

KREKELER LAW REPORT



SEPTEMBER 2019

VOL. 5 NO. 9

ITT TECHNICAL INSTITUTE STUDENTS MAY HAVE LOANS FORGIVEN

ITT filed bankruptcy in 2016. Its closure left over 22,000 students with loans but no education. About 650 of those students are here in Wisconsin.

These students may be eligible for forgiveness of their federal student loans. There may also be some assistance available through the Department of Safety and Professional Services for students with private loans.

Not all students are eligible for loan forgiveness. For example, students who transferred and pursued a similar program at another institution will not likely be eligible for discharge of their loans. For more information, contact the Wisconsin Department of Justice's public protection unit by telephone at (608) 266-1852, or by e-mail at consumerprotection@doj.state.wi.us.

Students who believe they were defrauded by the school, or another school, may be eligible for loan discharge under other grounds. Those students should contact their attorney.



Find Us on Social Media!



Follow the **Krekeler Strother, S.C.** page for blog and newsletter updates, tips, and firm happenings.



Follow **@jdkrek** on Twitter for firm thoughts and updates.



Positive Experience? Search for **Krekeler Strother, S.C.** and leave us a review!

Comments? Contact Wendy at (608) 310-3405 or email wbaker@ks-lawfirm.com

In This Issue

- *ITT Students May Have Loans Forgiven*
- *Mistake Does Not Lead to Free House*
- *Obtaining Transcripts from a University*
- *Foreclosure Redemption Periods in Bankruptcy*
- *What Dave Ramsey Does Not Know*
- *Where's Krekeler?*
- *Unreal Legal: Man Sues Parents*

MISTAKE DOES NOT LEAD TO FREE HOUSE

Sometimes people find minor or technical mistakes and try to capitalize on them. We have seen situations where a party's name is misspelled by a single letter and that typographical error becomes the cornerstone of a defense lawsuit.

These sort of "gotcha" attacks do not usually work. I was reminded of this by a recent 7th Circuit decision.

The lender–bank had a collector, or servicer, handling the loan. A mistake was made, and the servicer recorded a satisfaction of the mortgage. The loan had not been paid and the borrower did not even know of the recorded satisfaction.

At least not until later, when a foreclosure was commenced. The borrower was in default under the terms of the loan but sought to defend the foreclosure suit by using the mistakenly recorded satisfaction to argue that there no longer was a mortgage.

The loan servicer discovered the mistake and recorded an affidavit indicating that the satisfaction was in error.

The court found that the borrower received no rights from the mistake by the loan servicer. It was a unilateral action by the servicer and without any consideration. This meant the transaction was not a contract. Because no one, including the borrower, had detrimentally relied on the lease, it could be rescinded.

The law generally views "gotcha" moments with disfavor. There are some exceptions. For example, when dealing with liens on personal property, the lien perfection recording must often meet very technical standards. A failure to do so could render the lien unperfected.

Another recent 7th Circuit case illustrates this point. In *State Bank of Toulon v. Covy*, the court had to consider the enforceability of a lien on personal property. The security agreement referred to the date of the promissory note as being December 13, when the correct date was December 15. It provided that the collateral secured the obligations of the debtor pursuant to the note dated December 13.

These are not easy decisions. The bankruptcy court agreed with the Bank that, despite the "clerical error," the security agreement was effective. On appeal, the 7th Circuit noted the parties intended to secure the debt under the note dated December 15, but held that the verbiage in

the December 13 language was not ambiguous and the Bank therefore could not use reformation to correct its error.

So, is there a clear answer? No. The outcome will depend upon the facts and circumstances, and the area of law involved.

Do you have a "gotcha" story? Please let us know and maybe we can use it to teach others.

OBTAINING TRANSCRIPTS FROM A UNIVERSITY

This week a client asked if he would be able to obtain college transcripts after filing a bankruptcy. The college was holding the transcripts because of monies owed it.

The law in this area is both settled and unsettled. The 7th Circuit has ruled on a case involving a university and student in Wisconsin. The court found that the student has a right to a transcript and that the university's refusal to honor that right until that tuition was paid violated the automatic stay imposed by a bankruptcy filing. It also violated the discharge injunction which the student received in his bankruptcy case.

So the law is fairly settled here in Wisconsin, because Wisconsin courts must follow the decisions issued by the 7th circuit.

The law is not so settled if the university and student are located in another state. The 9th Circuit dealt with this issue for a student and school in Montana. It found that the university owned the transcript, as opposed to the student. This decision was issued over 30 years ago, and we have not checked to see if there have been any changes in the 9th Circuit since. But here in Wisconsin a student or former student filing bankruptcy should be able to obtain a copy of the transcript.



