CASE LAW UPDATE

HONORABLE STEVEN RHODES VETERAN'S DAY CONFERENCE

November 11, 2019

SUPREME COURT REVIEW

1. *Taggart v. Lorenzen,* ___ US ___, 2019 WL 2331303 (2019) – Creditor may be held in civil contempt for violating discharge order where there is no fair ground for doubt as to whether order barred creditors conduct using our objectively reasonable basis to conclude that conduct might be lawful. Violation of Discharge Injunction is not strict liability but also does not allow alleged wrongdoer to escape consequences based on unreasonable, yet sincerely held the subjective belief.

2. *Mission Products Holdings, Inc. v. Tempnology LLC,* ___US ___, 2019 WL 2166392 (2019) – Rejection of license agreement by Debtor/Licensor does not terminate Licensee's right to use licensed intellectual property. Rejection constitutes breach of license agreement by licensor that cannot rescind rights of non-breaching licensee.

3. *Obduskey v. McCarthy & Holthus,* ____ US _____, 139 S.Ct. 1029 2019 WL 1264579 (2019) – Fair Debt Collection Practices Act does not apply to non-judicial foreclosures, other than specific provisions of Section 1692f that prohibit unfair or unconscionable means to collect debt. Attorney, acting solely to enforce security interest, is not subject to Section 1692g(b).

DISCHARGE INJUNCTION

4. *In re DiStefano,* Case No. 18-5001 (Bankr. W.D. Mi. 2019) – Finding of contempt requires proof that creditor deliberately acted with actual knowledge of bankruptcy case; and that creditor lacked any objectively reasonable basis to belief e that conduct might be lawful. Creditor violates injunction where letters sent to Debtor that objectively have effect of coercing Debtor to pay or making demand for payment.

5. *Roth v. Nationstar Mortgage, LLC,* 935 F.3d 1270 (11th Cir. 2019) – Question is whether communication has objective effect of pressuring Debtor to pay discharged debt. Discharge injunction prevents creditor from communicating with Debtor in effort to coerce payment. Discharge injunction does not prevent Debtor from voluntarily making payments to creditors.

6. *In re Bentley,* 2019 WL 4879330 (Bankr. E.D. Ky. 2019) – Creditor does not violate discharge injunction by refusing to repossess surrendered automobile.

7. *In re Deemer,* 602 BR 770 (Bankr. M.D. Al. 2019) – Creditor violates discharge injunction where Creditor refuses to repossess surrendered vehicle or release lien, forcing Debtor to indefinitely store and retain worthless vehicle.

8. *In re Sterling,* 933 F.3d 828 (7th Cir. 2019) – Party violates discharge injunction where party has knowledge of granting of discharge and undertakes actions which willfully violate post-discharge injunction. Although creditor did not take action to collect debt, creditor's attorney who had been pursuing collection for over 10 years (but who did not have notice of bankruptcy or discharge) continued to pursue collection resulting in Debtor's arrest.

9. *Moore v. Automotive Finance Corp.,* 2019 WL 3323328 (M.D. Al. 2019) – Creditor has no obligation to continue to do business with Debtor post-discharge and does not violate discharge injunction by refusing to do so.

SERVICE – RULE 7004

10. *In re Longwell,* 2019 WL 1293999 (Bankr. N.D. Ohio 2019) – Rule 3012 allows a Debtor to value a secured claim as part of the Chapter 13 Plan but requires that Plan be served on holder of claim in manner provided under Rule 7004. Creditor not properly served where Debtor served Plan on creditor 3 months after deadline to object to confirmation and confirmation hearing had passed.

11. *In re Drobney,* 583 BR 700 (Bankr. W.D. Mi. 2018) – "Federally Insured Depository Institution" includes FDIC insured institutions as defined in section 3(c)(2) of the Federal Deposit Insurance Act; and credit union insured by FCUA. Rule 7004 requires service by certified mail directed to named officer of institution; or to attorney who has already appeared in Bankruptcy case. Plan that proposed to cram down lien held by Federally Insured Depository Institution could not be confirmed where Certificate of Service indicated service by first class mail only.

