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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

6	In re:)	BAP No.	OR-08-1339-MoJuR
)		
7	MATTHEW WAAG,)	Bk. No.	08-32547-ELP
)		
8)	Adv. No.	08-03172-ELP
	Debtor.)		
9	_____)		
)		
10	MATTHEW WAAG,)		
)		
11	Appellant,)		
)		
12	v.)	O P I N I O N	
)		
13	DEVONNA PERMANN and JOHN)		
	PERMANN,)		
14)		
	Appellees. ¹)		
15	_____)		

Argued and Submitted by Videoconference
on September 23, 2009

Filed - October 14, 2009

Appeal from the United States Bankruptcy Court
for the District of Oregon

Hon. Elizabeth L. Perris, Bankruptcy Judge, Presiding.

Before: MONTALI, JURY, and RIMEL,² Bankruptcy Judges.

¹ On June 29, 2009, counsel for the appellees sent a letter to the Clerk indicating that they would not be filing a brief or participating in oral argument.

² Hon. Whitney Rimel, U.S. Bankruptcy Judge for the Eastern District of California, sitting by designation.

1 MONTALI, Bankruptcy Judge:

2
3 This appeal presents the panel with an issue of first
4 impression in the Ninth Circuit: Does 11 U.S.C. § 1328(a)(4),³
5 which excepts from discharge certain debts for "restitution, or
6 damages, awarded in a civil action against the debtor as a result
7 of willful or malicious injury," require that a judgment for
8 damages be rendered prior to the petition date? Concluding that
9 section 1328(a)(4) does not require the existence of a
10 prepetition judgment, the bankruptcy court denied the debtor's
11 motion to dismiss a nondischargeability adversary proceeding
12 against him. We AFFIRM.

13 **I. FACTS**

14 The relevant facts are undisputed. In 2006, DeVonna and
15 John Permann ("Plaintiffs"), individually and as representatives
16 of the estate of David J. Permann, filed a wrongful death action
17 against Matthew Aaron Waag ("Debtor") and others in Montana state
18 court. Before any trial in the state court action and before
19 entry of any judgment, Debtor filed his chapter 13 case (on May
20 30, 2008) in Oregon.

21 On August 28, 2008, Plaintiffs filed a complaint alleging
22 that their claim against Debtor was excepted from discharge
23 pursuant to section 523(a)(6), averring that Debtor, acting in
24 concert with others, engaged in a course of conduct (including
25

26 ³ Unless otherwise indicated, all chapter, section and rule
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037, as
enacted and promulgated after the effective date of The
Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,
Pub. L. 109-8, 119 Stat. 23 ("BAPCPA"), because the case from
which this appeal arises was filed after its effective date
(generally October 17, 2005).

1 assault and battery) resulting in the death of David J. Permann.
2 On September 22, 2008, Plaintiffs filed a second amended
3 complaint alleging that their claim was excepted from discharge
4 under both section 523(a)(6) and section 1328(a)(4).⁴

5 In a motion to dismiss the nondischargeability adversary
6 proceeding, Debtor argued that the language of section 1328(a)(4)
7 excepting debts for damages "awarded in a civil action" required
8 the existence of a prepetition judgment. Citing Parsons v. Byrd
9 (In re Byrd), 388 B.R. 875 (Bankr. C.D. Ill. 2007), Debtor
10 contended that Plaintiffs could not, as a matter of law, assert a
11 claim for relief under section 1328(a)(4) because the Montana
12 wrongful death action was not adjudicated or otherwise reduced to
13 judgment prior to the petition date.

14 Plaintiffs opposed the motion to dismiss, citing Buckley v.
15 Taylor (In re Taylor), 388 B.R. 115 (Bankr. M.D. Pa. 2008), for
16 the proposition that Congress' use of "awarded" in section
17 1328(a)(4) does not require the plaintiff to obtain a judgment
18 before the petition date.⁵ At a hearing on the motion to
19 dismiss, the bankruptcy court followed the Taylor decision,
20 concluding that the plain language of section 1328(a)(4) does not
21 require entry of a prepetition judgment.

