
2015-2016 Florida Bankruptcy Case Law Update

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Lien Stripping

In re Bremer

2016 WL 1072501 (Bankr. M.D. Fla. March 17, 2016) (Jackson, J.)

- In Chapter 13 case, debtor sought to strip off both of creditor's mortgages based on negative valuation of investment property, which negative valuation resulted from debtor burying debris on property instead of cleaning it up. Bankruptcy Court accepted debtor's appraisal, but, relying on equity, did not accept the reduction for the damage the debtor himself caused to the property that resulted in the negative valuation.

In re Orlando

2015 WL 6684927 (Bankr. M.D. Fla. Oct. 30, 2015) (Jackson, J.)

- In Chapter 7 case, creditor sought to set aside lien strip order under Rule 60(b)(4) because of debtor's failure to properly serve creditor. However, creditor failed to notice the hearing on its motion, which resulted in the hearing being scheduled after the issuance of *Caulkett*. Despite *Caulkett*, the Bankruptcy Court denied the motion because the creditor's lack of diligence was an "exceptional situation."

In re Whiting

Case No. 3:14-bk-2004-PMG (Bankr. M.D. Fla. Oct. 8, 2015) (Glenn, J.)

- In Chapter 13 case, creditor whose lien was stripped in adversary proceeding was not entitled to unsecured claim because debtor's in personam liability was discharged in prior Chapter 7 case.

In re Chartier

2015 WL 7074294 (Bankr. M.D. Fla. Aug. 13, 2015) (Jackson, J.)

- Intervening change in case law (i.e. *Caulkett*) was not a basis for relief from a judgment under Rule 60(b).

Motion to Dismiss

In re Mojo Brands Media, LLC

2016 WL 1072508 (Bankr. M.D. Fla. March 16, 2016) (Jackson, J.)

- Creditor with minority interest in debtor filed motion to dismiss Chapter 7 case because the filing was not properly authorized under the debtor's operating agreement. Bankruptcy Court denied motion, finding that creditor denied motion, finding that creditor effectively ratified the filing by actively participating in the case and waiting three months to file motion.

In re Arafa

2015 WL 7251317 (Bankr. M.D. Fla. Nov. 16, 2015) (Jackson, J.)

- Bankruptcy Court grants motion to dismiss Chapter 7 case for abuse under Section 707(b). Bankruptcy Court finds debtor had a meaningful ability to repay his debts where his income and several categories of expenses exceeded the IRS standards and debtor's expenses included luxury vehicles and theme park passes.

Exemptions

In re Rivera – Cintron

2015 WL 4749217 (Bankr. M.D. Fla. Aug. 12, 2015) (Jennemann, J.)

- Trustee's objection to exemption in IRA, where trustee asserted that the funds in the IRA were not rolled over from debtor's 401(k) in compliance with applicable IRS provisions, overruled.

In re Oelschlager

2015 WL 4769004 (Bankr. M.D. Fla. Aug. 13, 2015) (Jennemann, J.)

- In Chapter 7 case, trustee objected to debtors' claimed exemption in the full value of a Hyundai Santa Fe as a "professionally prescribed health aid" under Fla. Stat. 222.25(2). Bankruptcy Court sustained trustee's objection, finding that "[w]ith great sympathy for the debtors' situation," the unmodified vehicle did not qualify for the exemption.

In re Jans

2016 WL 741884 (Bankr. M.D. Feb. 24, 2016) (Delano, J.)

- Debtor's earnings, which were primarily from real estate sales as an independent contractor, satisfied the exception under F.S. 222.11 for earnings of a head of family.

In re Belmont

2015 WL 7717203 (Bankr. M.D. Fla. Nov. 24, 2015) (Jackson, J.)

- Where debtor withdrew a portion of funds received as a tax refund, and 55.22% of the tax refund was exempt as the Earned Income Credit, 55.22% of the remaining amount in the account is exempt (debtor attempted to claim *all* remaining funds as exempt, urging the Bankruptcy Court to deem that the funds withdrawn pre-petition were all from the non-exempt portion of the funds).

Motion for Reconsideration/Relief from Judgment

A large number of cases addressed the issue of motions for reconsideration or motions for relief from Judgment under Rules 9023, 9024 and Rules 59 and 60. In all cases, the motions were denied and the Bankruptcy Court explained that the specific grounds of "new evidence" or "fraud" must be shown. These are not the chance for a second bite at the apple.

- *In re Dawkins*
2016 WL 792566 (Bankr. M.D. Fla. Feb. 12, 2016) (Jackson, J.)
- *In re Rivera*
2016 WL 513900 (Bankr. M.D. Feb. 9, 2016) (Delano, J.)
- *In re Smith*
2015 WL 9165844 (Bankr. M.D. Fla. Dec. 11, 2015) (Jennemann, J.)
541 B.R. 914 (Bankr. M.D. Fla. Dec. 11, 2015) (Jennemann, J.)
- *In re Narcisi*
539 B.R. 385 (Bankr. M.D. Oct. 8, 2015) (Delano, J.)

