Florida Bankruptcy Case Law Update

March 2014 Cases

Mariane L. Dorris
Editors: Bradley M. Saxton and C. Andrew Roy

Eleventh Circuit Opinions

In re Brown

---F.3d---, 2014 WL 1245266 (11th Cir. March 27, 2014)

- Section/Rule/Keywords: 11 U.S.C. § 1325(a) (5); 11 U.S.C. §506(a); replacement value standard.

- Summary: Chapter 13 Debtor proposed in his plan to surrender his vehicle under 11 U.S.C. § 1325(a) (5) (C) to satisfy the lender's secured claim. The issue before the Court was whether § 506(a) (2)'s valuation standard applies when a Chapter 13 debtor surrenders his vehicle under § 1325(a) (5) (C). The Court reasoned that under § 1325(a) (5), a plan's treatment of an allowed secured claim can be confirmed if: the secured creditor accepts the plan, the debtor retains the collateral and makes payments to the creditor, or the debtor surrenders the collateral. The term allowed secured claim refers to § 506(a). § 506(a) (1) bifurcates a secured creditor's allowed claim into secured and unsecured portions based on the collateral's underlying value. BAPCPA added § 506(a)(2), which unlike § 506(a)(1), is limited to certain cases involving individual debtors in Chapter 7 and Chapter 13 and expressly mandates a replacement value standard. The Court held that when a debtor surrenders property under § 1325(a) (5) (C), the replacement value standard of § 506(a) (2) will determine the amount of the allowed secured claim.

In re Custom Contractors, LLC

---F.3d---, 2014 WL 1226852 (11th Cir. March 26, 2014)

- Section/Rule/Keywords: 11 U.S.C. §§ 548 and 550(a); conduit defense to fraudulent transfer.

- Summary: The Chapter 7 Trustee sued the IRS to avoid and recover eight alleged fraudulent transfers made by the Debtor (Subchapter S Corporation) as payment for the income tax liability of the Debtor's principal. The bankruptcy

court ruled in favor of the IRS as to seven of the eight transfers. The District Court affirmed the bankruptcy court's ruling as to the seven transfers, but reversed with respect to the last and eighth transfer from the Debtor to the IRS. The District Court determined that the IRS could not be held liable as an initial transferee because it qualified for the mere conduit exception. The Eleventh Circuit affirmed the District Court.

The issue before the Court was whether the IRS was the initial transferee of the eighth transfer from the Debtor, or if the IRS was a mere conduit. The Court reasoned that in order for the IRS to meet the mere conduit or control test, the IRS must show (1) that they did not have control over the assets received and (2) that they acted in good faith and as an innocent participant in the fraudulent transfer. The Court analogized the IRS to a Bank holding a deposit. Since the Debtor made numerous prepayments of the principal's expected income tax liability, the transfers were not payments on an existing debt. Rather the transfers were more akin to deposits subject to refund at the request of the Debtor under 26 U.S.C. § 6402, an obligation similar to a bank's obligation to return deposited funds upon request.

District Court Opinions

Weber v. Mancuso Law, P.A.

2014 WL 1328487 (S.D. Fla. March 31, 2014) (Rosenbaum, J.)

- Section/Rule/Keywords: 11 U.S.C. §105; sanctions, contempt, bad faith

- Summary: The bankruptcy court sanctioned both the creditor and its counsel for willfully and knowingly interfering with the Reorganized Debtor's business operations. The issue before the court was whether 11 U.S.C. § 105 authorized sanctions absent a finding of contempt. The court reasoned that a bankruptcy court may impose sanctions if a party violates a court order or rule or to prevent an abuse of process. The court held that it was not an abuse of discretion for the bankruptcy court to sanction the creditor and its attorneys for intentionally misrepresenting the status of the order granting confirmation and attempting to lay claim to assets that had been transferred to the Reorganized Debtor.

Satterfield-Price v. Parrish

2014 WL 11179945408527 (M.D. Fla. March 20, 2014) (Steele, J.)

- Section/Rule/Keywords: 11 U.S.C. §523(a)(5); 11 U.S.C. § 101(14A)(B); nondischargeability, domestic support obligation, attorneys' fees

- Summary: Prior to filing Chapter 13 bankruptcy petition, the state court entered an order imposing unspecified amounts of attorney fees and costs against the debtor stemming from child custody litigation. Subsequent to the order, the parties stipulated to the amount of attorney fees and costs and a final judgment in that amount was entered by the state court. The spouse/creditor filed an adversary proceeding seeking a determination that the attorney fees and costs judgment was nondischargeable in bankruptcy because it was a domestic support obligation within the meaning of 11 U.S.C. § 523(a) (5).