23 ⁴ Section 1328(a)(4), not section 523(a)(6), governs the
24 dischargeability of Plaintiffs' in this chapter 13 case. Debts
25 excepted from discharge under section 523(a) may be discharged in
26 chapter 13 unless expressly excluded from discharge in section
1328(a)(2). Section 523(a)(6) provides a broader exclusion from
discharge than section 1328(a)(4) and is not incorporated into
section 1328(a)(2).

27 ⁵ Byrd and Taylor are the only two published cases
28 addressing this issue. One other case holds (like Byrd) that a
prepetition judgment is a prerequisite for a finding of
nondischargeability under section 1328(a)(4), but the case is
designated "Not For Publication" and is available only from the
electronic legal databases. In re Nuttall, 2007 WL 128896
(Bankr. D. N.J., Jan. 11, 2007).

1 On December 10, 2008, the bankruptcy court entered its order
2 denying the motion to dismiss. On December 23, 2008, Debtor
3 filed its notice of appeal and a motion for leave to appeal. On
4 January 7, 2009, we issued a notice of deficient appeal
5 indicating that the notice of appeal appeared untimely. In
6 response to a subsequent Clerk's Order Re Prosecution of Appeal,
7 Debtor filed a response that the bankruptcy clerk's office was
8 inaccessible due to inclement weather on the last day of the 10-
9 period for filing the notice of appeal. See Fed. R. Bankr. P.
10 8002(a) and Fed. R. Bankr. P. 9006(a). After confirming that the
11 bankruptcy court was closed on that date, we issued an order on
12 April 8, 2009, that the notice of appeal was timely filed on
13 December 23, 2008.

14 In our April 8 order, we also granted Debtor's motion for
15 leave to appeal, holding that leave to appeal the interlocutory
16 order was appropriate under Lompa v. Price (In re Price), 79 B.R.
17 888, 889 (9th Cir. BAP 1987), aff'd, 871 F.2d 97 (9th Cir. 1989).

18 II. ISSUE

19 Is a prepetition judgment a required predicate for the
20 application of the exception to discharge under section
21 1328(a)(4)?

22 III. STANDARD OF REVIEW

23 The issue presented in this appeal is purely one of law and
24 statutory construction; no factual dispute exists. We review
25 issues of statutory construction and conclusions of law,
26 including interpretation of provisions of the Bankruptcy Code, de
27 novo. Einstein/Noah Bagel Corp. v. Smith (In re BCE W., L.P.),
28 319 F.3d 1166, 1170 (9th Cir. 2003); Mendez v. Salven (In re

1 Mendez), 367 B.R. 109, 113 (9th Cir. BAP 2007).

2 Similarly, while denial of a motion to dismiss an adversary
3 proceeding for failure to state a claim is generally
4 interlocutory and thus rarely reviewed by us, any review of such
5 a denial is de novo. Meek v. County of Riverside, 183 F.3d 962,
6 965 (9th Cir. 1999) (an appellate court's review of a denial of a
7 motion under FRCP 12(b)(6) is reviewed de novo); see also Jensen
8 v. City of Oxnard, 145 F.3d 1078, 1082 (9th Cir. 1998) (same).

9 **IV. JURISDICTION**

10 The bankruptcy court had jurisdiction under 28 U.S.C.
11 § 157(b)(2)(I) and § 1334. We have jurisdiction under 28 U.S.C.
12 § 158(a)(3), as we have granted leave to Debtor to appeal the
13 interlocutory order denying his motion to dismiss the adversary
14 proceeding.

15 **V. DISCUSSION**

16 A. BAPCPA Revisions to Section 1328(a)

17 Prior to BAPCPA, a chapter 13 debtor could discharge many of
18 the debts which would have been nondischargeable in chapter 7 or
19 chapter 11. Specifically, before BAPCPA, section 1328(a)(2)
20 excepted from a chapter 13 discharge those debts specified in
21 section 523(a)(5), (8), or (9). See 11 U.S.C. § 1328(a)(2)
22 (2000). In 2005, acting to restrict the "superdischarge" of
23 chapter 13, Congress expanded the list of nondischargeable debts
24 in section 1328(a)(2) to include, inter alia, those described in
25 section 523(a)(2), (a)(3), or (a)(4).⁶

26
27 ⁶ The BAPCPA version of section 1328(a) states:
28 (continued...)

