
Florida Bankruptcy Case Law Update

January 2014 Cases
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Eleventh Circuit Opinions

In re Steffen

---F. App'x---, 2014 WL 170860 (11th Cir. Jan. 16, 2014)

- Section/Rule/Keywords: 11 U.S.C. § 363, Fed. R. Bankr. P. 6004, stay pending appeal
- Summary: Bankruptcy court authorized sale of property pursuant to contract providing for closing date four days after bankruptcy court's order was entered. At buyer's request, sale was consummated two days early. Six days after sale, debtor moved for stay pending appeal. Bankruptcy court denied debtor's motion. District court dismissed debtor's appeal and denied reconsideration. Eleventh Circuit affirmed district court's dismissal order, explaining that the plain language of § 363 prevents appellate courts from invalidating sales authorized by the bankruptcy court absent a stay pending appeal. Thus, failure to obtain a stay renders appeal of a § 363 authorization moot. Moreover, the fact that closing had already occurred when bankruptcy court considered debtor's motion was of no consequence because the district court could have invalidated the sale if a stay was obtained.

Durango-Georgia Paper Co. v. H.G. Estate, LLC

739 F.3d 1263 (11th Cir. Jan. 07, 2014)

- Section/Rule/Keywords: Pension Benefit Guaranty Corporation, Employee Retirement Income Security Act of 1974, contributing sponsor, controlled group
- Summary: Pension Benefit Guaranty Corporation brought an action in Gilman Paper Company's ("Paper Company") bankruptcy case to terminate their pension plan. Liquidating trustee of Paper Company's bankruptcy estate ("Trustee") sued members of Paper Company's controlled group for subsequent termination liability. District court granted motion to dismiss Trustee's complaint filed by a member of Paper Company's controlled group. Trustee appealed. Eleventh

circuit affirmed the district court, explaining Trustee's complaint is properly dismissed for failure to state a claim where the complaint is brought for the benefit of the bankruptcy estate and unsecured creditors, as opposed to plan beneficiaries.

District Court Opinions

Sain v. Isles at Bayshore Master Ass'n, Inc.,

2014 WL 357200 (S.D. Fla. Jan. 31, 2014) (Rosenbaum, J.)

- Section/Rule/Keywords: final order, collateral-order doctrine, interlocutory appeal, 28 U.S.C. § 1292
- Summary: Debtors filed motions to value, seeking to strip association liens from real property encumbered by first and second mortgage. Associations filed limited objection, asserting that despite any potential lien-stripping, they retain their right to collect past-due assessments and may pursue those payments from subsequent purchasers of the real property. Without determining priority of liens, bankruptcy court ruled in favor of associations and denied debtor's motion for reconsideration. District court denied debtors' motion for leave to appeal, reasoning that because the bankruptcy court reserved ruling on priority of liens, their order was not final. District court held the collateral-order doctrine is inapplicable because the bankruptcy court determined an issue independent of the merits of the proceeding and the issues raised on appeal will not be implicated until after conclusion of the bankruptcy litigation. District court refused to grant debtors an interlocutory appeal under 28 U.S.C. § 1292 because there was no showing that any § 1292(b) elements have been met or that any exigent circumstance exists.

General Lending Corp. v. Cancio,

---B.R.---, 2014 WL 320367 (S.D. Fla. Jan. 29, 2014) (Marra, J.)

- Section/Rule/Keywords: 11 U.S.C. § 109, doctrine of laches, good faith
- Summary: Creditor filed an objection to confirmation on the basis of good faith and a motion to dismiss based on the eligibility requirements of 11 U.S.C. § 109. Bankruptcy court overruled objection to confirmation and denied motion to dismiss, citing an absence of proof of egregious conduct and explaining the motion to dismiss was filed sufficiently late in the case to be barred by the

doctrine of laches. District court affirmed, concluding § 109 debt limitations define chapter 13 eligibility but if a creditor fails to raise an objection to a debtor's eligibility timely, the issue may be waived. District court further explained that it cannot conclude bankruptcy court's findings regarding good faith were clearly erroneous because the bankruptcy court considered appropriate factors and is in the best position to judge credibility and weigh evidence.

