Florida Bankruptcy Case Law Update

March 2015 Cases

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Eleventh Circuit Opinions

Ward v. AMS Servicing, LLC

--- F. App'x ----, 2015 WL 1432982 (11th Cir. Mar. 31, 2015)

- Section/Rule/Keywords: Judicial estoppel

- Summary: Under the terms of a loan modification agreement, a debtor-mortgagor's monthly mortgage payments were $1,182.89. She eventually stopped paying the monthly mortgage payments and filed for Chapter 13 bankruptcy. In exchange for the mortgagee not foreclosing on her home, the debtor-mortgagor entered into a consent decree with the mortgagee and stipulated that she owed the mortgagee nine monthly payments of $1,319.50, for a total amount of $11,881.55. This amount represented the debtor-mortgagor's post-petition debt. The bankruptcy court entered an order to this effect, which also stated that once the post-petition arrearage had been satisfied, the debtor-mortgagor's regular monthly mortgage payments of $1,182.89 would resume. Months later, the debtor-mortgagor filed an FDCPA suit against the mortgagee in district court alleging that the mortgagee was unlawfully attempting to collect monthly mortgage payments in excess of the terms of the loan modification agreement. The magistrate judge recommended dismissal on judicial estoppel grounds. The district judge overruled the debtor-mortgagor's objections, adopted the magistrate judge's report and recommendation, and dismissed the lawsuit. On appeal, the debtor-mortgagor argued that judicial estoppel did not apply because she did not succeed in the prior litigation and because her prior statements were not made under oath. The Eleventh Circuit rejected these

arguments and affirmed the dismissal. The appeals court explained that while circuit precedent includes a factor that requires that a prior statement be made under oath, the court has made clear that its judicial estoppel factors are not exhaustive or inflexible. The court also pointed out that Supreme Court precedent makes clear that judicial estoppel does apply when the prior litigation ended in a consent decree. Finally, the court found no merit in the debtor-mortgagor's suggested that she did not succeed in the bankruptcy litigation. As the court explained, the two parties agreed on a settlement and presented that settlement to the bankruptcy court for judicial approval and the entry of an order, both of which they received.

D'Antignac v. Deere & Co.

--- F. App'x ----, 2015 WL 1321570 (11th Cir. Mar. 25, 2015)

- Section/Rule/Keywords: Judicial estoppel

- Summary: The debtor filed Chapter 13 bankruptcy in 2005. In 2008, she filed a charge of discrimination with the Equal Employment Opportunity Commission based upon a June 2008 alleged incident of employment discrimination. The debtor completed her Chapter 13 payment plan and the bankruptcy court granted her a discharge in November 2008 and closed her case in January 2009. The debtor never disclosed the discrimination claim to the bankruptcy court. In August 2010, the debtor sued her former employer in district court for employment discrimination, despite the fact that the EEOC had concluded three months prior that her allegations did not support a valid claim for discrimination. The district court granted summary judgment to the employer on judicial estoppel grounds, explaining that by failing to meet her continuing duty to amend her bankruptcy schedules to disclose any new assets (to include claims for damages), the debtor was estopped from pursuing the discrimination claim. The debtor appealed and the Eleventh Circuit affirmed, concluding that (1) failing to disclose "a claim in bankruptcy constitutes an inconsistent position taken under oath if the debtor later pursues that claim"; and (2) that the district court did not abuse its discretion in finding that the debtor's failure to disclose was intentional because she was clearly aware of the presence of the asset.

Curtis v. Perkins (In re Int'l Mgmt. Assocs., LLC)

781 F.3d 1262 (11th Cir. Mar. 19, 2015)

- Section/Rule/Keywords: Business record exception

- Summary: In an adversary proceeding evidentiary hearing, a bankruptcy court admitted Rule 1006 summaries, which the Chapter 11 trustee had prepared, into evidence. The defendants appealed the bankruptcy court's ruling, which was in part based upon the Rule 1006 summaries. The district court affirmed. The defendants appealed once more and the Eleventh Circuit also affirmed. The bankruptcy court concluded that the documents upon which the Rule 1006 summaries were based were admissible (even though the trustee did not offer them into evidence) under the residual hearsay exception. This is important, as the Eleventh Circuit explained, because Rule 1006 summaries are admissible only if the proponent of the summaries establishes that the documents upon which the summaries are based are themselves admissible. In reviewing this evidentiary ruling, the appeals panel considered the underlying documents' admissibility under the business records exception, rather than the residual hearsay exception, explaining that it would overturn the bankruptcy court's evidentiary ruling only if the defendants showed a "substantial prejudicial effect," and that even if the bankruptcy court erroneously concluded that the underlying documents were admissible under the residual hearsay exception, that conclusion would not have a substantial prejudicial effect if the documents were otherwise admissible. Prior to the hearing, the Chapter 11 trustee had taken full control of the debtor-business. He took possession of the debtor-business' office and all documents. He investigated all of its past financial activity with the FBI and SEC. He interviewed former principals and employees of the debtor-business. After reviewing the Chapter 11 trustee's extensive testimony on these activities, the appeals panel concluded that he established that the records underlying the Rule 1006 summaries were admissible under the business records exception because he established that the records were authentic and that the requirements of Rule 803(6) were satisfied.