- *In re McCuan*
2015 WL 7717422 (Bankr. M.D. Nov. 30, 2015) (Delano, J.)
- *In re England*
2015 WL 6738627 (Bankr. M.D. Nov. 4, 2015) (Delano, J.)

See also:

In re Chartier, 2015 WL 7074294 (Bankr. M.D. Fla. Aug. 13, 2015) (Jackson, J.)
In re Orlando 2015 WL 6684927 (Bankr. M.D. Fla. Oct. 30, 2015) (Jackson, J.)

Discharge/Dischargeability/Revocation

In re Reynolds

2016 WL 590379 (Bankr. M.D. Fla. Feb. 12, 2016) (Jennemann, J.)

- Bankruptcy Court finds that only one of 3 separate obligations are non-dischargeable under Section 523(a)(15).

In re Brown

541 B.R. 906 (Bankr. M.D. Fla. Dec. 8, 2015) (Jennemann, J.)

- Bankruptcy Court finds that a judgment owed to debtor's minor child which resulted from debtor closing a College Savings Plan and using the funds for her own use is not dischargeable under Section 523(a)(15).

In re Clark

542 B.R. 311 (Bankr. M.D. Fla. Dec. 15, 2015) (Williamson, C.J.)

- Plaintiff alleged that debtor knowingly transferred assets with the intent to hinder Plaintiff's collection efforts and therefore the obligation is non-dischargeable under Section 523(a)(6). The Bankruptcy Court disagreed and distinguished the Eleventh Circuit precedent in *Jennings* because, in this case, there was no record evidence the debtor acted willfully and maliciously and there was a legitimate purpose for the transfer.

In re Demasi

542 B.R. 13 (Bankr. M.D. Fla. Nov. 13, 2015) (Williamson, C.J.)

- Debtor's prior medical practices sought to except claims against the debtor from discharge based on an alleged fraudulent misrepresentation concerning the poor performance the practice's management company. The Bankruptcy Court entered judgment for the debtor as the medical practices did not meet their burden in proving that the debtor had a financial interest in the management company, that the debtor concealed an audit of the management company, and that the debtor's statement that the management company was "doing a good job" was an actionable misrepresentation.

In re Narcisi

539 B.R. 385 (Bankr. M.D. Oct. 8, 2015) (Delano, J.)

- Creditors held a 20 year old judgment against debtor-auctioneer based on debtor's failure to properly auction creditors' property. Creditors sought to except the judgment from discharge based on fraud, embezzlement, and larceny. The embezzlement claim did not relate back for purposes of amendment, the debtor did not act in a fiduciary capacity as an auctioneer, and the debtor did not commit fraud by breaching the auction contract. Thus the Bankruptcy Court found in favor of the debtor.

In re Juerakhan

544 B.R. 711 (Bankr. M.D. Fla. Feb. 4, 2016) (Williamson, C.J.)

- Creditor sought to except \$159,100 debt owed by debtor-bail bondsman from discharge under section 523(a)(4) based on the debtor's intentional failure to uphold his fiduciary duty to the creditor. Creditor engaged debtor to post bail through bail bonds for creditor's son, and provided a \$100,000 cashier's check as collateral. Once creditor's son appeared in Bankruptcy Court, the debtor was to return the \$100,000. Instead, the debtor used the money for the operations of his business. The Bankruptcy Court granted summary judgment for the creditor, finding that a bail bondsman is a fiduciary under Florida Statutes, chapter 648, and that the debtor's actions actually constitute a crime under Florida law.

In re Quevedo

2016 WL 801386 (Bankr. M.D. Fla. Feb. 12, 2016) (Jackson, J.)

- Debtor may not revoke his own discharge. Section 727(d) permits only the trustee, a creditor of the United States Trustee to seek revocation of a discharge.

In re Barhatkov

2015 WL 6834996 (Bankr. M.D. Fla. Nov. 3, 2015) (Jackson, J.)

- Bankruptcy Court refuses debtor's effort to reopen case to revoke discharge and Bankruptcy Court imposes a 2-year injunction from filing.

Claims

In re Hause

2015 WL 7251662 (Bankr. M.D. Fla. Nov. 13, 2015) (Jackson, J.)

- In Chapter 13 case, former spouse's claim not entitled to DSO priority under Section 507(a)(1) as the obligation is in the nature of a property settlement and not support.

In re Shell's Seafood Restaurant, Inc.

544 B.R. 228 (Bankr. M.D. Fla. Dec. 22, 2015) (McEwen, J.)

- While Section 507(d) provides that a party that is subrogated to the rights of a holder of a priority claim is *not* entitled to priority, Bankruptcy Court finds that the party was the assignee, and not a subrogee, of the employee's 507(a)(4) wage priority claims and is entitled to priority.

In re Mullen

2015 WL 8252928 (Bankr. M.D. Fla. Nov. 16, 2015) (Glenn, J.)

- Late filed claim disallowed in Chapter 13 case.

