
Florida Bankruptcy Case Law Update

May 2013 Cases

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Supreme Court Opinions

Bullock v. BankChampaign, N.A

133 S. Ct. 1754 (May 13, 2013)

- Section/Rule/Keywords: 523(a)(4), defalcation, gross recklessness
- Summary: Debtor served as the trustee of family trusts, from which he borrowed money for various purposes and then paid the money back to the trusts with interest. In a dischargeability action by successor trustee against the debtor, the debtor's obligations to the trusts were deemed nondischargeable because they arose from the debtor's defalcation while serving as a fiduciary of the trusts. After the district court and circuit court affirmed, the Supreme Court held that, for purposes of dischargeability, defalcation requires a state of mind of knowledge or gross recklessness of the fiduciary in acting contrary to the duties required of the fiduciary. The Court remanded the case for further proceedings, if necessary, consistent with its ruling on the scienter issue.

Eleventh Circuit Opinions

In re Desmarais

2013 WL 1831884 (11th Cir. May 1, 2013) (designated unpublished)

- Section/Rule/Keywords: 523(a)(6), nondischargeable
- Summary: Creditor's debt originally arose from a breach of contract. Creditor later obtained a judgment against debtor based on a fraudulent transfer in violation of Fla. Stat. 726.105(1)(a). After the debtor filed bankruptcy, creditor sought to except the debt from discharge under §523(a)(6). The bankruptcy court held the debt was nondischargeable applying principles of collateral estoppel. The district court affirmed, holding that as a result of the debtor's wrongful conduct, the creditor's contract claim ripened into a judgment for

fraudulent transfer. The Eleventh Circuit affirmed the district court and its reliance upon *In re Jennings*, 670 F. 3d 1329 (11th Cir. 2012).

Fisher Island Ltd. V. Fisher Island Investments, Inc.

2013 WL 1831728 (11th Cir. May 1, 2013) (designated unpublished)

- Section/Rule/Keywords: 28 U.S.C. § 158, Rule 8001(a), standing, timeliness of appeal, excusable neglect.
- Summary: Eleventh Circuit held that party is not an “aggrieved party” and therefore lacked standing to appeal. The party (Fisher Island Limited) seeking to appeal was a part-owner of one of several alleged debtors against whom involuntary petitions were filed. It had signed the promissory note owed by the alleged debtors to the petitioning creditors which contained an indemnification clause. Alleged debtors successfully moved the bankruptcy court to require the petitioning creditors to post a \$100,000 bond for potential liability under Section 303(e). The creditors appealed that ruling, which was affirmed by the district court. Fisher Island Limited then for the first time filed a motion in the district court requesting an extension of the time to file a notice of appeal and filed an untimely notice of appeal. The district court denied the motion and dismissed the appeal. The Eleventh Circuit affirmed, holding that Fisher Island “suffered no change in its property, burdens or rights as a result of the bond order.” Because it presented no evidence that the creditors have looked, anticipated looking, or could look to it to satisfy the creditor’s attorney’s fees, Fisher Island Limited was not a person aggrieved and therefore lacked standing.

The court also found that the notice of appeal was untimely and that Fisher Island Limited did not meet the standard of “excusable neglect”, stating that counsel’s inattention to filing deadlines or an attorney’s strategic miscalculations do not constitute excusable neglect.

In re Northlake Foods, Inc.

--- F.3d ----, 2013 WL 1859118 (11th Cir. May 6, 2013)

- Section/Rule/Keywords: 548(a)(1)(B)(i), reasonably equivalent value
- Summary: Distribution trustee under confirmed plan sued debtor’s shareholder for fraudulent transfer. Shareholder received a transfer of \$94,429 from debtor which was a payment pursuant to a shareholder agreement executed 15 years earlier that provided that if the debtor changed its tax status from a “C”

corporation to an “S” corporation, debtor would pay the shareholder the amount of the tax the shareholder would be obligated to pay as a result of the corporate tax status change. The bankruptcy court entered judgment on the pleadings for the defendant shareholder finding the shareholder agreement constituted reasonably equivalent value. The district court affirmed. The Eleventh Circuit affirmed, finding that the shareholders agreement constituted reasonably equivalent value because it secured the consent of the shareholder to shift to “S” corporation status whenever it determined it was advantageous to do so. The agreement also benefitted the debtor by freeing up cash in the year of the tax status change and shifting it to the next year. The court rejected the plaintiff’s argument that a hearing was necessary to determine the reasonableness of the value. The court held that reasonably equivalent value does not require a dollar for dollar transaction. The benefits were evident in the shareholders agreement attached to the complaint, and where the complaint contained no allegation asserting why the benefits did not constitute reasonably equivalent exchange, the court had no grounds to conclude they did not.

District Court Opinions

Gatto v. Gatto (In re Gatto)

2013 WL 1881756 (M.D. Fla. May 6, 2013) (Dalton, J.)

- Section/Rule/Keywords: 523(a)(5), alimony, maintenance, support
- Summary: In an action by the debtor’s estranged wife to determine dischargeability of the debtor’s obligations under a property settlement agreement, the bankruptcy court determined that the property settlement agreement was not in the nature of alimony, maintenance, or support. On appeal by the wife, the district court affirmed the bankruptcy court decision, noting that, despite a “non-dischargeability” provision in the settlement agreement, the settlement agreement did nothing more than unwind the shared property and debts.