1 In addition to incorporating many of section 523's
2 exceptions to discharge into section 1328(a)(2), Congress added
3 another exception to a chapter 13 discharge: section 1328(a)(4),
4 which excepts from the chapter 13 discharge a debt "for
5 restitution, or damages, awarded in a civil action against the
6 debtor as a result of willful or malicious injury by the debtor
7 that caused personal injury to an individual or the death of an
8 individual." This subsection is similar to section 523(a)(6),
9 which Congress chose not to incorporate into subsection
10 1328(a)(2). Section 523(a)(6) excepts from discharge a debt "for
11 willful and malicious injury by the debtor to another entity or

12
13 ⁶(...continued)

14 (a) Subject to subsection (d), as soon as practicable after
15 completion by the debtor of all payments under the plan, and
16 in the case of a debtor who is required by a judicial or
17 administrative order, or by statute, to pay a domestic
18 support obligation, after such debtor certifies that all
19 amounts payable under such order or such statute that are
20 due on or before the date of the certification (including
amounts due before the petition was filed, but only to the
extent provided for by the plan) have been paid, unless the
court approves a written waiver of discharge executed by the
debtor after the order for relief under this chapter, the
court shall grant the debtor a discharge of all debts
provided for by the plan or disallowed under section 502 of
this title, except any debt --

21 (1) provided for under section 1322(b)(5);

22 (2) of the kind specified in section 507(a)(8)(C) or in
23 paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or
(9) of section 523(a);

24 (3) for restitution, or a criminal fine, included in a
sentence on the debtor's conviction of a crime; or

25 (4) for restitution, or damages, awarded in a civil
26 action against the debtor as a result of willful or
27 malicious injury by the debtor that caused personal
injury to an individual or the death of an individual.

28 11 U.S.C. § 1328(a).

1 to the property of another entity[.]” See 11 U.S.C. § 523(a)(6).

2 Section 1328(a)(4) differs from section 523(a)(6) in three
3 significant ways: (1) it applies to “willful or malicious”
4 injuries instead of to “willful and malicious” injuries; (2) it
5 applies to personal injuries or death and not to injuries to
6 property; and (3) it applies to restitution and damages “awarded
7 in a civil action against the debtor” as a result of such
8 injuries.

9 B. The Conflicting Interpretations of Section 1328(a)(4)

10 As noted previously, only two published cases, Byrd and
11 Taylor, directly address the issue presented here, with
12 diametrically opposed holdings. The court in Byrd, 388 B.R. at
13 877, held that a chapter 13 debtor can discharge a debt for
14 willful or malicious personal injury or death if damages or
15 restitution were not awarded on such a claim prior to the
16 petition date. In contrast, the Taylor court held that a
17 prepetition judgment is not a prerequisite to prevailing on a
18 section 1328(a)(4) nondischargeability claim. Taylor, 388 B.R.
19 at 118-121. In denying Debtor’s motion to dismiss, the
20 bankruptcy court here followed the holding of Taylor. We also
21 find the reasoning of Taylor to be more persuasive, for the
22 reasons set forth below.

23 **1. Grammatical Construction**

24 The courts in Byrd and Taylor disagreed about the
25 grammatical role of “awarded” in section 1328(a)(4), with the
26 Byrd court treating it as a past tense verb and the Taylor court
27 treating it as a past participle modifying “restitution” and
28 “damages.” In Byrd, the court held that the “new section

1 1328(a)(4) is worded in the past tense . . . Thus, a pre-petition
2 award of restitution or damages for willful or malicious injury
3 is a prerequisite to a finding of non-dischargeability under
4 § 1328(a)(4).” Byrd, 388 B.R. at 877 (emphasis added), citing 8
5 Collier on Bankruptcy ¶ 1328.02[3][k] (Alan N. Resnick & Henry J.
6 Sommer, eds., 15th ed. rev. 2006);⁷ and Keith M. Lundin, Chapter
7 13 Bankruptcy (3rd ed. 2000 & Supp. 2006). The Byrd court also
8 observed:

9 Section 1328(a)(4) is clearly worded differently than
10 11 U.S.C. § 523(a)(6), and, had Congress intended a
11 different meaning, it could easily have worded
12 § 1328(a)(4) to include restitution or damages as being
13 non-dischargeable regardless of the entry of a judgment
14 in a civil proceeding prior to the filing of a Chapter
15 13 bankruptcy petition. Given the plain meaning of
16 § 1328(a)(4), the Court must find that the debt of the
17 Plaintiff in the instant case is simply a contingent,
18 unliquidated debt that is allowable in the Debtor’s
19 Chapter 13 bankruptcy, and not subject to exception
20 from discharge.