  The issue before the court was whether the debt was "in the nature of alimony, maintenance, or support . . . of such . . . former spouse, or child of the debtor . . . without regard to whether such debt is expressly so designated." The court reasoned that a court ordered obligation to pay attorney fees and costs incurred in child support litigation can be "in the nature of support" and therefore not dischargeable in bankruptcy. One of the principal considerations is the purpose the obligation was intended to serve. To discern this intent, courts look to a range of factors, including the language used by the divorce court and whether the award seems designed to assuage need, as discerned from the structure of the award and the financial circumstances of the recipients. The court held that the award was not in the nature of sanctions, but in the nature of support. The amounts were for costs, attorney fees, and expert fees, and were not part of any punitive sanction by the state court.

In re Mutual Benefits Offshore Fund, Ltd.,

---B.R.---, 2014 WL 1202971 (S.D. Fla. March 19, 2014) (Moore, J.)

- Section/Rule/Keywords: 28 U.S.C. §§ 157(b), 1334(b); Federal Rule of Bankruptcy Procedure 7019, 9014(a)(c); jurisdiction; contested matters, indispensable parties

- Summary: Petitioning creditors filed an involuntary chapter 11 petition against the Debtor. The Zeltser Group filed an answer on behalf of the Debtor consenting the petition, and the Redmond Group filed a motion to strike the answer, claiming

that the Zeltser Group was not authorized to act on behalf of the Debtor. The parties specifically requested the bankruptcy court decided which group owned the Debtor. The Zelster Group raised several issues on appeal: (1) whether the Bankruptcy Court had jurisdiction and/or authority to enter final judgment on the ownership issue; (2) whether all the necessary parties were included in the litigation; and (3) whether the ownership issue could be tried as a contested matter rather than as an adversary proceeding.

The court reasoned that 28 U.S.C. §1334(b) provides that a proceeding is "related to" a case under Chapter 11 if the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy. Pursuant to 28 U.S.C. §157(b), bankruptcy courts have the authority to hear and enter final orders with respect to "core" matters. A matter is "core" if it arises under title 11, or arises in a case under title 11. The court held that the bankruptcy court is necessarily required to determine who the real owners of the alleged debtors actually are in order to rule on the creditor's claims.

With respect to the requirement to join "indispensable parties" claiming ownership in, or disputing the ownership of the debtor, the court reasoned that that there is no mandatory joinder rule in contested matters. The joinder requirements of Fed.R.Bankr.P. 7019 are not applicable to contested matters because Fed.R.Bankr.P. 9014(a) and (c) explicitly do not incorporate the adversary proceeding rules contained in F.R.B.P. 7019.

Finally, the issue of ownership of the debtor is not the type of matter specified under F.R.B.P. 7001. Moreover, the parties requested the bankruptcy court proceed with the ownership issue as a contested matter.

Valone v. Waage

2014 WL 970024 (M.D. Fla. March 12, 2014) (Chappell, J.)

- Section/Rule/Keywords: Fla. Stat. § 222.25(4); homestead exemption and wildcard exemption.

- Summary:. The Debtors filed a Chapter 13 petition listing their Florida residence valued at $104,200.00, subject to a first mortgage in the amount of $149,577.00 and a second mortgage in the amount of $71,884.00. The Debtors stripped off the second mortgage. The Debtors did not claim the residence as exempt, however, they did claim the Wildcard exemption under Fla. Stat. §222.25(4). The Wildcard exemption allows debtors who do not receive the benefit of Florida's

Homestead exemption under the Florida Constitution article X, section 4, to claim up to $4,000.00 in exemptions for personal property for each debtor.

The issue before the court was whether a debtor receives the benefit of Florida's Homestead exemption by simply retaining and residing in the residence in a Chapter 13. The Florida Supreme Court has held that the benefits of the homestead exemption protect a person's homestead against forced sale and levy. The court reasoned that the Debtors were receiving the benefits of the Florida Homestead Exemption because the residence is protected from levy by the Chapter 13 Trustee or any of the Debtors' unsecured creditors and will be as long as the Chapter 13 plan is in place. As such, the Debtors could not claim the Wildcard exemption.