12. *In re Panek-Hortman,* 593 B.R. 400 (Bankr. W.D.N.Y. 2018) – Rule 7004 requires service on insured depository institution by certified mail addressed to officer of institution. Certified mail addressed to on "Wells Fargo Bank, N.A., Attn: Timothy J. Sloan, President or CEO" but addressed "c/o" address for mortgage servicer. Debtor's use of address in foreclosure complaint did not comply as complaint did not establish an address that would satisfy the rigid requirement of certified mail to the address of the respondent.

CHAPTER 13 ATTORNEY FEES – CONVERTED CASES

13. *In re Freeman,* 2019 WL 5692665 (Bankr. E.D. Mi. 2019) – Section 330(a)(1) does not permit compensation to attorney for services rendered before conversion of case to Chapter 13 because Debtor's counsel is not "employed" under Section 327 or Section 1103. Section 330(a)(4)(B) allows Court in Chapter 12 or Chapter 13 to award reasonable compensation for representing Debtor's interests in case taking into account benefit and necessity of services, but that section is also limited to services in connection with the Chapter 13 phase and not including any services performed in connection with Chapter 7 phase.

CHAPTER 11 - ABSOLUTE PRIORITY RULE AND THE INDIVIDUAL DEBTOR

14. *Todeschi v. Juarez,* 2019 WL 3943814 (9th Cir. BAP 2019) – Individual Chapter 11 Plan may be confirmed over objection of unsecured creditors only if Debtor does not retain any property of estate. Recognizing split of authority, Court concluded that absolute priority rule prohibits retention of property "under the plan" and Debtor does not retain exempt property under plan but does so under applicable exemption statutes.

AUTOMATIC STAY

15. *Ragone v. Pizza Pan Elyria, LLC,* 2019 WL 2202941(Bankr. N.D. Ohio 2019) - Automatic stay prohibits continuation of judicial proceeding that was commenced pre-petition. Responsibility to comply with stay is placed on creditors. Debtor should not be required to take legal steps to recover property seized in violation of stay. Creditors must take necessary steps to halt or reverse any pending state Court actions or other collection efforts including garnishments, repossessions, or foreclosures

AUTOMATIC STAY – PASSIVE RETENTION

16. *In re Fulton*, 2019 WL 2521455 (7th Cir. 2019) – Creditor "exercises control over property of estate when creditor refuses to return property that creditor repossessed prepetition. Creditor must immediately return possession without requiring that Debtor bring turnover motion.

17. *In re Newberry*, 2019 WL 3857704 (Bankr. E.D. Mi. 2019) – Creditor violated stay by failing to withdraw Writ of Garnishment issued and served pre-petition but which allegedly attached to tax refund post-petition.

LIENS IMPAIRING EXEMPTIONS

18. *Wigger v. State Treasurer*, 2019 WL 1757135, *rehearing denied*, 2019 WL 1975845 (Bankr. W.D. Mi. 2019) – Judicial lien is one that is obtained by judgment, sequestration or other legal or equitable process, while statutory lien arises solely by force of statute on specified conditions. Lien must be statutory or judicial and cannot be both, and depends on origin of lien. Lien is not "judicial" merely because lien may be enforced in court proceedings, but statutory lien must arise solely by statute.

AVOIDANCE – SECTION 544 AND BFP

19. *Hardesty v. Horn*, 2019 WL 4780759 (Bankr. S.D. Ohio 2019) – Bankruptcy Trustee steps into shoes of hypothetical bona fide purchaser of real property and is clothed with whatever legal rights a bona fide purchaser would possess under state law. Bona Fide Purchaser is one who takes in good faith, for value, without actual or constructive notice of defect. Trustee's actual knowledge of transaction does not control, as outcome is dictated by constructive notice. While unrecorded deed is effective to transfer title, unrecorded deed is not enforceable against BFP.

CHAPTER 13 – PLAN FORM

20. *In re Malinowski*, 2019 WL 1504392 (Bankr. N.D. Ill. 2019) - Lender may not demand provisions in Chapter 13 Plan that are not authorized by Bankruptcy Code and are in conflict with district's standard-form Plan.

CHAPTER 13 – CONFIRMATION

21. *In re Scott*, Case No. 19-10104 (Bankr. S.D. Ohio 2019) – Bankruptcy Court cannot confirm Plan that does not meet with or contains provisions that are inconsistent with mandatory requirements of Code, even in absence of objection by affected creditor. Even assuming that creditor's silence is considered acceptance under Section 1325(a)(5), provisions were at odds with mandatory requirements of confirmed plan and Court lacks discretion to confirm plan that does not comply.