In re Lorenzo,

2014 WL 273130 (S.D. Fla. Jan. 24, 2014) (Marra, J.)

- Section/Rule/Keywords: 11 U.S.C. § 350, 28 U.S.C. § 158, 28 U.S.C. § 1292, request for counsel, interlocutory appeal, motion to reopen case
- Summary: Bankruptcy court granted debtor's motion to reopen case pursuant to 11 U.S.C. § 350 to add omitted debt held by appellant, directing debtor to file an adversary proceeding to determine the debt's dischargeability. Appellant filed a notice of appeal of bankruptcy court's order granting motion to reopen case. Debtor filed a motion to dismiss, arguing bankruptcy court's reopening order is interlocutory. District court explained 28 U.S.C. § 158(a) authorizes a district court to grant leave to appeal an interlocutory order from the bankruptcy court, but does not provide district court with any criteria for determining how to exercise its discretionary authority to grant a leave to appeal. District court thus looked to 28 U.S.C. § 1292(b) for guidance, concluding appellant has not met the standards for a discretionary interlocutory appeal. District court granted debtor's motion to dismiss and denied appellant's request for leave to appeal.

In re Bifani,

2014 WL 272920 (M.D. Fla. Jan. 23, 2014) (Whittemore, J.)

- Section/Rule/Keywords: fraudulent transfer, stay pending appeal, Fed. R. Bankr. P. 8005
- Summary: Trustee instituted adversary proceeding against appellant, seeking to avoid certain transfers of real property as fraudulent and to impose an equitable lien. Bankruptcy court granted trustee's subsequent motion for summary judgment in part, denying the rest as moot. While Appellant's appeal of order granting summary judgment was pending, bankruptcy court granted trustee authority to sell real property recovered through adversary proceeding. Appellant filed a motion to stay sale of real property with the district court. District court denied appellant's motion, explaining that by not seeking stay in the bankruptcy

court she failed to comply with Fed. R. Bankr. P. 8005. Even if appellant had complied, stay is inappropriate because appellant failed to establish substantial likelihood of success on the merits of her appeal and failed to show that trustee and other creditors would not suffer substantial harm if sale is stayed.

Stonebridge Gardens Section Two v. Campbell,

2014 WL 229191 (S.D. Fla. Jan. 21, 2014) (Rosenbaum, J.)

- Section/Rule/Keywords: lien strip, 11 U.S.C. § 506, “first in time, first in right”
- Summary: Debtor filed motion to value and determine secured status of lien on real property, seeking to strip-off second lien held by condominium association. Bankruptcy court granted motion, concluding that because first lien exceeds the value of the property, association’s wholly unsecured junior lien can be stripped pursuant to 11 U.S.C. § 506(d). Association appealed. District court affirmed bankruptcy court, explaining that in Florida, the applicable rule governing priority of lien interests is first in time, first in right. Because the first mortgage was recorded thirteen years before the association’s lien, the first mortgage is superior; bankruptcy court did not err by stripping off association’s lien.

Tobkin v. The Florida Bar,

---B.R.---, 2014 WL 105375 (S.D. Fla. Jan. 10, 2014) (Marra, J.)

- Section/Rule/Keywords: 11 U.S.C. § 523, dischargeability, governmental unit
- Summary: Florida Supreme Court entered judgment in favor of the Florida Bar disbarring debtor and ordering debtor to pay both restitution and costs. Debtor commenced chapter 13 bankruptcy case. Florida Bar filed adversary proceeding, contesting dischargeability of cost judgment. Bankruptcy court issued an opinion determining the cost judgment is non-dischargeable under 11 U.S.C. § 523(a)(7). Debtor appealed, seeking review of bankruptcy court’s opinion and denial of his motion for reconsideration. District court affirmed bankruptcy court, explaining that as an arm of the Supreme Court of Florida, the Florida Bar falls within Bankruptcy Code definition of a “governmental unit” and the cost judgment is a fine or penalty, not compensation for actual pecuniary loss.