In re Cross

2014 WL 931067 (M.D. Fla. March 10, 2014) (Corrigan, J.)

- Section/Rule/Keywords: Pre-BAPCPA 11 U.S.C. §523(a)(5); nondischargeability, domestic support obligation.

- Summary: Prior to the Debtor/Husband filing bankruptcy, the state court, in the divorce proceeding, made an award of $175 week of alimony, continuing until one of the parties died or until the wife remarried. The court also ordered the Debtor/Husband to pay the wife $50,000 as a property settlement, payable on June 18, 2004. On August 23, 2004, the Debtor/Husband filed bankruptcy without paying the $50,000.00. The Debtor/Husband received his discharge. However, on July 22, 2011, the wife recorded the $50,000.00 divorce court judgment in Florida in an attempt to collect the debt. The Debtor/Husband filed an adversary seeking damages for violation of the bankruptcy court's prior discharge injunction. The Wife responded by claiming the $50,000.00 was not discharged because it was in the nature of support.

  The issue before the Court was whether the $50,000.00 was in the nature of support. The court reasoned that the $50,000.00 was nondischargeable because the state court referred to the award as both lump sum alimony and as a property settlement during the course of the proceedings.

Iberiabank v. Geisen et al.,
506 B.R. 573 (M.D. Fla. March 4, 2014) (Moore, J.)

- Section/Rule/Keywords: Releases under confirmed Chapter 11 plan

- Summary: The Lender of the Debtor filed a motion to reopen the confirmed chapter 11 case for the bankruptcy court to interpret the release language provided in the plan. The Debtor's principal claimed that the plan provided him with a release of his guaranty in favor of the Lender. The plan provided that "in exchange for releasing the Insider Claims totaling $1,000,817.30, and providing the New Value Payment, all holders of Claims agree to the general release of Bradford Geisen (the principle)". The court held that the language of the release was broad and specific enough to cover the personal guaranty of the principle in favor of the Lender. The court reasoned that the release was an integral part of the Plan, the plan specifically detailed the principle's contributions to the plan, and the release specifically names the principle as the individual receiving the release.

Bankruptcy Court Opinions

In re Majorca Isles Master Association, Inc.
2014 WL 1323180 (Bankr. S.D. Fla. March 28, 2014) (Cristol, J.)

- Section/Rule/Keywords: Federal Rule of Bankruptcy Procedure 9006(b)(1); late filed proof of claim; excusable neglect.

- Summary: The bankruptcy court allowed a late filed proof of claim of creditor where debtor was aware of the creditor's claim and failed to notice the creditor of the bankruptcy, even though the creditor was aware of the bankruptcy proceeding.

In re Fisher Island Investments, Inc.
2014 WL 1343269, (Bankr. S.D. Fla. March 27, 2014) (Cristol, J.)

- Section/Rule/Keywords: 28 U.S.C. § 1334(c)(2); mandatory abstention

- Summary: Pursuant to 28 U.S.C. § 1334(c)(2), courts must abstain from hearing a state law claim if the party seeking abstention establishes that (1) the

claim has no independent basis for federal jurisdiction, other than § 1334(b); (2) the claim is a non-core proceeding; (3) an action has been commenced in state court; and (4) the action could be adjudicated timely in state court. Each of the requirements must be satisfied for mandatory abstention to apply. The court held that mandatory abstention did not apply because the state court action was not commenced until after the involuntary bankruptcy petitions were filed.

In re Plummer

---B.R.---, 2014 WL 1248039 (Bankr. M.D. Fla. March 25, 2014) (Jennemann, J.)

