BEFORE AND AFTER THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005 EXAMINED UNDER RECENT CASE LAW: A CURSE IN DISGUISE FOR CONSUMERS?

I. INTRODUCTION

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA or Act) is the most recent reform by Congress to overhaul and tighten abuse and fraud regulation within the bankruptcy system.\(^1\) While this spells fortune for creditors and credit card companies, it ultimately may hinder and punish genuine debtors in its crusade against escalating bankruptcy filings and abusers of the old bankruptcy system. Although the BAPCPA reforms countless areas of the Bankruptcy Code, my focus in this comment is the impact of major Chapter Seven provisions on consumers. At the heart of the BAPCPA is an array of provisions aimed at preventing abuse, disallowing debts obtained through fraud or crime, and disabling loopholes that existed in the past. Therefore, I will analyze those provisions enacted to prevent abusive filings and limit the abuse of the homestead exemption. Moreover, I will examine the purpose behind each application of the provision that has been mentioned in recent case law as well as some future fundamental provisions of the lengthy Act, which will reveal whether those provisions ultimately serve the intent of Congress in enacting the change in the Bankruptcy Code. In addition, I will examine abuse, fraud-crime, and homestead provisions before and after the BAPCPA to determine the path that consumer bankruptcy law will take and its likely effect on debtors in the future.

In Part II, I will introduce the BAPCPA through its public policy goals. In Part III, I will emphasize the differences between the “substantial abuse” test under the old bankruptcy regime to the newly refined abuse test. Furthermore, I will look at the structure and the varying types of provisions related to preventing abuse and encouraging repayment of debts and those related to the homestead exemption. In addition, I will discuss the recent criticism of the provisions of the Act. In Part IV, I will thoroughly examine the main provisions of the Act as they relate to consumers, debtors, creditors, and the legal system. Furthermore, and most importantly, I will discuss the consequences of these particular provisions of the Act, focusing on its effect on consumers, but including, in some detail, its effect on the legal system. In Part V, I will then conclude how the Act, for all its best intentions and desires to restrain filings gone awry, ultimately will not provide the best solution to the problems it was set out to solve.

Daren Schlecter*

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