Hammer v. Bank of America,

2014 WL 31302 (M.D. Fla. Jan. 03, 2014) (Hernandez Covington, J.)

- Section/Rule/Keywords: 42 U.S.C. § 1983, Fed. R. Civ. P. 12, Rooker Feldman Doctrine
- Summary: Plaintiffs filed a complaint pursuant to 42 U.S.C. § 1983 against Bank of America arguing that the bank, acting under color of state law, in concert with Sheriff's Office, threatened to violate their constitutionally protected property interest in their tenancy. Bank of America sought dismissal of the complaint pursuant to the Rooker Feldman doctrine and Fed. R. Civ. P. 12(b). District court declined to apply Rooker Feldman doctrine because Bank of America neither provided analysis of relevant factors nor supplied state court documentation. District court did, however, grant Bank of America's motion to dismiss, explaining that mere participation in a state court lawsuit does not translate into becoming a § 1983 state actor.

Bankruptcy Court Opinions

In re Falck,

---B.R.---, 2014 WL 322522 (Bankr. S.D. Fla. Jan. 29, 2014) (Olson, J.)

- Section/Rule/Keywords: 11 U.S.C. § 110, bankruptcy petition preparer, statutory sanctions, injunctive relief
- Summary: Bankruptcy petition preparers ("BPPs") ordered to appear before bankruptcy court to explain why sanctions should not be imposed for numerous violations of 11 U.S.C. § 110. Bankruptcy court concluded BPPs' illegal conduct in debtor's case is their normal practice, and was repeated in hundreds of other cases. Bankruptcy court found that sanctions, penalties, and injunctive relief were appropriate and ordered BPPs to (1) pay United States Trustee fines of \$5,000, (2) disgorge \$7,600 in fees received from debtor, (3) pay \$15,200 in statutory sanctions, (4) compensate debtor for all damages in excess of \$7,600, and (5) pay all reasonable attorney's fees and costs. BPPs were prohibited from preparing or assisting in the preparation of bankruptcy petitions or any documents prepared in connection with a bankruptcy case in any district in the United States.

In re Stanton,

---B.R.---, 2014 WL 238671 (Bankr. S.D. Fla. Jan. 22, 2014) (Williamson, J.)

- Section/Rule/Keywords: tax lien, Fla. Stat. § 319.22, entrustment doctrine, 26 U.S.C. § 6323
- Summary: Debtor's ex-wife claims, via marital settlement agreement, interest in cars seized pursuant to a tax lien in favor of the United States. Ex-wife had possession of cars when seized, but never obtained title. Bankruptcy court entered summary judgment in favor of United States, explaining that per Fla. Stat. § 319.22, a person cannot claim ownership in a car unless they have title. Bankruptcy court further concluded that entrustment doctrine exception to Fla. Stat. § 319.22 was inapplicable because ex-wife was not a dealer and the cars were not entrusted with her to resell to a third party. United States was also entitled to priority over ex-wife because tax lien both recorded and noticed prior to marital settlement agreement and ex-wife not a purchaser as contemplated at 26 U.S.C. § 6323.

In re TOUSA, Inc.,

503 B.R. 499 (Bankr. S.D. Fla. Jan. 16, 2014) (Olson, J.)

- Section/Rule/Keywords: 11 U.S.C. § 365, 11 U.S.C. § 502, and 11 U.S.C. § 101, contract rejection, damages
- Summary: Trustee of the TOUSA Liquidation Trust ("TOUSA") received bankruptcy court authorization to reject certain contracts with Superior Homes and Investments, Inc. ("Superior"). Superior filed proofs of claim seeking damages relating to rejection of the contracts. TOUSA filed an objection to Superior's claim and a motion for summary judgment on their objection. After analysis of the effect of TOUSA's rejection of the contracts under 11 U.S.C. §§ 365(g), 502(c), and 101(5), bankruptcy court granted TOUSA's motion for summary judgment as to any claim for money damages. Bankruptcy court explained that contracts between TOUSA and Superior contain valid and enforceable limitation provision, providing, essentially, that in the event of a default, Superior waived any right to seek or obtain money damages from TOUSA.