FORECLOSURE REDEMPTION PERIODS IN BANKRUPTCY

Under Wisconsin law, the borrower under a mortgage is entitled (after the entry of a foreclosure judgment) to a period of time before the property can be sold. That time is called the redemption period. During the redemption period, the borrower may sell the property or otherwise pay off the loan and redeem the property.

A bankruptcy stays all collection efforts by a creditor. This automatic stay is one of the principal benefits of a bankruptcy filing.

But the automatic stay does not stop the running of the redemption period. It does prevent the sale of the property if the redemption period expires during the bankruptcy case.

To counter the bankruptcy stay, the creditor could bring a motion for relief from stay. Depending upon the facts and circumstances, the stay could be lifted, terminated, modified or annulled. With the proper relief from the Court, the creditor could proceed with the foreclosure sale or with strict foreclosure if the property is subject to a land contract.

Because redemption periods continue to run during a bankruptcy case, it is often beneficial to the debtor to file prior to the entry of judgment. If the judgment has not been entered, the redemption period does not even begin to run. This means that after the bankruptcy, the creditor would still have to get a judgment and the debtor would still be entitled to the entire redemption period allowed by law.

Want to know more about redemption periods, foreclosure, or bankruptcy? Contact us and arrange a meeting for free coffee, free information, and an interesting discussion.

WHAT DAVE RAMSEY DOES NOT KNOW

Dave Ramsey is a radio financial advisor. His basic premise is that debt is bad, and everyone should work their way out of it. His advice is generally good and we agree with it, but Dave is not so astute when it comes to advising about the law.

This weekend a woman called his show about dunning calls she was receiving from a creditor. The creditor had likely purchased the debt from the original creditor at some fraction on the dollar. Dave estimated that fraction at 5%. He asked the woman what the original amount of the debt was, and she tried to tell him what the amount of the judgment was.

Ramsey told her the judgment amount was not important. But he was wrong. The judgment amount in this instance may be important for two reasons.

The first is that the judgment is a determination of the amount actually owed by the debtor. The original amount of the debt, or even what the debtor believes should be owed, is not necessarily relevant.

The second reason is that while the debt buyer likely paid only a fraction of the amount owed, one would have to know at what point in the process the debt was purchased. If the debt was purchased after the judgment, it was the amount owing at that time to which the fraction was applied to determine the sale price for the debt buyer.

Finally, Ramsey stated that debt buyers were "scum." While we deal with debt buyers all the time, and realize they are making a profit, or trying to, out of each transaction, that is the same thing Dave Ramsey is doing with his various endeavors. His books, courses, and media presentations are all designed to make a profit.

Profit is not bad. We all want to profit, even Dave Ramsey.



WHERE'S KREKELER ?



Mike Cerniglia has been awarded membership in the National Italian American Bar Association. Since 1983, NIABA has worked to improve the administration of justice and advance the interests of

Italian-American legal community.

Mike is one of only eleven lawyers in the state of Wisconsin to have membership in this organization.

State Bar's Annual Bankruptcy Update – Nov 6th and 7th

David will be speaking at the State Bar's Annual Bankruptcy Update in Madison on November 6 and in Milwaukee on November 7th. His presentation, with Attorney Paul Swanson, is titled "Game Changers: The Small Business Reorganization Act of 2019 and the Family Farm Relief Act of 2019." The new laws are designed to provide more relief for small businesses in financial trouble.

Between 2008 and 2015, less than 27% of Chapter 11 cases for small businesses ended with confirmed plans of reorganization. Under the new law a number of provisions that apply in Chapter 11 will not apply to small businesses. The goal is to make reorganization



more feasible for small businesses in trouble. If you would like to know more, contact us for a free coffee and coaching session.



Have a question? Idea for a future article?

If you ask for it – we will write it!

E-mail Wendy Baker at
wbaker@ks-lawfirm.com

UNREAL



MAN SUES PARENTS

Lots of people, probably most of us, at one time or another have had fights or arguments with our parents. But an Indiana man has taken it to another level, suing his parents for \$87,000.

The 40-year-old man had lived with his parents after his divorce. When he moved out and into his new place, he discovered that his twelve boxes of pornographic magazines and videos were missing. The parents admitted they had thrown them out for his own good.

When a local prosecutor refused to charge the parents criminally, the man filed suit in federal court.

And that is the naked truth.

KREKELER STROTHER, S.C.

ATTORNEYS AT LAW

2901 W. Beltline Highway, Suite 301
Madison, WI 53713

We Help Quickly.

Phone: 608/258-8555
Fax: 608/258-8299
www.ks-lawfirm.com

WE SOLVE FINANCIAL PROBLEMS.

This is an advertisement for legal services. We have been designated by Congress as a debt relief agency and can help people file for relief under the Bankruptcy Code.

WE HELP QUICKLY.

Copyright © 2016 KREKELER LAW, All rights reserved.