- Section/Rule/Keywords: 11 U.S.C. §105; §521(a)(2), §524; sanctions, discharge injunction

- Summary: Chapter 7 Debtors filed statement of intentions stating that they intended to surrender real property. Debtors received a discharge on October 4, 2011. On October 8, 2012, the Lender finally served the Debtors with the foreclosure complaint relating to the property. The state court entered an order granting foreclosure, but also added language retaining jurisdiction to determine amount attorney fees and costs the Debtors would be liable for. The bankruptcy court held that in order to effectuate a "surrender" under §521(a)(2), the Debtor need only allow the secured creditor to obtain possession by available legal means without interference. The debtor is not required to take any affirmative action to physically deliver the property. But the debtor cannot impede the creditor's efforts to take possession of it collateral by available legal means. With respect to real estate in particular, a debtor has no obligation to sign a deed or any other legal document to effectuate the creditor's possession. Moreover, the attorney fee award violated the §524 discharge, so the order is void. Finally, the Lender and its counsel were liable for Debtors' attorneys' fees and costs as sanctions under §105.

In re Fundamental Long Term Care, Inc.

---B.R.---, 2014 WL 1494021 (Bankr. M.D. Fla. March 25, 2014) (Williamson, J.)

- Section/Rule/Keywords: Federal Rule of Bankruptcy Procedure 8005; stay pending appeal

- Summary: The Appellant requested a stay pending appeal with respect to an appeal of an order denying a motion for protective order and requiring the Appellant produce a privilege log. In order to obtain a stay pending appeal, the

appellant must satisfy a four pong test: (1) likelihood of success on the merits; (2) irreparable harm in the event a stay is not granted; (3) lack of harm if a stay is granted; and (4) entry of a stay will serve the public interest. The bankruptcy court denied the stay and reasoned that the Appellant had failed to satisfy the first prong because it could not cite one case where a court excused a party from preparing a privilege log. The court reasoned that without the privilege log, the party requesting documents would never be able to ascertain whether the privilege applied and to what documents were not being produced on the basis of privilege.

In re New River Dry Dock, Inc.

---B.R.---, 2014 WL 1155310 (Bankr. M.D. Fla. March 21, 2014) (May, J.)

- Section/Rule/Keywords: 11 U.S.C. §1129(b); cramdown; fair and equitable, indubitable equivalent

- Summary: The Debtor proposed a plan whereby the real property would be transferred (sale) to the Association without a stated price and payment deferred until after the Unit Owners approve the plan of termination of the condominium, a judicial valuation proceeding is concluded, and a funding source obtained. The plan provided that the conveyance would be free and clear of all liens. Neither the value to be paid for the transfer, nor the ultimate source of funds was known. The Debtor argued that the Secured Lender was receiving the "indubitable equivalent" of its secured claim because ultimately it would be paid or would receive it collateral back. The court reasoned that without compensation for the risks arising from the delay, a deferred surrender of collateral would not provide "indubitable equivalent."

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In re Pearlman

2014 WL 1100223 (Bankr. M.D. Fla. March 20, 2014) (Jennemann, J.)

- Section/Rule/Keywords: 11 U.S.C. §330(a); attorney compensation

- Summary: In determining "reasonable compensation" a court may base the award on its own independent judgment. A court is itself an expert on the question and may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment either with or without the aid of witnesses.

In re: Stillwaggon

2014 WL 1087898 (Bankr. M.D. Fla. March 19, 2014) (Delano, J.)

- Section/Rule/Keywords: 11 U.S.C. § 348(f)(2); §541(a)(5)(A); §1306(a)(1); inheritance, property of the estate, conversion to Chapter 7 from Chapter 13

- Summary: On May 24, 2010, Debtor filed a Chapter 13 bankruptcy petition. In January 2011, the Debtor's mother began experiencing health problems; On March 2011 the Debtor's mother passed away. On April 2011, the Debtor confirmed her Chapter 13 plan. In September 2012, the Debtor received $57,800.00 from her mother's estate as her inheritance. Once the Chapter 13 Trustee learned of the inheritance, she moved to modify the confirmed plan and claimed that the inheritance was property of the estate under §1306(a)(1). On January 2013, the Debtor used a portion of the inheritance for a down-payment on real property. On February 2013 the Debtor filed a motion to convert her Chapter 13 to a Chapter 7. At the time of the conversion, the Debtor had only 2 remaining payments under her Chapter 13 plan. Shortly after conversion, the Debtor used additional funds from the inheritance to close the sale of the real property.