21 Byrd, 388 B.R. at 877.⁸

22 ⁷ Both the 2006 and 2009 revised editions of Collier
23 provide in section 1328.02[3][k] that “[i]t is also unclear
24 whether a debt would be nondischargeable [under section
25 1328(a)(4)] if no award had yet been made in a civil action when
26 the bankruptcy petition was filed. If Congress had intended for
27 a debt to be nondischargeable even if not yet awarded, the words
28 ‘awarded in’ would appear to be surplusage.”

⁸ The holding in Nuttall is similar to that in Byrd,
although Nuttall was designated as “Not for Publication.” The
Nuttall court stated:

Although Congress may not have intended for victims of
intentional torts to be subject to discharge of their
debts where the Debtor beats them in a race to the
courthouse, this Court finds that the plain language of
the statute requiring that the debt be “awarded” means
that the debt is subject to discharge until there has
been a determination of liability, which has not yet
occurred in the matter before this Court.

(continued...)

1 The Taylor court rejected the analysis of the Byrd and
2 Nuttall courts:

3 Whether Congress intended to distinguish between claims
4 for personal injury that had been reduced to judgment
5 on the date of filing must be considered within the
6 context of § 1328(a) as well as within the Bankruptcy
7 Code as a whole. After analyzing this provision in the
8 context of exceptions to discharge listed in § 1328(a)
9 and the Code as a whole, I must disagree with the
10 interpretation of § 1328(a)(4) that the Nuttall and
11 Byrd courts find to be plain. Nuttall and Byrd hold
that because Congress used the word "awarded," it must
have intended to provide one treatment for a judgment
entered before a petition is filed and a different
treatment for a claim that is disputed or contingent on
the date of the petition. However, I believe this
interpretation is erroneous and ignores the grammatical
structure of § 1328(a)(4).

12 Taylor, 388 B.R. at 119 (emphasis added).

13 The Taylor court then examined the use of the word "awarded"
14 both grammatically and in the context of the entire subsection.
15 Unlike the Byrd and Nuttall courts, the court found that
16 "awarded" -- like the "included" in subsection 1328(a)(3) -- was
17 not being used as a past tense verb, but as a past participial
18 phrase as an adjective modifying the nouns "restitution" and
19 "damages." "A past participle is simply the form of the verb
20 used in the phrase and does not suggest past action." Taylor,
21 388 B.R. at 119. As noted in one leading grammar treatise, both
22 present and past participles "can be used for referring to past
23 present or future time" and the past participle "signifies
24 'perfectiveness' or completion, but is not restricted to past
25 time." S. Chalker and E. Weiner, The Oxford Dictionary of English

26
27 ⁸(...continued)
28 Nuttall, 2007 WL 128896 at *3.

1 Grammar at pages 282 and 286-87 (1994) (emphasis added).⁹

2 As a past participle, "awarded" merely signifies
3 "completion" or an entry of a restitution or damages award at the
4 time of the determination of nondischargeability. Taylor, 288
5 B.R. at 119. Nothing in phraseology of section 1328(a)(4)
6 requires, either implicitly or explicitly, entry of a prepetition
7 judgment. Id. The contention by Debtor and the holding of Byrd
8 that "awarded" is a past tense verb requiring a prepetition
9 judgment is not convincing.