SE Prop. Holdings, LLC v. Seaside Eng'g & Servicing, Inc. (In re Seaside Eng'g & Surveying, Inc.)

780 F.3d 1070 (11th Cir. Mar. 12, 2015)

- Section/Rule/Keywords: Valuation; non-debtor releases and bar orders

- Summary: The bankruptcy court confirmed a Chapter 11 plan. The district court affirmed that decision. A group of creditors appealed and the Eleventh Circuit also affirmed, and in doing so, the court provided "guidance to the Circuit's bankruptcy courts with respect to a significant issue: i.e., the authority of bankruptcy courts to issue non-consensual, non-debtor releases or bar orders, and the circumstances under which such bar orders might be appropriate." The

Eleventh Circuit explained that in considering whether the propriety of non-debtor releases and bar orders, which "ought not to be issued lightly, and should be reserved for those unusual cases in which such an order is necessary for the success of the reorganization, and only in situations in which such an order is fair and equitable under all the facts and circumstances," bankruptcy court should follow the guidance of the U.S. Court of Appeals for the Sixth Circuit set forth in *In re Dow Corning Corp.*, 280 F.3d 648, 658 (6th Cir. 2002): "[W]hen the following seven factors are present, the bankruptcy court may enjoin a non-consenting creditor's claims against a non-debtor: (1) there is an identity of interests between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete the assets of the estate; (2) the non-debtor has contributed substantial assets to the reorganization; (3) the injunction is essential to reorganization, namely, the reorganization hinges on the debtor being free from indirect suits against parties who would have indemnity or contribution claims against the debtor; (4) the impacted class, or classes, has overwhelmingly voted to accept the plan; (5) the plan provides a mechanism to pay for all, or substantially all, of the class or classes affected by the injunction; (6) the plan provides an opportunity for those claimants who choose not to settle to recover in full and; (7) the bankruptcy court made a record of specific factual findings that support its conclusions."

The Eleventh Circuit made two other noteworthy points. First, it explained that a court does not err in considering the loss of key employees when deciding upon a discount rate under a going-concern valuation. Second, the court concluded that a plan is not discriminatory to an equity holder that receives the full value of its equity interest, but no stock in the reorganized entity, even though other equity holders did receive stock in the reorganized entity.

District Court Opinions

Gowdy v. Mitchell

2015 WL 1608092 (S.D. Fla. Mar. 31, 2015) (Scola, J.)

- Section/Rule/Keywords: Civil contempt

- Summary: A business-debtor had one asset: a shrimp boat that was operating off the coast of Seattle, which the district court arrested in admiralty on a personal injury claim of a seaman who worked on the shrimping boat. For efficiency purposes, the bankruptcy court permitted James Gowdy, the president

of the business-debtor, to continue to operate the shrimping boat in U.S. waters off the coast of the state of Washington while the district court adjudicated the seaman's personal injury claim. The seaman won at trial, and the district court ordered the debtor-business to deposit funds into court registry. The debtor failed to comply, and the shrimping boat and Gowdy quickly disappeared. Twenty years later, the U.S. Marshall arrested Gowdy in Galveston, Texas. Gowdy eventually made it back to the bankruptcy court, and that court held him in civil contempt. Gowdy appealed that decision on many grounds, all of which the district court denied, and made the following points: the bankruptcy court provided due process to Gowdy at the civil contempt hearing by giving him notice of the hearing and permitting him to be heard; the bankruptcy court did not err by permitting Gowdy to appear without counsel at the civil contempt hearing, or by not appointing him counsel after having determined that he was not indigent; the bankruptcy court had subject matter jurisdiction over the civil contempt hearing under 11 U.S.C. § 1105; and the sanctions imposed by the bankruptcy court—damages equal to the amount of the seaman's judgment, attorneys' fees, and statutory interest—were aimed at forcing Gowdy to return the shrimp boat, were not criminal in nature, and were within the court's authority.

Isbell v. DM Records, Inc.