  The Court reasoned that pursuant to §1306(a)(1) the inheritance was part of the Chapter 13 estate as of the date of conversion to a Chapter 7. However, §348(f)(1)(A) prescribes the effect of conversion of a case from one chapter of the Bankruptcy Code to a case under another chapter. Because the inheritance was not property of the estate as of the petition date, the inheritance is property of the Debtor's Chapter 7 case only if the Debtor converted her Chapter 13 case to a case under Chapter 7 in bad faith. The court held that the Debtor did not convert in bad faith because she filed her Chapter 13 with the intent of completing her plan; she made 34 of the 36 monthly payments; at the time she filed she had no reason to believe she receive an inheritance. The court declined to find that the Debtor converted her case in bad faith, as such, the inheritance is not property of the Chapter 7 estate.

In re Wierzbicki

---B.R.---, 2014 WL 1089644 (Bankr. M.D. Fla. March 18, 2014) (Funk, J.)

- Section/Rule/Keywords: 11 U.S.C. §707(b)(3)(A) and (B); dismissal bad faith and totality of the circumstances.

- Summary: The bankruptcy court would not impute income to the Debtor and as such would not dismiss the Chapter 7 based upon the "totality of the Debtor's financial circumstances, and did not find that the case was filed in bad faith based upon pre-petition litigation choices. The court reasoned that the ability to pay is insufficient standing alone to warrant dismissal. Reviewing the totality of the circumstances, the Debtor's decrease in salary was in good faith, and his failure to modify a pre-petition alimony and child support award did not support a finding of abuse. Any payments under a Chapter 11 plan would be "little to nothing."

In re The Sanibel Diamond Store, LLC

2014 WL 8878156 (Bankr. M.D. Fla. March 5, 2014) (Delano, J.)

- Section/Rule/Keywords: 11 U.S.C. §105, 363; comply with sale order

- Summary: The Debtor moved to compel the City of Sanibel to comply with the bankruptcy court's order granting the Debtor's Emergency Motion to Approve Sale and related procedures and agreements. After entry of the order, the City of Sanibel issued a citation to a "sign walker" for being in violation of the City's Municipal Code requiring all "sign walkers" to apply a receive a permit prior to engaging in "sign walking." The bankruptcy court conducted a hearing and concluded that the City failed to appear or object to the sale order, which was a final order, and failed to produce any evidence as to its policies and procedures with respect to the issuance of permits allowing the use of signs, etc. Pursuant to §105, the court concluded it had the authority to enter an order to effectuate the prior sale order, and determined that reasonable signage was appropriate. As such, the "sign walkers" would be allowed to advertise the sale as set forth in the sale order.

In re: The Sanibel Diamond Store, LLC

2014 WL 890589 (Bankr. M.D. Fla. March 5, 2014) (Delano, J.)

- Section/Rule/Keywords: Federal Rule of Bankruptcy Procedure 8005; stay pending appeal.

- Summary: The Appellant requested a stay pending appeal with respect to an appeal of an order authorizing the Debtor to conduct a liquidation sale and an interim order granting the Debtor's emergency motion to compel the City to comply with the provisions of the sale order relating to the use of sign walkers. In

order to obtain a stay pending appeal, the appellant must satisfy a four pong test: (1) likelihood of success on the merits; (2) irreparable harm in the event a stay is not granted; (3) lack of harm if a stay is granted; and (4) entry of a stay will serve the public interest. The bankruptcy court denied the stay and reasoned that the Appellant had failed to satisfy the first prong because an appeal of both orders will be dismissed as untimely. Second, the City has not demonstrated irreparable injury because the City failed to introduce any evidence concerning the adverse impact it would suffer as a result of the use of sign walkers. Third, the Debtor will suffer substantial harm due to the limited tourist season and availability for a market for the liquidation sale. Fourth, the City cannot demonstrate the stay will serve a public interest because no evidence was entered regarding what the public interest is.

In re Castillo and Lafontaine

2014 WL 843606 (Bankr. S.D. Fla. March 3, 2014) (Isicoff, J.)

- Section/Rule/Keywords: Fla. Stat. §222.25(4); Wildcard Exemption, Homestead Exemption

- Summary: Trustee objected to the Debtor's Wildcard Exemption because Debtor lived in his family's homestead. However, the Debtor did not have an ownership interest in the homestead, only his wife owned the property. The court held that since the Debtor does not own the homestead, the benefits he enjoys from living there are not the benefits that deprive him of his Wildcard Exemption.