**Alternate Case Problems**

*Chapter 16*

**Creditors’ Rights and Bankruptcy**

**16-1. Preferences.** Fred Currey purchased cattle from Itano Farms, Inc. As payment for the cattle, Currey gave Itano Farms worthless checks in the amount of $50,250. Currey was later convicted of passing bad checks, and the state criminal court ordered him to pay Itano Farms restitution in the amount of $50,250. About four months after this court order, Currey and his wife filed for Chapter 7 bankruptcy protection. During the ninety days prior to the filing of the petition, Currey had made three restitution payments to Itano, totaling $14,821. The Curreys sought to recover these payments as preferences. What should the court decide? Explain. [*In re Currey,* 144 Bankr*.* 490 (D.Ida. 1992)]

**16–2. Automatic Stay.** David Sisco had about $600 in an account in Tinker Federal Credit Union. Sisco owed DPW Employees Credit Union a little more than $1,100. To collect on the debt, DPW obtained a garnishment judgment and served it on Tinker. The next day, Sisco filed a bankruptcy petition. Tinker then told DPW that because of the bankruptcy filing, it could not pay the garnishment. DPW objected, and Tinker asked an Oklahoma state court to resolve the issue. What effect, if any, does Sisco's bankruptcy filing have on DPW's garnishment action? [*DPW Employees Credit Union v. Tinker Federal Credit Union,* 925 P.2d 93 (Okla.App.4th 1996)]

**16-3. Preferences.** The Securities and Exchange Commission (SEC) filed a suit in a federal district court against First Jersey Securities, Inc., and others, alleging fraud in First Jersey’s sale of securities (stock). The court ordered the defendants to turn over to the SEC $75 million in illegal profits. This order made the SEC the largest unsecured creditor of First Jersey. First Jersey filed a voluntary petition in a federal bankruptcy court to declare bankruptcy under Chapter 11. On the same day, the debtor transferred 200,001 shares of stock to its law firm, Robinson, St. John, & Wayne (RSW), in payment for services in the SEC suit and the bankruptcy petition. The stock represented essentially all of the debtor’s assets. RSW did not find a buyer for the stock for more than two months. The SEC objected to the transfer, contending that it was a voidable preference, and asked that RSW be disqualified from representing the debtor. RSW responded that the transfer was made in the ordinary course of business. Also, asserted RSW, the transfer was not in payment of an “antecedent debt,” because the firm had not presented First Jersey with a bill for its services and therefore the debt was not yet past due. Was the stock transfer a voidable preference? Should the court disqualify RSW? Why or why not? [*In re First Jersey Securities, Inc.,* 180 F.3d 504 (3d Cir. 1999)]

**16-4. Discharge in Bankruptcy.** Mallinckrodt received an undergraduate degree from the University of Miami and, in 1995, a graduate degree from Barry University in mental health counseling. To finance this education, Mallinckrodt borrowed from The Education Resources Institute, Inc., and others. Unable to find a job as a counselor, Mallinckrodt worked as a tennis instructor and coach. (At one time, he had played pro­fessional tennis and was ranked among the top eight hundred players in the world.) In 1996, he ruptured his Achilles tendon and was unable to work. After a lengthy rehabili­tation, he began work on a part-time, hourly basis at Horizon Psychological Services, but the work was intermittent and low paying. He continued to work as a tennis in­structor and was also a licensed real estate broker, but he had little income in either field. With monthly income of about $549 after taxes, and expenses of $544, Mallinckrodt filed a bankruptcy petition to discharge his student loan debt, which with interest to­taled nearly $73,000. Is this debt dischargeable? Discuss. [*In re Mallinckrodt,* 260 Bankr. 892 (S.D.Fla. 2001)]

**16–5. Discharge in Bankruptcy.** Jon Goulet attended the University of Wisconsin in Eau Claire and Regis University in Denver, Colorado, from which he earned a bachelor’s degree in history in 1972. Over the next ten years, he worked as a bartender and restaurant manager. In 1984, he became a life insurance agent and his income ranged from $20,000 to $30,000. In 1989, however, his agent’s license was revoked for insurance fraud, and he was arrested for cocaine possession. From 1991 to 1995, Goulet was again at the University of Wisconsin, working toward, but failing to obtain, a master’s degree in psychology. To pay for his studies, he took out student loans totaling $76,000. Goulet then returned to bartending and restaurant management and tried real estate sales. His income for the year 2000 was $1,490, and his expenses, excluding a child-support obligation, were $5,904. When the student loans came due, Goulet filed a petition for bankruptcy. On what ground might the loans be dischargeable? Should the court grant a discharge on this ground? Why or why not? [*Goulet v. Educational Credit Management Corp.,* 284 F.3d 773 (7th Cir. 2002)]