22. *Briggs v. Johns*, 2018 WL 4690394 (W.D. La. 2018) – Bankruptcy Court lacks authority to sua sponte deny confirmation of Plan. *Espinosa* requirement that Court review Plan to ensure compliance with Code applies only as to self-executing provisions of Code but does not require Court to ferret out every possible objection to confirmation. Self-executing provisions are those that apply without judicial involvement.

CHAPTER 13 – PLAN MODIFICATIONS

23. *In re Moore,* 2019 WL 1868609 (Bankr. E.D. Tn. 2019) – Modification is limited to matters that arise post-confirmation and which were unseen at time of confirmation. Debtor's inheritance post-confirmation qualified as change in circumstances permitting Trustee to seek to modify plan to increase distributions to creditors. Debtor's inheritance post-petition consisted property of estate that must be accounted for in any plan modification.

24. *In re Scholl,* 2019 WL 4187699 (Bankr. S.D. Ohio 2019) – Modifying plan to require Debtors to increase payments to unsecured creditors where Debtors, during plan, received large insurance payout, did not endanger "fresh start".

PROPERTY OF ESTATE – DEATH OF DEBTOR

25. *Cohen v. Chernushin,* 911 F.3d 1265 (10th Cir. 2018) – Debtor's death post-petition removes from property of estate any property Debtor and third party owned with rights of survivorship. Section 541 limits Estate's interest to interest Debtor had on petition date, and establishes clear cut date after which property acquired by Debtor does not become property of estate, but does not elevate Estate's interest to greater standing that Debtor had but for bankruptcy filing.

26. *In re Jaffe,* 932 F.3d 602 (7th Cir. 2019) – Tenant by entirety holds contingent future interest in property while other tenant is alive. Contingent interest is broadly considered an interest in real estate to which judgment lien could attach, even though judgment was against only one tenant.

PROPERTY OF ESTATE – THIRD PARTY CLAIMS

27. *In re Spiech Farms, LLC,* 2019 WL 2913270 (W.D. Mi. 2019) – Causes of action brought by creditor against Debtor's former officers and directors for allegedly improperly diverting assets that would have been available to pay creditors was disguised action to recover fraudulent transfers or for breach of fiduciary duty that belonged to Estate. Trustee is sole party authorized to bring actions unless action is one over which creditor has exclusive right to prosecute exclusive of Debtor. If recovery of by Creditor would preclude subsequent recovery by Debtor, action is property of estate.

PROPERTY OF ESTATE – "ROOTED IN PRE-BANKRUPTCY PAST"

28. *Church Joint Venture, LP v. Blasingame,* 2019 WL 1498192 (6th Cir BAP 2019) – Pre-petition cause of action is property of Bankruptcy Estate. Whether cause of action is pre- or post-petition depends on whether pre-petition facts gave rise to pre-petition violation of Debtor's rights. Action is bankruptcy property only if Debtor suffered a pre-petition injury.

29. *Davis v. Nasuti,* Case No. 10-24836 (Bankr. N.D. Ga. 2018) – Personal injury claim is property of estate if claim is sufficiently rooted in pre-bankruptcy past. Cause of action for product liability for defective medical device arose when device implanted, even if Debtor was unaware of any issues and had no problems with device pre-petition.

30. *Smith-Warren v. City of Sterling Heights,* 2019 WL 2996182 (E.D. Mi. 2019) – Pursuing cause of action that was not disclosed as an asset in previous bankruptcy filing creates inconsistency sufficient to support judicial estoppel. All facts supporting

Debtor's claims occurred prepetition but Debtor did not disclose to Bankruptcy Court any potential claims.

CHAPTER 13 - VOLUNTARY RETIREMENT CONTRIBUTIONS

31. *In re Penfound,* Case No. 18-48940 (Bankr. E.D. Mi. 2018), *affd,* 2019 WL 4573841 (E.D. Mi. 2019) – Section 1325(b) prohibits Debtors from excluding post-petition voluntary retirement contributions in calculating disposable income.

32. *Davis v. Helbling,* Case No. 17-12965 (Bankr. N.D. Ohio), *appeal pending* Case No. 19-3117 (6th Cir. 2019) - Section 1325(b) prohibits Debtors from excluding post-petition voluntary retirement contributions in calculating disposable income.

