

This is the thirty-fourth quarterly newsletter for my clients. Due to your great interest, I plan to continue this quarterly report.

“WILLFUL AND MALICIOUS” DISCHARGE EXCEPTION

11 USC 523(7)(6) provides that a debt cannot be discharged if the debtors behavior was willful and malicious. The most recent case to discuss this term is In re Groff, 2003 Bankr. Lexis 1594 (Bankr. D.NJ 2003)

In the Groff case, the debtor killed a child while driving an uninsured vehicle while her license was suspended. The Court held that even though the debtor pled guilty to the criminal charges it did not prevent her from contesting the “willful and malicious” exception to discharge.

The Court held that a knowing and conscious decision to drive a vehicle without a license, registration or insurance did not establish that there was intent to willfully injure and kill the child.

This is the same analysis as used by the US Supreme Court in In re Geiger 523 US 57 (1998). In Geiger, the US Supreme Court held the doctor’s gross negligence did not reach the willful and malicious standard.

Based on Groff, if someone knowingly drove a vehicle which was uninsured while unlicensed, if an accident results, that debt would be discharged in bankruptcy based on the reasoning in the Groff and Geiger cases.

In contrast, if there was a physical assault, my position would be that the debt would NOT be discharged in Chapter 7, and I would advise a person to file Chapter 13 since “willful and malicious” behavior is not an exception to discharge in Chapter 13.

FORECLOSURE SALES

If you are BEHIND on your mortgage, you want TO SAVE YOUR BIGGEST INVESTMENT --- YOUR HOME.

A Chapter 13 allows you to save your home by paying the arrears over a five year plan. The key is that you want to file ASAP and make sure it is filed before the date of Sheriff Sale.

There is still a split on whether you can file Chapter 13 after the Sheriff Sale. If your home already went to Sheriff Sale, please contact me so I can advise you if you still have a chance to save your BIGGEST INVESTMENT .

The last option you may have was discussed in In the matter of Ryker, 301 B.R. 156 (DNJ 2003). In Ryker, the debtor argued that the sheriff sale was voidable due to a defect in notice. The Court held that the mortgagee’s failure to

re-advertise was a defect in notice since it halted competition bidding and rendered the sale subject to avoidance.

In essence, if you can show there is an independent ground for equitable relief such as fraud, accident, surprise, or irregularity in sale, the Chancery Courts could set aside the foreclosure sale regardless of whether the sheriff sale prevented the debtor from curing arrears under a Chapter 13 Plan.

However, DON'T LET IT GET TO THIS POINT. CONTACT MY OFFICE AS SOON AS YOU GET BEHIND TO PREVENT SHERIFF SALE.

LET ME ANSWER ALL YOUR QUESTIONS

We are a full service law firm that wants to service your needs. Besides helping people with financial problems, our office helps people with all types of motor vehicle violations, work related injuries, and any other personal injuries.

As my law practice continues to grow, I hope to help you in all areas of the law where I have helped my other clients. Remember that even if I am not familiar with a specific area of the law, I work with other lawyers who are well qualified to handle these matters. Therefore, if you have any question on any legal matter whatsoever, please ask me about it.

IF YOU LIKE MY WORK SPREAD THE WORD.

I appreciate the confidence my clients show by referring new business to me. Such referrals are my largest and best source of new clients. Please let me know if you have a friend or relative who needs legal assistance or who would like to receive one of my quarterly newsletters.

I sincerely appreciate all the referrals from so many of you over the past several years. Thank you for your continued confidence and good will.

If you would like me to do a workshop and discuss The Debt Trap at your church, feel free to contact me.

Steven N. Taieb has been Board Certified in Consumer Bankruptcy Law by the American Board of Certification since 1994. He has helped over 5000 people resolve their legal problems.