10 2. Comparison of Subsections 1328 (a) (3) and (a) (4)

11 Taylor's grammatical deconstruction of "awarded" is further
12 supported by a review of section 1328(a)(3), which was added to
13 the Bankruptcy Code in 1994 after the Supreme Court held in Penn.
14 Dept. of Public Welfare v. Davenport, 495 U.S. 552 (1990), that a
15 chapter 13 debtor could discharge a criminal restitution
16 obligation arising from a criminal prosecution. The Taylor court
17 emphasized the parallelism between section 1328 (a)(4) and
18 section 1328(a)(3), which excepts from discharge debts for
19 restitution or a criminal fine "included in" a sentence on a
20 debtor's conviction of a crime:

21 A similar construction is found in the prior paragraph
22 of the section, § 1328(a)(3), which provides that
23 restitution and criminal fines "included in a sentence
24 on the debtor's conviction of a crime" also are not
dischargeable. In § 1328(a)(3) and (4), the words

25 ⁹ Another grammar treatise supports the Taylor court's
26 analysis: "In traditional grammar terms, English has two
27 participles, traditionally called *present* and *past*. . . . The
names *present* and *past* are misnomers, since either participle can
28 occur in what is technically a present or past tense. . . . The
two kinds of participles are frequently used as adjectives in
English . . ." Pam Peters, The Cambridge Guide to English Usage
at page 409 (2004) (italics in original; emphasis added).

1 "included" and "awarded" do not function as past-tense
2 verbs, but are past participles in phrases that define
3 and limit the types of restitution, fines and damages
4 that are non-dischargeable. Restitution and criminal
5 fines are non-dischargeable under § 1328(a)(3) only if
6 they are part of a debtor's sentence. Likewise,
7 restitution and damages are non-dischargeable under
8 § 1328(a)(4) only if they arise from a willful or
9 malicious injury that causes personal injury or death.
10 By reading "awarded" as part of a participial phrase,
11 the word is not rendered mere surplusage, but part of a
12 phrase that describes what types of "restitution" and
13 "damage" awards are protected from discharge.

14 Taylor, 388 B.R. at 119 (emphasis added).

15 Both the Taylor court and the bankruptcy court here examined
16 "numerous cases" construing section 1328(a)(3), but could not
17 identify one reported case in sixteen years holding that
18 restitution or fines in a criminal proceeding were dischargeable
19 simply because a debtor filed a bankruptcy petition before the
20 criminal sentence was imposed. Id. at 120. "If 'awarded' in
21 § 1328(a)(4) requires that a judgment be entered before a
22 petition is filed, the same logic would apply in § 1328(a)(3)
23 when the phrase 'included in the debtor's sentence upon
24 conviction of a crime' is considered." Id. We agree with the
25 Taylor court and the bankruptcy court that these subsections are
26 parallel and designed to distinguish between restitution imposed
27 ("included") in a criminal case and restitution imposed
28 ("awarded") in a civil case. Neither requires a prepetition
imposition of such restitution.

29 **3. Interpretations of A Prior Similar Provision of** 30 **Section 523**

31 Even though the Taylor court found no decisions interpreting
32 the meaning of "included" in section 1328(a)(3), it did find two
33 decisions interpreting similar language in a prior version of

1 section 523(a) (9). Taylor, 388 B.R. at 120. In the 1984 version
2 of that section, the discharge did not apply to "any debt . . .
3 to the extent that such debt arises from a judgment . . . entered
4 in a court of record against a debtor wherein liability was . . .
5 a result of the debtor's operation of a motor vehicle while
6 illegally intoxicated." In both cases, the bankruptcy courts
7 held that the judgments could be obtained postpetition. See
8 Young v. Rose (In re Rose), 86 B.R. 86 (Bankr. E.D. Mich. 1988)
9 and Burch v. Tyler (In re Tyler), 98 B.R. 396 (Bankr. N.D. Ill.
10 1989).

11 Although not mentioned by the Taylor court, the Ninth
12 Circuit similarly held in Stackhouse v. Hudson (In re Hudson),
13 859 F.2d 1418, 1420 (9th Cir. 1988), that a creditor's drunk
14 driving claim did not have to be reduced to judgment or consent
15 decree before a debtor filed for bankruptcy in order to have
16 consequent debt declared nondischargeable under the prior version
17 of section 523(a) (9):

18 Although the code section describes the subject debt as
19 one which arises from a judgment or consent decree, the
20 statute does not specifically address whether a claim
21 must be reduced to judgment or consent decree before
22 the debtor files for bankruptcy. This had encouraged
23 debtor parties to argue that the statute requires
24 reduction of the claim to judgment or consent decree
25 prior to bankruptcy. However, the bankruptcy courts
26 addressing this issue have, until this case,
27 unanimously concluded that the language of § 523(a) (9)
28 does not require that a claim be reduced to judgment or
consent decree prior to the offender's bankruptcy.