CHAPTER 13 - DIRECT PAYMENTS

33. *In re Mrdutt,* 2019 WL 2265030 (9th Cir. BAP 2019) – "Overwhelming majority" of Courts conclude that Direct pay secured claims are payments under plan for purposes of Section 1328. Debtor who has not made all direct payments has not completed payments under plan and is not eligible for discharge, even if Debtor has made all required payments to Trustee.

34. *In re Simmons,* 2019 WL 4793126 (Bankr. S.D. Ga. 2019) – Adopting minority position, Court concluded that failure to make post-petition direct mortgage payments as required by confirmed Plan. Post-petition mortgage payments paid directly by Debtor are not "payments under the Plan" and failure to make payments standing alone does not merit dismissal of case or denial of discharge. "Payments under the Plan" mean payments that Debtor is to make to Trustee.

CHAPTER 13 – EMI AND ATTORNEY FEES

35. *Credit Acceptance Corporation v. Thompson,* 2019 WL 4860971 (S.D. Ind. 2019) – Section 1325(a)(5)(B)(iii) does not require equal monthly installments from first month after confirmation where plan proposes to pay attorney fees in full ahead of secured claims. Section 1326(b)(1) requires payment of administrative claims "before or at the time or each payment to creditors". Three alternative theories have developed regarding EMI. First theory is that once payments to creditor commence, payments must be EMI but EMI payments do not commence at confirmation as long as plan proposed interim adequate protection payments. Second approach holds that secured creditor is not entitle to any payment until administrative expense are paid in full, allowing accelerated payment of attorney fees before any payment to secured creditors. Third approach is that EMI must commence at confirmation, as Section 1326(b)(1) does not trump EMI creditor, and EMI requirement does not allow for post-confirmation adequate protection payments in amount less than EMI payment.

36. *In re Shelton,* 2018 WL 4404631 (Bankr. N.D. Ill. 2018) - Plan that proposed lower initial payment to secured creditors to allow counsel to be paid, with payments to secured creditors increasing after counsel's fees have been paid in full, violates requirement of equal monthly installments under Section 1325 (a)(5). Provision of Section 1326 allows for payment of attorney's fees before or at time of payment to creditors does not override equal monthly installment requirement of Section 1325(a)(5).

EXPIRATION OF STAY

37. *In re Smith,* 2019 WL 417827 (Bankr. E.D. Tn. 2019) – Majority of courts conclude that expiration of stay applies only to Debtor and property of Debtor but not as to property of estate. Minority approach holds that stay terminates in all respects. Third approach terminates stay only as to continuation of proceedings commenced prior to bankruptcy that involve property of Debtor or property of estate.

38. *Smith v. State of Maine Bureau of Revenue Services,* 2018 WL 6520887 (1st Cir. 2018) – Expiration of stay terminates stay in entirety as to both Debtor and property of estate. Recognizing that majority of courts limit expiration to Debtor and not property of estate, text of statue is inartfully drafted, overall intent of Congress appears to have been to give second filers benefit stay temporarily and best way to accomplish that is to interpret Section First Modified Pre-Confirmation Chapter 13 Plan(c)(3)(A) to terminate entire stay including estate property.

CHAPTER 13 ELIGIBILITY

39. *Napolitano v. Rumbin,* 2019 WL 3890317 (Bankr. D. Ct. 2019) – Unsecured debts discharged in prior Chapter 7 are not included in calculation of unsecured debt in subsequent Chapter 13. Non-recourse lien that survived Debtor's Chapter 7 discharge is subject to bifurcation with amount of claim in excess of value of property being deemed unsecured and not included in calculation for purpose of Debt limits. Undersecured balance of secured claim is not allowed claim in Chapter 13 where Debtor previously received discharge in prior Chapter 7.

40. *Asset Management Holdings, LLC v. Hernandez,* 754 Fed. Appx. 632 (9th Cir. 2019) – Mortgage that was included in Debtor's Chapter 7 case not counted for eligibility purposes in subsequent Chapter 13 where amount of superior liens eclipsed value of property. Ability to strip lien under Section 506 was "readily ascertainable". Wholly unsecured second mortgage discharged in prior Chapter 7 case is not counted as secured or unsecured debt for eligibility purposes

FRAUDULENT TRANSFERS – CONSTRUCTIVE FRAUD

41. *Keates v. Bullitt County Sanitation District,* 2019 WL 1965917 (Bankr. W.D. Ky. 2019) – Transfer is constructively fraudulent where Debtor received less than reasonably equivalent value and was insolvent on the date of the transfer or became insolvent as a result of the transfer. Debtor received little or no value in exchange for transfer of $14,000 to defendant in exchange for Debtor's oral agreement to hook up sewer lines where defendant did not connect systems even though defendant had capacity to do so.