**16–6. Guaranty.** In 1981, in Troy, Ohio, Willis and Mary Jane Ward leased a commercial building to Buckeye Pizza Corp. to operate a pizza parlor. Two years later, Buckeye assigned its interest in the building to Ohio, Ltd. In 1985, Ohio sold its pizza business, including its lease of the Wards’ building, to NR Dayton Mall, Inc., an Indiana corporation and a subsidiary of Noble Roman’s, Inc. As part of the deal, Noble Roman’s agreed that it “unconditionally guarantees the performance by N.R. DAYTON MALL, INC., of all its obligations under the .  .  . Assumption Undertaking.” In the “Assumption Undertaking,” NR agreed to accept assignment of the Ward lease and to pay Buckeye’s and Ohio’s expenses if they were sued under it. A dozen years later, NR defaulted on the lease and abandoned the premises. The Wards filed a suit in an Indiana state court against Noble Roman’s and others, contending that the firm was liable for NR’s default. Noble Roman’s argued that it had guaranteed only to indemnify Buckeye and Ohio. The Wards filed a motion for summary judgment. Should the court grant the motion? Explain. [*Noble Roman’s, Inc. v. Ward,* 760 N.E.2d 1132 (Ind.App. 2002)]

**16–7. Automatic Stay.** On January 22, 2001, Marlene Moffett bought a used 1998 Honda Accord from Hendrick Honda in Woodbridge, Virginia. Moffett agreed to pay $20,024.25, with interest, in sixty monthly installments, and Hendrick retained a security interest in the car. (As discussed in Chapter 29, Hendrick thus had the right to repossess the car in the event of default, subject to Moffett’s right of redemption.) Hendrick assigned its rights under the sales agreement to Tidewater Finance Co., which perfected its security interest. The car was Moffett’s only means of traveling the forty miles from her home to her workplace. In March and April 2002, Moffett missed two monthly payments. On April 25, Tidewater repossessed the car. On the same day, Moffett filed a Chapter 13 plan in a federal bankruptcy court. Moffett asked that the car be returned to her, in part under the Bankruptcy Code’s automatic-stay provision. Tidewater asked the court to terminate the automatic stay so that it could sell the car. How can the interests of both the debtor and the creditor be fully protected in this case? What should the court rule? Explain. [*In re Moffett,* 356 F.3d 518 (4th Cir. 2004)]

**16–8. Discharge in Bankruptcy.** Between 1980 and 1987, Craig Hanson borrowed funds from Great Lakes Higher Education Corp. to finance his education at the University of Wisconsin. Hanson defaulted on the debt in 1989, and Great Lakes obtained a judgment against him for $31,583.77. Three years later, Hanson filed a bankruptcy petition under Chapter 13. Great Lakes timely filed a proof of claim in the amount of $35,531.08. Hanson’s repayment plan proposed to pay $135 monthly to Great Lakes over sixty months, which in total was only 19 percent of the claim, but said nothing about discharging the remaining balance. The plan was confirmed without objection. After Hanson completed the payments under the plan, without any additional proof or argument being offered, the court granted a discharge of his student loans. In 2003, Educational Credit Management Corp. (ECMC), which had taken over Great Lakes’ interest in the loans, filed a motion for relief from the discharge. What is the requirement for the discharge of a student loan obligation in bankruptcy? Did Hanson meet this requirement? Should the court grant ECMC’s motion? Discuss. [*In re Hanson*, 397 F.3d 482 (7th Cir. 2005)]

**16–9. Default.** Primesouth Bank issued a loan to Okefenokee Aircraft, Inc. (OAI), to buy a plane. OAI executed a note in favor of Primesouth in the amount of $161,306.25, plus interest. The plane secured the note. When OAI defaulted, Primesouth repossessed the plane. Instead of disposing of the collateral and seeking a deficiency judgment, however, the bank retained possession of the plane and filed a suit in a Georgia state court against OAI to enforce the note. OAI did not deny defaulting on the note or dispute the amount due. Instead, OAI argued that Primesouth Bank was not acting in a commercially reasonable manner. According to OAI, the creditor must sell the collateral and apply the proceeds against the debt. What is a secured creditor’s obligation in these circumstances? Can the creditor retain the collateral and seek a judgment for the amount of the underlying debt, or is a sale required? Discuss. [*Okefenokee Aircraft, Inc. v. Primesouth Bank,* 296 Ga.App. 872, 676 S.E.2d 394 (2009)]

**16–10. Discharge.** Caroline McAfee loaned $400,000 to Carter Oaks Crossing. Joseph Harman, Carter’s president, signed a personal guaranty for the loan. Later, Harman obtained a discharge in bankruptcy under Chapter 7 for his personal debts. His petition did not list the guaranty among the debts. When Carter defaulted on the loan, McAfee sought to collect the unpaid amount from Harman based on the guaranty. Harman argued that the guaranty had been discharged in his bankruptcy. Is Harman correct? Why or why not? [*Harman v. McAfee,* 302 Ga.App. 698, 691 S.E.2d 586 (2010)]