529 B.R. 793 (S.D. Fla. Mar. 26, 2015) (Moore, C.J.)

- Section/Rule/Keywords: 11 U.S.C. § 303(b)(1)-(2), involuntary petitions

- Summary: A judgment creditor filed an involuntary petition placing the debtor into bankruptcy. The debtor moved to dismiss the petition, arguing that it had more than twelve creditors, and because the judgment-creditor was not joined by at least two of the other debtors' creditors, the petition was subject to dismissal under 11 U.S.C. § 303(b)(1)-(2). The judgment-creditor challenged the debtor's list of creditors, principally contending that many creditors held small and recurring claims in the nature of intellectual property royalty payments and thus should be excepted from the debtor's creditor list under Eleventh Circuit precedent, *Denham v. Shellman Grain Elevator, Inc.,* 444 F.2d 1376, 1379 (5th Cir. 1971). The bankruptcy court disagreed, awarded the debtor summary judgment, and dismissed the involuntary petition. The district court affirmed, concluding that royalty payments that accrue only when licensing rights to intellectual property are sold, which could be days, weeks, months, or even years apart, are not recurring claims.

PaeTec Commc'ns., Inc. v. Bulls (In re Bull)

528 B.R. 473 (M.D. Fla. Mar. 24, 2015) (Davis, J.)

- Section/Rule/Keywords: 11 U.S.C. § 502, allowance of claims; substantive consolidation

- Summary: A husband and wife jointly filed a Chapter 11 case. The husband was president of a corporation, BCI, and owned 100% of it; the wife had no ownership interest in BCI, but did serve as an officer. Two years before the debtors filed for bankruptcy, BCI sued PaeTec in New York state court. PaeTec filed a counterclaim in the New York litigation. In their Chapter 11 filings, the debtors did not list the New York litigation as an asset or PaeTec as an unsecured creditor. PaeTec proceeded to file a claim in the debtors' bankruptcy case based upon its counterclaim in the New York litigation. PaeTec also moved to substantively consolidate the debtors and BCI. The debtors objected and moved to disallow PaeTec's claim. The bankruptcy court denied Paetec's motion for substantive consolidation and granted the debtors' motion to deny PaeTec's claim. In an extensive and comprehensive opinion, the district court affirmed both of the bankruptcy court's decisions.

Farm Credit of Florida, ACA v. Sugarleaf Timber, LLC (In re Sugarleaf Timber, LLC)

529 B.R. 317 (M.D. Fla. Mar. 23, 2015) (Davis, J.)

- Section/Rule/Keywords: 11 U.S.C. § 1129(b)(2)(A)(i)-(iii), plan confirmation, cramdown, indubitable equivalence

- Summary: A Chapter 11 debtor-defendant owned roughly 7,000 acres of real property that it purchased with financing from the plaintiff. The debtor-defendant executed three promissory notes in favor of the plaintiff, which were in turn secured by mortgages on the real property and the debtor-defendant's other assets. The debtor-defendant eventually defaulted on the repayment of the notes and filed for bankruptcy. The debtor-defendant's proposed a transfer of the real property to the plaintiff in exchange for full satisfaction of the notes. The plaintiff voted against the Chapter 11 plan and objected to confirmation. The debtor-defendant nevertheless argued that the plan was confirmable under 11 U.S.C. § 1129(b)(1)—a cramdown as to the plaintiff—because the "dirt for debt" offered the plaintiff the indubitable equivalent of its claim. The bankruptcy court held a five-day trial and heard extensive testimony (and received many exhibits) on valuation. The bankruptcy court concluded that the real property was worth

$4.653M more than the plaintiffs claim—and consequently, the indubitable equivalent—and confirmed the debtor-defendant's Chapter 11 plan. The plaintiff appealed. The district court first reasoned that the proper standard of review of an indubitable equivalence finding was clear error. The district court concluded that the bankruptcy court's decisions (1) on the highest and best use for the real property, (2) on the fair market value of the real property, and (3) on whether the plaintiff would realize the full value of its claim, were not clearly erroneous and thus affirmed the bankruptcy court's order confirming the Chapter 11 plan.

Tobkin v. Florida Dept. of Rev. (In re Tobkin)

2015 WL 1281054 (S.D. Fla. Mar. 20, 2015) (Cooke, J.)

- Section/Rule/Keywords: 11 U.S.C. § 502, allowance of claims, substantive consolidation

- Summary: A Chapter 13 debtor's former spouse and the Florida Department of Revenue filed claims in the debtor's bankruptcy case for domestic support obligations. The debtor filed numerous objections and adversary proceedings related to these claims, arguing that he was not responsible for the domestic support obligations. After the debtor continually failed to present a confirmable Chapter 13 plan, the former spouse and the Department of Revenue moved to have the debtor's bankruptcy case converted to a Chapter 7 case. The bankruptcy court granted this motion. The bankruptcy court then took up the debtor's many objections to the former spouse's and Department of Revenue's domestic support obligation claims. Thereafter, the bankruptcy court entered an order referring the dispute to Florida state court for valuation of the claims. After the state court entered an order on the claims, which was later addressed by a state appeals court, the Department of Revenue filed a motion in the debtor's bankruptcy case asking the bankruptcy court to allow the claims, which the bankruptcy court granted. The debtor then appealed to the district court. As to the debtor's first argument—that the Department of Revenue did not have standing to file a claim—the district court explained that, under 11 U.S.C. § 501(a) and state law, the former spouse conferred standing upon the Department when she called upon it to assist her in collecting the outstanding domestic support obligations from the debtor. As to the debtor's second argument—that the domestic support obligations are no longer valid because his former spouse is remarried and his children are no longer minors—the district court explained that domestic support obligations vest at the time they are due. Thus, the change in circumstances—a new marriage and children growing in age—does not absolve his obligation to pay the ordered domestic support. In addition, the

validity of the outstanding domestic support obligations was properly considered in Florida state court. It would have been improper, the district court noted, for the bankruptcy court to revisit that determination.