In re Phillips

2013 WL 1899611 (M.D. Fla. May 7, 2013) (Steele, J.)

- Section/Rule/Keywords: 363(b), business judgment

- Summary: District court affirms bankruptcy court in concluding that Trustee exercised sound business judgment in determining that debtor's bid was the "highest and best" offer at auction. Trustee is entitled to great deference in deciding which bid to accept.

In re Palm Beach Finance Partners, L.P.

2013 WL 2036161 (S.D. Fla. May 14, 2013) (Marra, J.)

2013 WL 2158430 (S.D. Fla. May 17, 2013) (Marra, J.)

- Section/Rule/Keywords: 28 U.S.C. § 157, *Stern v. Marshall*, withdrawal of reference
- Summary: District court held that *Stern* does not mandate withdrawal of the reference at early stage of case. The Supreme Court did not intend for *Stern* to have broad implications. Nothing in *Stern* limits the bankruptcy court from issuing a report and recommendation. The bankruptcy court should initially determine if it has the constitutional authority to render a final judgment on a particular issue. If the bankruptcy court did not have authority, the district court will simply treat the "decision" as a report and recommendation.

In re Aurora Capital, Inc.

2013 WL 2156821 (S.D. Fla. May 17, 2013) (Marra, J.)

- Section/Rule/Keywords: 28 U.S.C. § 157, *Stern v. Marshall*, withdrawal of reference
- Summary: District court held that *Stern* does not mandate withdrawal of the reference at early stage of case. The Supreme Court did not intend for *Stern* to have broad implications. Nothing in *Stern* limits the bankruptcy court from issuing a report and recommendation. The bankruptcy court should initially determine if it has the constitutional authority to render a final judgment on a particular issue. If the bankruptcy court did not have authority, the district court will simply treat the "decision" as a report and recommendation. Before getting to the *Stern* issue, the court held that, while the existence of a valid jury trial demand is enough to satisfy "cause" to withdraw the reference, a complete withdrawal of the reference in the early stage of the proceedings is premature. Thus, the court withdraws the reference only for purposes of the jury trial and leaves the reference intact as to all pretrial matters.

Bankruptcy Court Opinions

Belmont Wine Exchange, LLC v. Nascarella (In re Nascarella)

--- B.R. ----, 2013 WL 1968500 (Bankr. M.D. Fla. May 10, 2013) (Williamson, J.)

- Section/Rule/Keywords: 523(a)(2)(A), misrepresentation, collateral estoppel
- Summary: Purchaser obtained a default judgment for fraud against debtor who sold wine to purchaser. Once debtor filed bankruptcy, the purchaser filed a motion for summary judgment asserting that the debt arising from the default judgment was nondischargeable under principles of collateral estoppel. The bankruptcy court determined that the default judgment did not have preclusive effect because the fraud complaint did not contain specific allegations as to who, the debtor or his son, made false representations to the purchaser. The bankruptcy court further rejected the purchaser's partnership argument to impute the debtor's son's actions to the debtor for purposes of nondischargeability. Thus, the bankruptcy court denied the purchaser's motion for summary judgment and subsequent motion for reconsideration.

In re Spreng

2013 WL 1968496 (Bankr. M.D. Fla. May 10, 2013) (Funk, J.)

- Section/Rule/Keywords: Rule 3007, claim objection
- Summary: Debtor objected to creditor's claim arising from the debtor's purchase of the creditor's residence. After a trial, the bankruptcy court sustained in part and overruled in part the debtor's objection. Based on an analysis of the parties' agreement, the creditor's claim could not include certain moving and storage costs related to the debtor's purchase.

In re Mouttet

--- B.R. ----, 2013 WL 2111283 (Bankr. S.D. Fla. May 16, 2013) (Isicoff, J.)

- Section/Rule/Keywords: 28 U.S.C. § 1334, subject matter jurisdiction, 523(a)(4), collateral estoppel
- Summary: Lenders in soured business deal to bring lottery and other gaming services to Jamaica sued debtor and other defendants, seeking recovery under Florida RICO and Federal RICO, and a determination that the debtor is not

entitled to discharge their claims. After the district court withdrew the reference as to the RICO claims, but referred the severed RICO claims back to the bankruptcy court for proposed findings, the defendants moved to dismiss the complaint for lack of bankruptcy subject matter jurisdiction. The bankruptcy court recommended that whether “related to” jurisdiction existed could not be determined from the complaint based on the severed RICO claims and dismissal of some of the core claims. Thus the court recommended dismissal of the RICO counts. The bankruptcy court also dismissed several counts under section 523(a)(4) by the lenders because (1) generally the debtor’s failure to pay back a loan does not constitute larceny, (2) the lenders’ allegations concerning the debtor’s alleged larceny were inconsistent with other allegations in the complaint, and (3) a Jamaican court already rendered a judgment regarding one of the lender’s ownership of equity that the debtor was alleged to have converted. Dismissal was warranted because many of the allegations in the complaint asserted that loan proceeds were used for the purposes for which they were lent.

In re Holdsworth

2013 WL 2237530 (Bankr. M.D. Fla. May 21, 2013) (Williamson, J.)

- Section/Rule/Keywords: crime-fraud exception, attorney-client privilege
- Summary: The crime-fraud exception did not apply to allow debtor and other wrongful death defendants’ discovery of communications between wrongful death plaintiffs and their attorney. The debtor and other defendants could not establish that the plaintiffs’ threat concerning criminal action for the wrongful death constituted extortion sufficient for the crime-fraud exception to apply.