42. *Gocha v. Downs,* 2019 WL 654295 (Bankr. W.D. Mi. 2019) – Reasonably Equivalent Value is question of fact based on facts and circumstances of particular case. Debtor did not receive value in exchange for deposit of funds withdrawn from Debtor's retirement account into account owned solely by Debtor's spouse where there was no enforceable agreement between Debtor and spouse to use funds to purchase new home nor any other agreement by spouse to provide any benefit to Debtor.

43. *Lim v. Manuel,* 2019 WL 4010388 (Bankr. E. D. Mi. 2019) – Debtor's pre-petition transfer to spouse of accrued Social Security payments is potentially avoidable.

Although Social Security benefits never became part of estate, transfer may nonetheless be avoidable as constructively fraudulent.

DEATH OF DEBTOR – GENERALLY

44. *In re Marks*, 2019 WL 343815 (Bankr. E.D. Mi. 2019) When Debtor dies, only person who can appear on Debtor's behalf is official representative of probate estate. Death of Debtor post-confirmation does not require dismissal if personal representative duly appointed by probate Court substitutes in place of Debtor. Case dismissed where personal representative filed, and later withdrew, motion for substitution

CHAPTER 13 – LATE FILED PROOFS OF CLAIM

45. *In re Schaller,* Case No. 17-54117 (Bankr. E.D. Mi. 2018) – Prior to December 1, 2017, there was no basis for a Court in Chapter 13 to allow claim filed after claim bar date. Rule 3002(c)(6) added new exception where Debtor does not file a matrix identifying creditors and creditor does not have reasonable opportunity to file claim after learning of case. Debtor's original matrix did not include creditor although Debtor and Creditor were engaged in pre-petition litigation of claims and counterclaims. Creditor first learned of bankruptcy 10 days before bar date when creditor's State Court attorney received e-mail from Debtor's State Court attorney advising that counsel had just learned of bankruptcy case and that scheduled hearing needed to be adjourned. Creditor's State Court counsel advised Creditor who hired Bankruptcy Attorney to investigate and file claim. Creditor filed claim 30 days later, 20 days after bar date. Creditor was not included on matrix preventing creditor from receiving timely notice, and credit did not have reasonable opportunity to file claim before expiration of bar date. Although case pre-dated December 1, 2017, and Rule revision normally applies only to cases filed after effective date of rule, Advisory Committee notes indicated that Court had discretion to apply rule even in cases filed before December 1. Claim allowed as timely filed under Rule 3002(c)(6).

46. *Brenner's Restoration, Inc. v, Somerville,* 2019 WL 4923928 (Bankr. D. Md. 2019) – In Chapter 13, even untimely filed claim is allows absent objection. Rule 3002(c)(6) allows Court to extend deadline before or after deadline expires if Debtor does not timely file list of creditor names and addresses required by Rule 1007(a). Creditor not entitled to extension where Debtor filed creditor list even though list admittedly did not include creditor. Although creditor did not have sufficient notice in time to file proof of claim, insufficient of notice standing alone is not basis to extend deadline unless insufficiency is caused either by Debtor not filing list of creditors or Debtor listing creditor at foreign address. Creditor who did not have sufficient notice in time to file claim holds debt that is not "provided for in the plan" and is not subject to discharge under Section 1328 and may be enforced after conclusion of Chapter 13 case.