Ashton Revocable Living Trust v. Mukamal (In re Palm Beach Fin. Partners, L.P.)

527 B.R. 518 (S.D. Fla. Mar. 19, 2015) (Moore, C.J.)

- Section/Rule/Keywords: Authority to enforce settlement agreement; enforceability of oral settlement agreement

- Summary: A debtor invested with PCI, which turned out to be a Ponzi scheme and later filed for bankruptcy in Minnesota. Appellants also invested with PCI and received profits from those investments. The trustee for the debtor (in the U.S. Bankruptcy Court for the Southern District of Florida) and the trustee for PCI (in the U.S. Bankruptcy Court for the District of Minnesota) filed adversary proceedings against the appellants to recover fraudulent transfers. The parties attended mediation in Minnesota and reached an oral settlement agreement and the Minnesota mediator submitted a mediation report to the Florida bankruptcy court. No party objected to the report, and the Florida bankruptcy court dismissed the debtor's adversary proceeding against the appellants and retained jurisdiction to approve and enforce the settlement agreement. Again no party objected. Months later, the appellants separated from the counsel that represented them at mediation. After hiring new counsel, the appellants sought to amend the terms of the mediation settlement. The trustee for the debtor then moved for approval of the settlement agreement and the appellants objected. Following an evidentiary hearing on the matter, the Florida bankruptcy court entered a lengthy memorandum opinion finding that the oral settlement agreement was valid and enforceable. The appellants appealed to the district court. The district court rejected all of the appellants' arguments and affirmed. In doing so, the district court made several points: (1) the bankruptcy court's authority to enforce a settlement agreement has nothing to do with its authority to adjudicate the merits of a dispute; (2) the appellants' failure to contest the oral settlement agreement at six critical points in the course of the litigation supported, in part, the bankruptcy court's application of judicial estoppel; and (3) the bankruptcy court did not commit clear error in concluding, under general contract principals, that the parties intended to be bound by their oral settlement agreement and that the agreement was thus enforceable.

Chacon v. El Milagro Care Center, Inc.

2015 WL 1097405 (S.D. Fla. Mar. 11, 2015) (Simonton, J.)

- Section/Rule/Keywords: 11 U.S.C. § 362(c)(2), automatic stay

- Summary: A group of plaintiffs sued the debtor-defendant under the Fair Labor Standards Act in district court and were awarded a money judgment. The debtor-defendant then filed for bankruptcy and the district court stayed the Fair Labor Standards Act lawsuit. Less than a year later, the bankruptcy court dismissed the debtor-defendant's bankruptcy case. Thereafter, the plaintiffs moved the district court to lift the stay. The debtor-defendant did not respond to the plaintiffs' motion, and thus, the district court concluded, did not dispute that her bankruptcy case had been dismissed. Accordingly, the district court granted the plaintiffs' motion and lifted the stay.

Fiandola v. Moore (In re Moore)

2015 WL 1020368 (M.D. Fla. Mar. 9, 2015) (Chappel, J.)

- Section/Rule/Keywords: 11 U.S.C. § 727(a)(5)

- Summary: The plaintiffs contracted with the debtor-defendants, who breached the terms of the contract. The plaintiffs then sued the debtor-defendants in state court and obtained a money judgment. The debtor-defendants filed for bankruptcy. Thereafter, the plaintiffs filed an adversary proceeding, and following an evidentiary hearing, the bankruptcy court ruled in favor of the debtor-defendants and granted them a discharge. The plaintiffs appealed. In affirming the bankruptcy court's order, the district court explained that the bankruptcy court did not commit clear error in concluding that the debtors inadvertently left assets off of their schedules; that the bankruptcy court did not err in concluding that the debtor-defendants did not violate 11 U.S.C. § 727(a)(5) by failing to explain the loss of certain assets, because those assets belonged to the debtor-defendant's LLC, not the debtor-defendants personally; and that the bankruptcy court correctly chose against imputing the debtor-defendants' LLC's income to the debtor-defendants.

Bankruptcy Court Opinions

Advanced Telecomm. Network, Inc. v. Flaster/Greenburg, PC (In re Advanced Telecomm. Network, Inc.)

