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CASES OF INTEREST TO CREDITORS IN THE OCTOBER TERM OF THE UNITED STATES SUPREME COURT

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There are two cases for argument in the United States Supreme Court's October Term that may be of interest to creditors- Ransom v. MBNA America Bank and Chase Bank USA v. McCoy.

The former deals with the construction of 11 U.S.C.A. §707(b)(2)(A)(ii), which sets forth the available deductions from income for purposes of determining if the presumption of abuse arises under Chapter 7 and of calculating disposable income under Chapter 13. The issue is whether, under that section, as incorporated into Chapter 13 by 11 U.S.C.A. § 1325(b)(3), the Bankruptcy court can allow a Chapter 13 debtor with an above-median income to claim an ownership deduction for a vehicle, when the debtor doesn't make payments on the vehicle. The specific statutory language at issues provides, in pertinent part, that "[t]he debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards," promulgated by the IRS. The debtor claims that he should be able to deduct the standard cost for vehicle ownership even though his vehicle is paid in full. MBNA, an unsecured creditor, disagrees. The United States has filed an Amicus brief in support of MBNA, arguing that where the debtor does not actually make payments on the vehicle, there are no "applicable monthly expense amounts" to deduct. The National Association of Consumer Bankruptcy Attorneys has filed an Amicus brief in support of the debtor, arguing that with the amendments to the Bankruptcy Code enacted in the Bankruptcy Abuse Prevention and Consumer Protections Act of 2005, Congress intended that the focus be shifted away from actual expenses to standardized amounts, and that requiring individual inquiry into the debtor's actual monthly expenses with respect to the debtor's vehicle(s) frustrates that purpose. Both raise compelling policy arguments in their briefs, which can be found here and here, respectively. The lower court's decision, ruling against the debtor, is available at *In re Ransom*, 577 F.3d 1026 (9th Cir. 2009).

The latter concerns the pre-2009 Regulation Z, 12 C.F.R. § 226.9(c), issued pursuant to the Truth in Lending Act (TILA), 15 U.S.C.A. § 1601 *et. seq*. The issue in the case is whether the regulation required a creditor to provide a credit card holder with a change-in-terms notice in advance when the creditor increases the credit card rate due to the card holder's default, when the contract provided for the right to increase the rate upon default. I frame the issue in the past tense, because under the current version, the answer would clearly be "yes," since the phrase at issue- "[t]he 15-day timing requirement does not apply...if a periodic rate or other finance charge is increased because of the consumer's delinquency or default,"- has been removed. The case presents an interesting question concerning the deference that should be given to the rulemaking authority's interpretation of a regulation's meaning, as published in the Federal Register in connection with proposed changes to the rule. The United States and the American Bankers Association have filed Amicus briefs in support of the bank, arguing, in part, that the Federal Reserve Board's interpretation should be given deference, and that the lower court, in coming to its conclusion (which can be found at *McCoy v. Chase Manhattan Bank USA*, 559 F.3d 963 (9th Cir. 2009)), failed to do so.

Expect to read more on these cases on the Florida Collection Law Blog as they progress. A list of all cases scheduled for the October Term 2010 can be found on SCOTUSblog.

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