In re Bumps,

2014 WL 185336 (Bankr. M.D. Fla. Jan. 15, 2014) (Briskman, J.)

- Section/Rule/Keywords: 11 U.S.C. § 523, student loans, discharge
- Summary: Debtor filed complaint seeking discharge of \$46,139.56 in student loan debt pursuant to 11 U.S.C. § 523(a)(8). After considering the amount of time debtor will likely remain in the work force, her earning capacity, and most recent work history, bankruptcy court concluded debtor's income and expenses illustrate a persistent inability to maintain a minimal standard of living if forced to pay the loan. However, because debtor's finances provide for regular monthly disposable income, she was, in fact, able to pay a portion of the loan. Bankruptcy court thus granted debtor a partial discharge of \$12,000 with the remainder of her student loan held non-dischargeable.

In re Pearlman,

2014 WL 103214 (Bankr. M.D. Fla. Jan. 10, 2014) (Jennemann, J.)

- Section/Rule/Keywords: reconsideration, settlement agreement, Fed. R. Civ. P. 60(c), 11 U.S.C. § 502
- Summary: Trustee filed motion for reconsideration, asking bankruptcy court to reconsider order entered four years ago approving settlement with certain investors in Ponzi scheme. Bankruptcy court denied trustee's motion, explaining that the one-year time bar at Fed. R. Civ. P. 60(c) prohibited granting trustee's untimely motion for reconsideration. Even if trustee's motion was not time-barred, bankruptcy court did not find adequate cause under 11 U.S.C. § 502(j) for reconsideration. Settlement agreements are compromises and just because rules change or someone gets a better or worse deal, public policy dictates that settlements, once final, are binding.

In re Salas,

2014 WL 92728 (Bankr. Jan. 9, 2014) (Cristol, J.)

- Section/Rule/Keywords: 11 U.S.C. § 1325, 11 U.S.C. § 707, current monthly income, disposable income
- Summary: Debtor included a deduction for mortgage payments in his disposable income calculation. While the mortgage payments were, in fact, contractually due, debtor was not making payments. Instead, debtor was trying to modify the

mortgage loan outside of his plan. Trustee filed a motion to dismiss debtor's case. Bankruptcy court denied trustee's motion, explaining 11 U.S.C. § 707(b)(2) provides that current monthly income shall be reduced by the debtor's average monthly payments on account of secured debts; it does not expressly qualify or limit the kind of secured debt that may be deducted from current monthly income. This case involved a first mortgage debt that was contractually due, on property that had not been surrendered. Case law and the bankruptcy code allow this deduction regardless of whether debtor is presently making payments.

In re Schurtenberger,

2014 WL 92828 (Bankr. Jan. 9, 2014) (Cristol, J.)

- Section/Rule/Keywords: 11 U.S.C. § 532(a)(2)(A), dischargeability, Florida Deceptive and Unfair Trade Practices Act
- Summary: Plaintiffs filed a complaint pursuant to 11 U.S.C. § 532(a)(2)(A), objecting to discharge of a debt resulting from a pre-petition arbitration award. Plaintiffs filed a motion for summary judgment, seeking a determination the debt was obtained by debtor through false pretenses, false representations or actual fraud. Debtor filed a response in opposition to the motion and a cross motion for summary judgment. Bankruptcy court denied plaintiffs' motion and granted debtor's cross motion, explaining the issues at stake have, in fact, already been litigated and determined at arbitration. Because the arbitration panel did not find any justifiable reliance or intent to deceive, bankruptcy court concluded it is collaterally estopped from reaching a different conclusion.

In re Burgess,

503 B.R. 154, 2014 WL 47020 (Bankr. M.D. Fla. Jan 7, 2014) (Williamson, J.)

- Section/Rule/Keywords: contempt, automatic stay, 11 U.S.C. § 362
- Summary: State court entered contempt order in civil case, incarcerating debtor until he submitted a full and complete fact information sheet and paid sanctions. Debtor filed an emergency motion asking bankruptcy court to rule the automatic stay prohibited state court from continuing the contempt order incarcerating him. Bankruptcy court denied debtor's motion, explaining that because sanctions could be neither purged nor reduced, the contempt order is criminal and punitive in nature, designed to vindicate the court's authority. Pursuant to 11 U.S.C. § 362(b), the automatic stay does not prohibit commencement or continuation of a criminal action or proceeding against a debtor.