2015 WL 1507858 (Bankr. M.D. Fla. Mar. 31, 2015) (Jennemann, C.J.)

- Section/Rule/Keywords: Fed. R. Civ. P. 15, amending pleadings

- Summary: The debtor-plaintiff moved for leave to amend its complaint (after the defendant filed a responsive pleading) in two ways—to amend portions of the complaint in light of recent court rulings and to add a claim for attorneys fees. The defendant objected as to the second proposed amendment, arguing that such amendment would be futile because the debtor-plaintiff cannot recover its attorneys' fees under any plausible scenario. The bankruptcy court disagreed and granted the debtor-plaintiff's motion for leave to amend. Applying New Jersey law and the Tort of Another doctrine, which is merely an exception to the American Rule that requires each party to bear the cost of its own representation, the bankruptcy court concluded that the debtor-defendant's allegations state a valid claim for relief.

Gulf Coast Endoscopy Center of Venice, LLC v. DeMasi (In re DeMasi)

529 B.R. 338 (Bankr. M.D. Fla. Mar. 31, 2015) (Williamson, J.).

- Section/Rule/Keywords: Fed. R. Civ. P. 17, substitution of parties

- Summary: A creditor-plaintiff, as assignee of two LLCs of which he was a member, filed a nondischargeability proceeding against the debtor-defendant, against whom he had previously secured a state court judgment for damages. The debtor-defendant later moved to dismiss the creditor-plaintiff's claims brought under 11 U.S.C. § 523(a)(2), arguing that fraud claims are non-assignable under Florida law. Accordingly, he suggested the creditor-plaintiff did not have standing to bring the §523(a)(2) claims. The bankruptcy court agreed and granted the debtor-defendant's motion to dismiss. The two LLCs of which the creditor-plaintiff was a member then moved to substitute in as the real parties in interest. Over the debtor's objection, the bankruptcy court granted this motion, finding that even though the substitution period had ended, the error in naming the proper plaintiff in the first instance was an understandable mistake. The debtor-defendant moved for reconsideration on three bases: (1) that the bankruptcy court overlooked controlling Eleventh Circuit law that required the

bankruptcy court to deny the motion for substitution; (2) that the bankruptcy court improperly shifted the burden to the debtor-defendant to prove why substitution was improper; and (3) that the bankruptcy court must consider newly discovered evidence that proved that the substituting LLCs did not in fact consent to substitution. The bankruptcy court concluded that all three asserted bases for reconsideration lacked merit and denied the debtor-defendant's motion. The bankruptcy court reasoned that the Eleventh Circuit decision that the debtor-defendant relied upon was not controlling, and in fact not on point; that the bankruptcy court did not shift the burden to the debtor-defendant; and that the debtor-defendant did not truly have newly discovered evidence that would warrant reconsideration.

Musselman v. David Jones Ins., Inc. (In re Florida Eco-Safaris, Inc.)

2015 WL 1523069 (Bankr. M.D. Fla. Mar. 31, 2015) (Jennemann, C.J.)

- Section/Rule/Keywords: 11 U.S.C. § 548, fraudulent transfer, "mere conduit"

- Summary: The Chapter 7 trustee sought to avoid certain transfers made by the debtor to an insurance company. The insurance company moved for summary judgment, arguing that even if the transfers were made, it was a "mere conduit" and cannot be held liable. The bankruptcy court concluded that the insurance company failed to carry its burden and denied the motion for summary judgement. Notably, the bankruptcy court explained that the insurance company made no argument, and certainly did not prove, that it acted in good faith, which is a requirement of the Eleventh Circuit's mere conduit test and falls on the defendant's (here, the insurance company) shoulders.

In re Trigent Holdings Ltd.

2015 WL 1514175 (Bankr. S.D. Fla. Mar. 27, 2015) (Kimball, J.)

- Section/Rule/Keywords: 11 U.S.C. § 502(c), estimation of claims

- Summary: A creditor filed a claim against the debtor. The bankruptcy court concluded that fixing or liquidating the claims would unduly delay the administration of the case and thus estimated the value of the claim under 11 U.S.C. § 502(c). The bankruptcy court pointed out that the Bankruptcy Code does not set a procedure to estimate the amount of a claim. Instead, bankruptcy courts are bound by the legal rules that govern the ultimate value of the claim and should use whatever method is best suited to the circumstances. After concluding that the creditor had no chance of prevailing on its claim—which was

based upon tortious interference with prospective business relations under Texas law—the bankruptcy court decided that the creditor's claim had no value.