Hudson, 859 F.2d at 1420 (emphasis added).

The Ninth Circuit noted that any other interpretation would
lead to an absurd result: an unjust and unwise race to the
courthouse, a race that "would give the debtor a clear advantage

1 since it takes considerably longer to obtain a judgment than it
2 does to file bankruptcy." Id. (citations and internal quotations
3 omitted). Remarking on Congress's clear intent "to prevent
4 drunken drivers from escaping liability by discharging debts in
5 bankruptcy," the Ninth Circuit held that "adherence to a
6 requirement that a creditor first obtain a 'judgment or consent
7 decree' would effectively nullify the statute. Such an
8 interpretation would merely encourage drunk drivers to file
9 preemptively for bankruptcy once it became clear that they would
10 be held civilly accountable for their actions." Id.

11 We believe that the Ninth Circuit would apply a similar
12 analysis to section 1328(a)(4). We agree with its conclusion
13 that requiring a prepetition judgment of liability renders the
14 subsection "practically useless." "Only in cases of legal
15 malpractice will prepetition judgments ever be entered. This
16 Court will not presume Congress to have intended to sabotage its
17 legislation and create such an absurdity." Id. at 1420-21
18 (quotations and citations omitted).

19 **4. Our Interpretation of Section 1328(a)(4)**

20 Based on the grammatical structure of section 1328(a)(4),
21 the context in which it is used, and its policy and object, we
22 agree with the Taylor court that it does not differentiate
23 between a judgment entered prepetition and one entered
24 postpetition. Lamie v. U.S. Trustee, 540 U.S. 526, 534 (2004)
25 ("When the statute's language is plain, the sole function of the
26 court -- at least where the disposition required by the text is
27 not absurd -- is to enforce it according to its terms."); Grogan
28 v. Garner, 498 U.S. 279, 288 n.13 (1991) ("In determining the

1 meaning of the statute, we look not only to the particular
2 statutory language but to the design of the statute as a whole
3 and its object and policy.”) (quoting Crandon v. United States,
4 494 U.S. 152, 158 (1990)). Section 1328(a)(4) does not require,
5 explicitly or implicitly, a prepetition judgment. The bankruptcy
6 court did not err in enforcing the statute by its clear terms and
7 denying the motion to dismiss.

8 Even if the language were not plain and clear, we will
9 adhere to the Ninth Circuit’s guidance in Hudson to avoid an
10 absurd result: a race to the courthouse in which a willful or
11 malicious tortfeasor could eliminate an otherwise
12 nondischargeable debt simply by filing a chapter 13 petition
13 prior to entry of judgment. Two victims, otherwise similarly
14 situated, could end up with dissimilar results, based simply on
15 the timing of the entry of their respective judgments. We agree
16 with the Taylor court that this would be an absurd result.¹⁰

17 As the Taylor court so aptly stated, Byrd’s narrow reading
18 of the statute is inconsistent with Congress’s intent in BAPCPA
19 to limit the broad discharge previously available to chapter 13
20 debtors:

21 There is no reason to assume that Congress intended to
22 differentiate between creditors who were able to obtain
23 a judgment against a debtor before the bankruptcy
24 filing and those that were stymied in their efforts to
obtain redress for their injuries by the invocation of
the automatic stay. Congress was concerned that

25 ¹⁰ At oral argument, Debtor’s counsel argued that the
26 absurd result could be avoided simply by dismissing on bad faith
27 grounds a case filed just prior to judgment. We will not leave
28 willful tort victims to the unpredictability of a discretionary
call on specific facts when our interpretation of section
1328(a)(4) as written leads to what we believe to be the proper
result intended by Congress.

1 debtors who committed certain wrongful acts not escape
2 financial responsibility for those acts. Accordingly,
3 if § 1328(a)(4) is interpreted as discriminating
4 between creditors who have obtained a judgment before a
petition is filed and those who have not, the provision
is absurd and cannot be construed literally.

5 Taylor, 388 B.R. at 122. The bankruptcy court's decision here,
6 like that of the Taylor court, complies with the plain language
7 of the statute and avoids an absurd result.

8 **VI. CONCLUSION**

9 For the foregoing reasons, we AFFIRM.