next, the BAP affirmed the

holding that debtor's payments to creditor were not in the nature of illegal stock redemptions because the debtor did not purchase its own stock. Finally, the "new value" defense did not apply. The creditor did not have a security interest in debtor's assets under Ohio law because the debtor only executed a financing statement and guaranty. There was no document showing debtor's intent to grant a security interest in its assets. Moreover, even assuming that the financing statement was valid, creditor's failure to perfect its security interest by filing the financing statement in the proper place meant that creditor's release of its unperfected security interest was voidable and could not constitute "new value" for debtor's preferential payments. Affirmed in part and vacated and remanded in part.

District Court for the Western District of Michigan

Boyd v. Engman, 404 B.R. 467 (Bkrtcy. W.D.Mich. March 4, 2009) (Judge Jonker) - Did the bankruptcy court, Judge Hughes, err in disallowing certain claimed fees and expenses? Law firm that Chapter 7 trustee retained moved for interim approval of fees and expenses. Creditor and debtor objected, claiming that the trustee mismanaged the estate and the firm was seeking reimbursement for (a) non-legal services; or (b) legal services that did not benefit the estate. Judge Hughes disallowed only part of the fee application, and the firm appealed. The district court first held that firm's fees trying to obtain approval of a settlement was compensable from the estate to the extent that the fees were reasonable under the "lodestar method." The trustee's actions - both mandatory and discretionary - benefit the estate, and the bankruptcy court too narrowly construed the purpose of Rule 9019(a) and "benefit to the estate.: Next, the district court held that the bankruptcy court erred in its construction of 11 U.S.C. § 330(a). Time to prepare and defend prior fee applications was compensable as part of the firm's role in administration of the bankruptcy process. Third, the firm was entitled to fees for tasks that it did at trustee's request, even tasks that did not require legal expertise, and there was no basis to hold that the Code or Local Rule 9013-1(i) barred recover of such expenses. Fourth, the court used legally inappropriate hindsight-application of "benefit to estate" standard to deny certain costs. Finally, the court should have granted "practically nominal" mileage and parking fees that the firm certified where there was no specific objection to them. Reversed.

Bankruptcy Court for the Western District of Michigan

In re Erickson, --- B.R. ----, 2009 WL 1479407 (Bkrtcy.W.D.Mich. May 20, 2009) (Judge Hughes) - Can debtors claim a § 522(d)(5) exemption in their entire tax refunds included in their amended Schedule C? Debtors originally claimed exemptions under § 522(d)(5) in cash, bank accounts, and vacant parcel of land. They then filed an Amended Schedule

C reducing the claim in the property and using the balance of the maximum allowance to $22,400 to claim tax refunds. The Chapter 7 trustee objected, arguing that debtors removed the land from the estate. Judge Hughes held that the "wild card" provision in § 522(d)(5) allowed debtors to claim the exemption in real property in-kind, and the debtors could used the remainder of the "wild card" provision to claim a portion of tax refunds exempt. The Court sustained the objection to the $13,810 exemption, calculating the maximum § 522(d)(5) exemption amount as $9,113.00.

In re Vandenbosch, --- B.R. ----, 2009 WL 1285265 (Bkrtcy.W.D.Mich. April 30, 2009) (Judge Gregg) - Did debtors fulfill obligations under land contract that entitled them to specific performance and could trustee avoid mortgage from debtors to vendor because it contains an erroneous legal description? Chapter 7 trustee brought adversary proceeding against vendors who sold real property to debtors on land contract, seeking specific performance of land contract and avoidance and recovery of mortgage on property that debtors supposedly granted to vendors. After trial, Judge Gregg held that the debtors fully performed their obligations under the land contract by satisfying amount due and were entitled to legal title to the property. The debtors were entitled to specific performance of the land contract at the time they paid off the land contract. The debtors' right to compel specific performance became property of the estate when they filed their case, and the trustee could enforce the right to compel specific performance. Finally, the Court concluded that the trustee could avoid the vendor's mortgage under his strong-arm powers where the mortgage was recorded against the wrong property. Reformation was not available as a remedy because the trustee acquired the property as a bona fide purchaser, for value and without notice.

In re Weeks, 400 B.R. 117, (Bkrtcy.W.D.Mich. January 23, 2009) (Judge Hughes) - Discharged Chapter 7 debtor filed adversary proceeding against bank seeking damages for alleged violation of discharge injunction. Bank moved for summary judgment. Judge Hughes denied the motion because the Bank failed to establish that dismissal was proper. The debtor's postpetition choice not to revoke his prepetition guaranties of his business's future indebtedness to bank bound him to honor the promises in those guaranties, but the discharge barred the Bank's postpetition efforts to obtain repayment from debtor as a guarantor of a loan to his business. The Bank's efforts to resurrect debtor's personal liability violated § 524(e), and the debtor would be permitted to pursue a claim for damages for the Bank's post-petition efforts to enforce its guaranties.

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