

# **GARDEN STATE CLE LESSON PLAN**

A 1.0 CLE CREDIT COURSE

## **FREE DOWNLOAD LESSON PLAN AND EVALUATION**

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### **MOTION PRACTICE IN CONSUMER BANKRUPTCY (WITH FORMS)**

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WITH

**DAWN R. SAN FILIPPO, ESQ.**

AND FEATURING

**ROBERT RAMSEY, SENIOR INSTRUCTOR**

#### **Program Description**

If you're lucky, a judge signs a routine order to discharge and close your bankruptcy case. Sometimes, the court is barely involved at all. But when a judge's decision is required to resolve an issue in a consumer bankruptcy claim, mastery of motion practice in consumer bankruptcy is invaluable. This 1.0 credit seminar will teach you the 'what', 'when', and 'how' when it comes to filing a motion in a consumer bankruptcy case.

## **I. INTRODUCTION**

- **Garden State CLE**
- **Panelists**  
**[DAWN R. SAN FILIPPO, ESQ. and**  
**ROBERT RAMSEY]**
- **Scope of Topic**  
**[1:03 duration and**  
**6 pages of Lesson Plan materials]**

## **II. CHAPTER 7 MOTIONS**

- **Occasionally secured creditors will file a Motion for Relief from Stay in a Chapter 7 liquidation case**
- **Regarding auto lenders, they want to continue with their lien enforcement procedure**
- **Chapter 7 cases take 4 - 6 weeks to reach meeting of creditors**
- **It is a three month process more or less, depending in part on the number of filings in the quarter**
- **Most creditors in Chapter 7 are unsecured**

- **Secured creditors may include an auto finance company, a mortgage company (first or second)**
- **Petitioners may move for relief from stay for various reasons**
- **Debtor defenses include: adequate protection (enough value in the security)**
- **Car payments have to be makeable (and made) and a reaffirmation agreement needs to be signed by the Debtor**
- **Trustee's can make Motions to Dismiss for failure to pass the means test**
- **Address this issue up front with the means test at the interview and drafting stages**
- **Motions to deny the Debtor their discharge can be made too, sometimes for failure to disclose assets and liabilities (sec 527---non dischargeability claims)**
- **Fraud is one basis for a Motion to Dismiss or for non dischargeability claims**
- **Running up new debts and charges before Bankruptcy filing is a big no-no**

### **III. Chapter 13 Motions**

- **Motions are filed as a part of the initial Plan, they are integrated in the form to a degree**
- **The Plan of Payment and Motions accompany the Petition**
- **Motions may include:**
  - i. Motion to Modify the Plan due to changes in circumstances like job loss, illness, etc.**
  - ii. Motion to Convert a Chapter 13 to Chapter 7 can be filed when the Debtor cannot live up to the obligations required in the Plan**
  - iii. Debtor Motions to Strip off the Second Mortgage when the second is unsecured by the value in the property. Not even a dollar can be secured**

## **IV. Chapter 13 Discovery**

- **2004 examination is a deposition**
- **Bad behavior is punished: hiding assets, not providing information etc. and it can rise to the level of criminal investigation by the US Attorney**
- **Certain claims can be factored and sold off to benefit the Estate but it is rare in BK cases**
- **Other potential assets: Annuities? No. They are exempt under the fresh start approach**
- **Preference actions: 90 day lookback for some creditors, one year for family members**
- **The Debtor's Petition reveals what is available for preference claims**
- **Adversary Proceedings tend to be rare, they often do follow a failed business**
- **Trials are also rare. They try before the Judge and not a Jury in most cases. It is a bench trial with segments that can be chopped up as in Chancery Division. They can take an hour, they can take weeks. Most are a couple of days.**

## V. ATTORNEY RESPONSIBILITY

- Liability falls to the Attorney for failure to provide full financial disclosure on all assets AND all debts
- Now attys must have on hand a year's bank statements and so on
- Credit reports are routinely pulled by some attorneys or at least the Debtor pulls the reports and provides them
- Hidden cash? Ethically, the attorney is required to put it down on the Petition
- Overseas cash and other assets
- Family debts need to be discharged too, the client can always gift it back later if they choose. But the debt remains unenforceable