In re Gedda

2015 WL 1396605 (Bankr. M.D. Fla. Mar. 24, 2015) (Jennemann, C.J.)

- Section/Rule/Keywords: 11 U.S.C. §§ 706(a) and 1112(b)(4), conversion

- Summary: The debtor belatedly moved (after he received his discharge) to convert his Chapter 7 case to a Chapter 11 case in an apparent attempt to end the Chapter 7's trustee's efforts to recover what the Chapter 7 trustee thought were fraudulent transfers made by the debtor to his wife, to whom the debtor made substantial prepetition transfers. The court denied the debtor's motion to convert. Relying on the Supreme Court's decision in *Marrama v. Citizens Bank of Massachusetts* and 11 U.S.C. §§ 706(d) and 1112(b)(4), the bankruptcy court concluded that denying a debtor's motion to convert to Chapter 11 is appropriate when cause is shown—i.e., a "substantial and continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation"—or where the debtor has acted in bad faith. In addition to these two bases for denying conversion, bankruptcy courts should also consider that impact that conversion would have on the debtor's creditors and the efficient administration of the bankruptcy estate. The bankruptcy court decided that the debtor failed all three prongs.

Estate of Jackson v. Gen. Elec. Cap. Corp. (In re Fundamental Long Term Care, Inc.)

527 B.R. 497 (Bank. M.D. Fla. Mar. 20, 2015) (Williamson, J.)

- Section/Rule/Keywords: Compromise, Settlement, Bar Oder, All Writs Act, Anti-Injunction Act

- Summary: After 11 years of litigation, the parties mediated a settlement that included a $20M payment to the bankruptcy estate and ended the litigation. The bankruptcy court was prepared to approve the settlement reached by many of the parties, which included the entry of a bar order enjoining the settling defendants from later pursuing the non-settling defendants for claims that were or could have been litigated in the bankruptcy case. This was fair, the bankruptcy court reasoned, because the proposed settlement released the settling defendants from further liability, but offered no protection to the non-settling defendants, who either prevailed at the dismissal or summary judgment stages or

prevailed at trial on the merits. Importantly, the parties objecting to the compromise and the bar order acknowledged that their objections would be moot if the court were to enter a permanent injunction (the court had previously issued a temporary injunction) that would enjoin the probate estate parties from pursuing claims against them in other courts. Accordingly, if the court did not enjoin the probate estate parties from further pursuing the non-settling defendants, the non-settling defendants could incur liability, but be barred by the bar order from seeking contribution or indemnification from the settling defendants. In other words, without the injunction, the settlement agreements would leave only the non-settling defendants—who the bankruptcy court had already determined did nothing wrong—exposed. The bankruptcy court turned to the All Writs Act and the Anti-Injunction Act to conclude it had separate authority to issue an injunction because the injunction was necessary to aid the bankruptcy court's jurisdiction and to protect its judgment.

Estate of Jackson v. Gen. Elec. Cap. Corp. (In re Fundamental Long Term Care, Inc.)

527 B.R. 479 (Bankr. M.D. Fla. Mar. 20, 2015) (Williamson, J.)

- Section/Rule/Keywords: Breach of fiduciary duty, aiding and abetting

- Summary: Tort creditors of THI and THMI (THI's subsidiary at the time) and the Chapter 7 Trustee alleged that the director of THI breached his fiduciary duty, and that THI Holdings (THI's parent company) and the GTCR Group (THI Holding's parent company) aided and abetted THI's director's breach of his fiduciary duty, by authorizing a sale of THMI for $10,000 and a sale of THI Baltimore (THI's sister company) for $20,000,000, and allowing THI-Baltimore's buyers to divest THMI of its assets. After hearing nearly 100 hours of testimony and considering more than 3,000 exhibits, the bankruptcy court ruled in favor of THI, THI Holdings, and the GTCR Group, concluding that the tort creditors failed to offer any evidence that proved the companies were worth more than they sold for or that THI's director knew that THMI's assets would be divested. In fact, the court decided that the evidence proved just the opposite—that THI's director acted in the best interest of THI's secured and unsecured creditors and preserved THMI's assets for the benefit of the tort creditors.

In re Colony Beach and Tennis Club, Inc.

2015 WL 1281825 (Bankr. M.D. Fla. Mar. 18, 2015) (May, J.)

- Section/Rule/Keywords: 11 U.S.C. § 362(a), automatic stay

- Summary: A creditor purchased the debtors' loans from a bank, which were secured by the debtors' interests in real property. Thereafter, the creditor forced a judicial sale of the real property (subject to the existing foreclosure judgment), in accordance with the bankruptcy court's order granting relief from stay as to the "real estate collateral." Being the highest bidder at the foreclosure sale, the creditor acquired the rights to the real property. In doing so, the creditor satisfied all of its claims against the debtor. Nevertheless, while the debtors' bankruptcy case was still ongoing, the creditor commenced a second action to enforce its lien rights against the real property, this time to collect accrued and unpaid rents for the use of the real property. The debtors' Chapter 7 trustee, among others, disagreed with this conduct and filed a motion against the creditor for violating the automatic stay. The creditor took the position that in acquiring the real property, it also acquired the right to the unpaid rents. Therefore, in line with the bankruptcy court's order granting relief from stay as to the "real estate collateral," the creditor argued that it was permitted to collect the unpaid rents, in addition to forcing the foreclosure sale. The creditor also argued that the bankruptcy court lacked jurisdiction to decide the scope of its order from relief. The bankruptcy court disagreed with the creditor that it did not have the authority to decide the meaning of its orders. The bankruptcy court then concluded that the order for relief (along with the bankruptcy court's in-court discussion of the relief granted) made clear that the rent collection action was not permitted. Just as importantly, the court pointed out, once the creditor satisfied its claims against the debtor by forcing the foreclosure sale, it had no right at all to attempt to collect the unpaid rents for the use of the real property. After the foreclosure sale, that right was an unencumbered asset belonging to the debtors' bankruptcy estates.

