

## Opinions

All

<< 9 10 11 12 13 14 15 16 17 18 19 >>

[In re Perez](#) (June 2016) -- Judge S.V. Kelley

Chapter 13 debtor who worked at car dealership not required to include value of demo vehicle in her current monthly income.

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[Woodsman LLC v. Denil, Adversary Case No. 15-2567](#) (May 2016) -- Judge B.E. Hanan

This adversary proceeding involved a dispute over the rights and interests of the defendant-debtors, the vendees, in a piece of real property that was subject to a land contract where the redemption period under state law had expired, but the state court had yet to enter an order under Wisconsin Statutes section 846.30 finalizing the strict foreclosure. Plaintiff, Woodsman LLC, the vendor, moved for summary judgment on two alternative grounds: (1) that the subject property was not property of the debtors' bankruptcy estate; or (2) that the entry of an order finalizing Woodsman's judgment of strict foreclosure under Wisconsin Statutes section 846.30 was a ministerial act not subject to the automatic stay. The court held that: (1) the subject property was property of the debtors' bankruptcy estate because the debtors held equitable title in the property until a final order under Wisconsin Statutes section 846.30 was entered; and (2) entering a final order under Wisconsin Statutes section 846.30 was not a ministerial act excepted from the automatic stay even if the ministerial acts exception was a permissible construct within the Seventh Circuit.

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[In re Birschbach, Case No. 15-22376](#) (March 2016) -- Chief Judge G.M. Halfenger

The debtor filed a motion pursuant to 11 U.S.C. section 522(f) in one push mower and two riding lawn mowers. The court determined that section 522(f)(4) did not permit the debtor to avoid the lien on the riding lawn mowers but that the debtor was entitled to avoid the lien on the push mower.

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[Phifer v. City of Milwaukee \(In re Phifer\), 547 B.R. 288](#) (March 2016) -- Judge S.V. Kelley

Debtor's completed Chapter 13 plan and discharge effectively stripped City's tax lien from property, and subsequent tax foreclosure to recover discharged taxes violated discharge injunction.

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[In re Beck](#) (February 2016) -- Judge S.V. Kelley

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Debtor could avoid Dept. of Workforce Development lien as a judicial lien impairing debtor's exemptions.

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[In re Gibas, Case No. 15-31102, 543 B.R. 570](#) (January 2016) -- Judge B.E. Hanan

A couple filed for chapter 11 relief after obtaining a voluntary dismissal of their prior joint chapter 13 case in which a secured creditor had moved for relief from the automatic stay shortly before the debtors requested dismissal. The husband moved to continue the automatic stay; the wife moved to impose the stay; and the court ordered the couple to show cause why they were eligible to be debtors under section 109(g)(2). Interpreting the word "following" in section 109(g)(2) to mean "after," rather than requiring a causal connection between the dismissal and motion for relief from stay, the court concluded that the couple were not eligible for relief under Title 11. Based on the couple's past history of serial filings and egregious conduct in eight bankruptcy cases filed since 2011, the court dismissed the case with a one-year bar to refiling. The court further held that, even if the couple were eligible under section 109(g)(2), their conduct demonstrated bad faith, which would preclude the court from continuing or imposing the automatic stay as to either.

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[In re Johnson](#) (January 2016) -- Judge S.V. Kelley

Reconsidering *In re Washington*, the Court disallowed a late-filed claim in a Chapter 13 case filed by a creditor without notice of the bar date. The Court held that the Supreme Court's *Law v. Siegel* decision required that equitable principles could not trump the Bankruptcy Code, and that due process was not violated because the unsecured claim would not be discharged.

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[In re Burris, Case No. 15-31603](#) (December 2015) -- Chief Judge G.M. Halfenger

A secured creditor objected to the debtor's plan because the debtor's plan did not provide for its claim. Overruling the objection, the court held that nothing in section 1322 or 1325 required the debtor to include the secured claim in her plan.

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[In re Schmalig, Case No. 11-32516](#) (December 2015) -- Judge B.E. Hanan

Wilmington Savings Fund Society, FSB, a mortgage creditor of the chapter 13 debtors, sought relief from the automatic stay and abandonment. The debtors did not oppose the motion, so Wilmington filed an affidavit of no objection and proposed order in accordance with Local Rule 9014.1. While granting Wilmington relief from the automatic stay and abandonment as to the subject property was appropriate, Wilmington's proposed order requested that its claim be deemed withdrawn so it could avoid the requirements of Federal Rule of Bankruptcy Procedure 3002.1 (which requires mortgage creditors to provide chapter 13 debtors, who propose a "cure and maintain" on their principal residence under 11 U.S.C. section 1322(b)(5), notice of mortgage payment changes and a statement about whether the debtors cured their default

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and whether they are otherwise current with their mortgage payments upon plan completion), and also requested an award of attorneys' fees. The court granted Wilmington relief from the automatic stay and abandonment and deemed its claim withdrawn, but explained that without a timely-filed proof of claim in the claims register, an award of attorneys' fees was not appropriate.

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[In re Antoinette Benton, Case No. 14-33505, Harry Kaufmann Motorcars, Inc. v. Debtor, Adv. No. 15-2067](#) (October 2015) -- Judge M.D. McGarity

Plaintiff filed complaint to determine dischargeability of debt based on a fraudulent check tendered for the down payment on a vehicle purchased by Chapter 7 Debtor. The debt owed by the Debtor was found to be excepted from discharge under 11 U.S.C. § 523(a)(2)(A) due to Debtor's silence and concealment of a material fact.

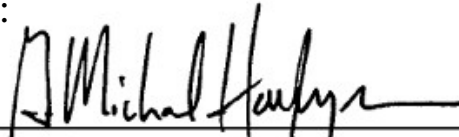
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[<< 9 10 11 12 13 14 15 16 17 18 19 >>](#)



THE FOLLOWING ORDER  
IS APPROVED AND ENTERED  
AS THE ORDER OF THIS COURT:

DATED: December 21, 2015

  
G. Michael Halfenger  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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In RE:

Tracy Burris,  
  
Debtor.

Case No. 15-31603-GMH  
  
Chapter 13

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**ORDER OVERRULING CONFIRMATION OBJECTION**

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On December 2, 2015, Santander Consumer USA Inc. (“Santander”), which holds a claim secured by the debtor’s 2005 Mazda, filed an objection to confirmation of the debtor’s chapter 13 plan. CM-ECF Doc. No. 16. Santander’s objection is that the debtor’s plan does not provide for its claim. Nothing in §1322, which governs plan content, or §1325, which governs plan confirmation, requires a debtor to include a secured claim in a plan. See 11 U.S.C. §§1322(a) & 1325(a)(5) (describing the required plan treatment for “each allowed secured claim *provided for in the plan*”) (emphasis added).

Accordingly, **IT IS ORDERED** that Santander’s objection to confirmation is OVERRULED.

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