

DEBTOR/CREDITOR

April 2024

Collection Costs Not Dischargeable

In 2010, Mr. Hilgartner assaulted Ms. Yagi. After the assault, they entered into a settlement agreement obligating Mr. Hilgartner to pay Ms. Yagi for the harm he caused her. When Mr. Hilgartner stopped making payments under the settlement agreement, Ms. Yagi sued him to enforce the agreement. Mr. Hilgartner filed for bankruptcy protection, and Ms. Yagi sought a declaration that the amounts due under the settlement agreement, including late charges and attorneys' fees, were nondischargeable, because they were compensation for willful and malicious injury.

The bankruptcy court agreed that the principal amounts due under the settlement agreement were a direct result of the injury caused by the assault and were not discharged in Mr. Hilgartner's bankruptcy case. However, the late charges and attorneys' fees only indirectly flowed from the assault, and were just contract obligations that could be discharged in bankruptcy. The appellate court disagreed, concluding that the late charges and attorneys' fees under the settlement agreement also "arose" from the willful and malicious injury and were equally nondischargeable in bankruptcy.

Yagi v. Hilgartner (In re Hilgartner), 91 F.4th 186 (4th Cir. 2024).

Tax Sale Foreclosure Undone

Under the Maryland procedure for collection of delinquent real property taxes, the unpaid tax debt becomes a lien on the real property. The tax collector for the county in which the property is located then holds a "tax sale" at which prospective buyers bid to acquire a tax sale certificate which transfers to the certificate buyer the tax lien on the property. If the property owner fails to pay the taxes (with interest), the tax certificate holder may foreclose the tax lien and acquire the property.

A federal judge in Maryland recently determined that a foreclosure of the tax sale certificate could be undone where the property owner filed a bankruptcy petition less than 90 days after the order foreclosing the owner's interest in the property. The court determined that the foreclosure was a transfer of property in payment of a prior debt which could be reversed as a preference under bankruptcy law. However, the tax lien, itself, remained.

Brusznicki v. Tucker (In re Tucker), 653 B.R. 598 (D. Md. 2023).

Farewell

This is the last Notes on Debtor/Creditor Relations, as I am retiring at the end of June this year. I especially appreciate all of you who have from time to time responded with comments on the substance of the cases about which I have written. I wish to give special thanks to Allan Hillman, who has sent substantive comments on almost every issue that I have sent out, in addition to his friendship and good counsel.

I wish each of you the very best and much success in all your future endeavors.

○ ○ ○

This newsletter is intended to inform its readers of developments in the area of debtor/creditor relations. It is not legal advice or a legal opinion regarding any specific matter. You should consult a lawyer regarding any questions relating to your particular situation. Congress has required bankruptcy attorneys to state: "I am a debt relief agency. I help people file for bankruptcy relief under the Bankruptcy Code." 11 U.S.C. § 528. If you wish to receive Notes on Debtor/Creditor Relations by email, go to www.jamesolsonattorney.com/newsletter.html and click on the link at the word "here".

Prepared by James C. Olson, Attorney and Counselor at Law