Hanson v. Antio, LLC (In re Hanson)

526 B.R. 916 (Bankr. M.D. Fla. Mar. 18, 2015) (Glenn, J.)

- Section/Rule/Keywords: FDCPA, Fed. R. Bankr. P. 9023, reconsideration

- Summary: The Chapter 13 debtor filed a complaint against a creditor asserting that the creditor violated the FDCPA by failing to provide notice of the assignment of the claim held by the creditor. The defendant moved to dismiss the complaint, which the bankruptcy court originally denied. The defendant then

moved for reconsideration, which the bankruptcy court granted, acknowledging that it was manifest error to deny the defendant's motion to dismiss because the debtor's FDCPA complaint did not state a cause of action for three reasons: (1) the defendant acquired the alleged debt after the bankruptcy case was filed, (2) the only collection activity alleged in the complaint was the filing of a proof of claim in the bankruptcy case, and (3) the complaint did not contain sufficient factual allegations to show that the filing of the proof of claim was deceptive or abusive.

Webber v. Cabrebra (In re Gedda)

2015 WL 1537458 (Bankr. M.D. Fla. Mar. 16, 2015) (Jennemann, C.J.)

- Section/Rule/Keywords: Preliminary injunction

- Summary: The Chapter 7 trustee moved for a preliminary injunction to protect the proceeds of a promissory note that the trustee believed the debtor improperly conveyed to his wife. The debtor objected, arguing that the trustee had not established the existence of irreparable harm. The bankruptcy court agreed and denied the trustee's motion. The bankruptcy court explained that whether irreparable harm exists hinges on whether any alternative, adequate legal remedies are available to the Trustee. "'The critical question is whether there exists an adequate remedy at law, not whether the moving party prefers one remedy to another.' 'Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.'" (quoting *SME Racks, Inc. v. Sistemas Mecanicos Para, Electronica, S.A.*, 243 Fed.Appx. 502 (11th Cir. 2007)).

In re Little Rest Twelve, Inc.

2015 WL 1318912 (Bankr. S.D. Fla. Mar. 16, 2015) (Cristol, J.)

- Section/Rule/Keywords: Sanctions, 11 U.S.C. § 105

- Summary: The debtor had initially been forced into bankruptcy by its creditors by way of an involuntary Chapter 11 petition. The fight over ownership of the debtor lasted years, in the Bankruptcy Court for the Southern District of Florida and in New York state court. Indeed, the bankruptcy court granted stay relief so that the New York state court could resolve who, among the dueling persons claiming ownership of the debtor, was authorized to lawfully act as the debtor's representative in the New York state court action. While that matter was ongoing, one of the individuals claiming ownership in the debtor, Mr. Zeltser, then filed a

separate voluntary Chapter 7 petition on behalf of the debtor. The debtor moved for sanctions against Mr. Zeltser and others. The court granted the motion as to Mr. Zeltser pursuant to its inherent sanctions authority under section 105, concluding that he acted improperly and in bad faith by filing the Chapter 7 petition when he knew that the ownership control dispute was not settled. In fact, the bankruptcy court pointed out, Mr. Zeltser personally appeared in the bankruptcy court handling the debtor's Chapter 11 case and requested that it resolve the ownership dispute.

In re Roberts

527 B.R. 461 (Bankr. N.D. Fla. Mar. 11, 2015) (Specie, C.J.)

- Section/Rule/Keywords: 11 U.S.C. § 522(o)(4), exemptions

- Summary: The debtors lived in a waterfront home that they claimed as their homestead, and which home was constructed using funds obtained by disposing of non-exempt assets. After the § 341 meeting, the Chapter 7 trustee filed an objection under 11 U.S.C. § 522(o)(4) to the debtors' claim of homestead exemption. The debtors responded and the bankruptcy court held a full evidentiary hearing on the matter. Ultimately, the bankruptcy court concluded that the debtors', in liquidating their non-exempt assets and constructing their "dream home" at the time when they were on the verge of defaulting on two significant commercial debts, acted with intent to hinder, delay, or defraud their creditors. Accordingly, the bankruptcy court sustained the trustee's objection and reduced the debtors' homestead exemption in accordance with § 522(o)(4).