47. *In re Vanderpol,* 2019 WL 4880065 (Bankr. D. Colo. 2019) – Rule 3002(c) allows Court to extend deadline to file proof of claim if notice was insufficient because debtor did not file list of creditors names and addresses required by Rule 1007(a). If Debtor does not file matrix, case will automatically be dismissed on the 46th day post-petition which is before expiration of claims bar date. Although plain language of Rule does not apply where Debtor files incomplete matrix, "Congress must have intended" Rule to require a full and complete Matrix. Incomplete matrix does not cut off Court's ability

to extend time for Creditor who was omitted from Matrix and did not otherwise have notice of the case in time to file a Proof of Claim

CHAPTER 13 – DIRT FOR DEBT

48. *In re Keokuk,* 2019 WL 1531843 (Bankr. E.D. Ky. 2019) – Section 1325(a)(5) requires that Debtor either pay value of secured claim or surrender collateral. Lender held security interest in mobile home and real estate on which home was located. Debtor proposed to surrender mobile home and "cramdown" secured claim to value of real estate to be paid in full over the term of the Plan. Plan complied with Section 1325(a)(5)(B)(i) by providing that lender retained liens until full payment order entry of discharge; and Section 325(a)(5)(B)(ii) by providing that the value of property distributed as of effective date of the Plan was not less than allowed amount of secured claim. Debtor may distribute non-cash property to pay all allowed secured claims. Chapter 13 does not prohibit "property-for-debt" Plans. However, Plan incorrectly proposed to reduce secured claim by "replacement value" of mobile home which is value used where Debtor proposes to retain asset. Where Debtor proposes to transfer assets as partial payment, valuation must take into account liquidation value of collateral including fees related to sale and costs of ownership pending liquidation. Court denied confirmation but set matter for additional proceedings to determine value of mobile home for purposes of crediting debt under Section 506

CHAPTER 13 – 60 MONTH PLAN LENGTH

49. *Touroo v. Terry,* 2019 WL 2590751 (E.D. Mi. 2019) – Bankruptcy Court has discretion to allow Debtor to complete obligations after expiration of 60 month term. Section 1327 prohibits confirming Plan that runs more than 60 months but does not preclude allowing Debtor additional time to complete obligations that came due during 60 month plan. Factors to consider include whether Debtor substantially complied with plan including diligence in making payment; feasibility of completing Plan if permitted and length of time needed and amount of arrearage due; whether cure would prejudice creditors; whether debtor's failure to complete plan is excusable rather than culpable; and availability and relative equities of other remedies such as conversion or hardship discharge.

CHAPTER 13 – EMPLOYMENT OF NON-BANKRUPTCY COUNSEL

50. *In re Griffin,* Case No. 19-0020 (Bankr. W.D. Mi. 2019) - Recognizing split of authority on whether Section 327 applies to Debtor's request to employ special (non-bankruptcy) counsel, Court concluded that under circumstances of this case Debtor's proposed employment of Special Counsel is not subject to Section 327 approval. Possibility that special counsel fees would be paid from proceeds of litigation which was property of estate did not require approval of retention in first instance. Standing to pursue cause of action in first instance was unclear and Court would not appoint counsel and perhaps implicitly determine standing of Debtor. Application clear that Debtor sought counsel to represent Debtor, not estate and not trustee; and entry of an order approving retention may cause confusion or conflict.

51. *In re Blume*, 2018 WL 5778057 (Bankr. E.D. Mi. 2018) - Recognizing split of authority on whether Section 327 applies to Debtor's request to employ special (non-

bankruptcy) counsel, Court concluded that under circumstances of this case Debtor's proposed employment of Special Counsel is not subject to Section 327 approval. Debtor did not seek authority to pay, and will not pay, counsel during pendency of Chapter 13 case and will not be paying or seeking to pay counsel from any property of bankruptcy estate

FRAUDULENT TRANSFERS – COLLEGE EXPENSES

52. *Pergament v. Brooklyn Law School*, 595 BR 6 (E.D.N.Y. 2019) – Fraudulent transfer can be recovered from initial transferee without regard to transferee's good faith. Subsequent transferees are liable only to extent transferee took for value and in good faith. Initial transferee is first person or entity to exercise control over property and right to put money or property to transferee's own purpose. Transferee who is defined as one who has no dominion or control over assets and can do nothing more than transmit funds to third party is not "transferee". Tuition payments made for adult children while children could still withdraw and receive refund are not transfers to or for benefit of College. College did not acquire any interest in or right to funds until drop-add period expired. Until that point, College was holding funds for benefit of child and not for College's own account and College could not take or use funds for its own purposes until directed to do so by Parent or Child and then funds were applied directly to Child's account. College was mere conduit as to pre-paid tuition expenses. If children withdrew from College, funds would have been returned to Child who could use them as Child pleased. However, payments made after Child registered for classes and that were not refundable did not implicate "mere conduit" because College received funds for its own use and benefit