In re Kraz

539 B.R. 887 (Bankr. M.D. Fla. Feb. 4, 2016) (Williamson, C.J.)

- In Chapter 11 case Bankruptcy Court granted summary judgment for debtor finding that creditor not entitled to accrue interest or attorneys fees and costs as part of its claim, based on the Bankruptcy Court's interpretation of the state court judgment.

Chapter 11

In re Marshall Creek Retail Investors, LLC

2015 WL 3485996 (Bankr. M.D. Fla. May 18, 2015) (Glenn, J.)

- Bankruptcy Court confirms Chapter 11 plan over feasibility objection and approves injunction for guarantors where centerpiece of plan is a settlement with the largest creditor which provides that released individuals will contribute over \$500,000 to fund the plan.

In re 8 Mile Ranch

2015 WL 5307389 (Bankr. M.D. Fla. Sept. 10, 2015) (Jennemann, J.)

- After entry of confirmation order, creditors sought to compel reorganized debtor to transfer about 1,300 acres of real property on which the creditors held a mortgage, but the debtor objected to the turnover of 160 acres based on a sketch of the property used in creating the mortgage. The Bankruptcy Court determined that it could hear parol evidence based on the latent ambiguity in the confirmation order as to what property was to be conveyed, and thus looked to the debtor's schedules, the plan, the mortgage, and testimony surrounding the formation of the mortgage. Based on its review, the Bankruptcy Court held that, the error in the legal description notwithstanding, the 160 acres was always intended be transferred under the plan.

In re HWA Properties, Inc.

544 B.R. 231 (Bankr. M.D. Fla. Jan. 6, 2016) (Delano, J.)

- Bankruptcy Court denied confirmation because plan included third-party bar order, but the bar order was not necessary and the third-parties were not making a "substantial contribution" to the reorganization.

Chapter 13

In re Harmon

2015 WL 8249995 (Bankr. M.D. Fla. Dec. 2, 2015) (Glenn, J.)

In re Montalvo

2016 WL 769997 (Bankr. M.D. Fla. Feb. 25, 2016) (Jennemann, J.)

Property of the Estate

In re Cypress Health

536 B.R. 334 (Bankr. N.D. Fla. Aug. 19, 2015) (Jennemann, J.)

- In Chapter 11 case, Bankruptcy Court grants debtor's motion for turnover, holding that \$50,000 held in escrow for sale that did not close is property of the estate.

In re Rodriguez

542 B.R. 604 (Bankr. M.D. Fla. Dec. 7, 2015) (Jackson, J.)

- Bankruptcy Court finds that cash held in Debtor's safe deposit box was property of debtor's daughter.

Surrender

In re Townsend

2015 WL 5157505 (Bankr. M.D. Fla. Sept. 1, 2015) (Delano, J.)

- Creditor filed motion to reopen case and to compel debtors to surrender real property in compliance with debtor's intentions. Debtors transferred property to third-party, and both defended "vigorously defend[ed]" the foreclosure case. Confirmed plan stated that the surrender was not intended to abrogate debtors' state law contract rights. Bankruptcy Court denied motion.

In re Grimm

Case No. 6:09-bk-12873-ABB (Bankr. M.D. Fla. Sept. 28, 2015) (Briskman, J.)

- Like *Townsend*, debtors also "vigorously defended" foreclosure action. Continued defense of the foreclosure litigation was in violation of the debtors' duties under section 521

Miscellaneous

In re Teltronics

540 B.R. 481 (Bankr. M.D. Fla. Nov. 3, 2015) (Williamson, C.J.)

- In a fraudulent transfer case, plaintiff, the trustee of a Chapter 11 liquidating trust, failed to prove insolvency and that debtor received less than reasonably equivalent value.

In re Carter

2015 WL 6684795 (Bankr. M.D. Fla. Oct. 5, 2015) (Jackson, J.)

- Court analyzes whether excusable neglect applies under Rule 9006(b)(1).

In re Chitwood

2015 WL 7180624 (Bankr. M.D. Fla. July 23, 2015) (Jackson, J.)

- For Court to permit an exception to the general rule that all records be made available to the public, the party requesting the sealing of documents must show a sufficient commercial reason or that the document contains “scandalous or defamatory” information within Code Section 107(b). A simple “no seal, no deal” provision will not suffice.

In re Nica Holdings

810 F.3d 781 (11th Cir. Dec. 17, 2015)

- Assignee under assignment for the benefit of creditors (ABC) cannot place assignor into bankruptcy without specific authority to do so by assignor when ABC is initiated.

Slater v. U.S. Steel Corp.

2016 WL 723012 (11th Cir. Feb. 24, 2016)

- In employment discrimination case, plaintiff was judicially estopped from pursuing action because she failed to disclose the claim in her Chapter 7 case. Even after amending her schedules and SOFA, the district court still granted summary judgment in favor of the defendant based on judicial estoppel. Eleventh Circuit affirmed based on its past precedent. Judge Tjoflat with an excellent specially concurring opinion.

In re McClean

794 F.3d 1313 (11th Cir. July 23, 2015)

- Filing a proof of claim in a Chapter 13 case based on a debt that was previously discharged in a Chapter 7 case is a violation of the Chapter 7 discharge injunction.