Colon v. Wright (In re Wright)

2015 WL 1084549 (Bankr. N.D. Fla. Mar. 9, 2015) (Shulman, J.)

- Section/Rule/Keywords: 11 U.S.C. § 546(a), limitations, equitable tolling

- Summary: A creditor objector to the Chapter 11 debtors' plan of reorganization The creditor also moved to have the bankruptcy court convert the debtors' case to Chapter 7, believing that there were fraudulent transfers that a trustee should pursue. In the meantime, the creditor filed an adversary proceeding to pursue the supposed fraudulent transfers itself. The debtors went back and forth over a period of time—which eventually exceeded two years—filing various documents with the bankruptcy court and attempting to mediate a settlement. The debtors knew all along that they could not confirm a plan without this creditor's support. Eventually, the parties reached the conclusion that they were not going to reach a settlement and the bankruptcy court, without objection, entered an order converting the debtors' case to Chapter 7. Months later, the creditor filed a second adversary proceeding. The debtors moved to dismiss under Fed. R. Civ. P. 12, arguing that the second adversary proceeding was outside the two-year

limitation period under §§ 544 and 548 and thus time-barred. The creditor did not dispute that the two-year limitations period had passed. Instead, the creditor argued that the limitations period should have been equitably tolled. The bankruptcy court first pointed out that 11 U.S.C. § 546(a) provides for equitable tolling in two situations: (1) active fraud and (2) negligent fraud. The creditor did not allege either of these, however. Instead, the creditor suggested that the debtors' gamesmanship prolonged the proceedings unnecessarily and hindered the creditor from pursuing its case. The bankruptcy court disagreed, and explained that the debtors' were not deliberately holding up their Chapter 11 case or otherwise unfairly delaying the proceedings. And even if they were, the bankruptcy court noted, the creditor could have taken steps to protect its interests as a major creditor, such as filing for an extension of the limitations period under Rule 9006 if that's what it needed. Accordingly, the bankruptcy court granted the debtors' motion to dismiss.

In re Charania

2015 WL 1208616 (Bankr. S.D. Fla. Mar. 12, 2015) (Mark, J.)

- Section/Rule/Keywords: Florida homestead exemption

- Summary: The debtor incorrectly believed that he conveyed his interest in a parcel of real property to his son and daughter-in-law years prior to his initial bankruptcy filing. After he realized this was not true, the debtor attempted to claim the real property as exempt under Florida's constitutional homestead exemption and to void a lien that his creditor had placed on the property. The bankruptcy court explained that to qualify for Florida's constitutional homestead exemption, a debtor must occupy the real property with intent to live at that property permanently. In this case, the bankruptcy court concluded that the debtor could not satisfy the second factor of the test because he had unequivocally testified that he believed he had no ownership interest in the property after his attempted conveyance of the property to his son and daughter-in-law.

In re Monticello Realty Investments, LLC

526 B.R. 902 (Bankr. M.D. Fla. Mar. 6, 2015) (Funk, J.)

- Section/Rule/Keywords: 11 U.S.C. § 1126, designating votes, 11 U.S.C. § 506(b), claims allowance, 11 U.S.C. § 1129, confirmation

- Summary: A soon-to-be Chapter 11 debtor was having difficulty satisfying the terms of a note that one of its largest creditors, a bank, held. After many attempts to work around this and multiple modifications to the terms of the note, the bank foreclosed on the collateral secured by the note. Then, the debtors filed for bankruptcy protection and eventually proposed a plan oforganization. The bank voted against the plan. The bankruptcy court held an evidentiary hearing and the

parties submitted post-trial briefs. The debtor asked the bankruptcy court to do three things: (1) to designate and disqualify the bank's vote, (2) to overrule the bank's claim, and (3) to confirm the Chapter 11 plan. The bankruptcy court declined to do all three, explaining that the bank did not act in bad faith in voting against the plan, but instead acted in an allowable way to protect its own interests; that each part of the bank's claim was allowable; and that the proposed plan for reorganization was not confirmable because it failed to satisfy the requirements of 11 U.S.C. § 1129(a). (The bankruptcy court did not need to consider whether the plan satisfied § 1129(b) because the plan failed to satisfy more than just § 1129(a)(8).)

Laboon v. Goldberg (In re Goldberg)

2015 WL 1061656 (Bankr. M.D. Fla. Mar. 5, 2015) (Jackson, J.).

- Section/Rule/Keywords: 11 U.S.C. § 523(a)(2), nondischargeability, collateral estoppel

- Summary: A judgment-creditor filed an adversary proceeding seeking a determination from the bankruptcy court that his claim was nondischargeable under 11 U.S.C. § 523(a)(2). The judgment-creditor then moved for summary judgment, arguing that the state court judgment (upon which his claim was based) was entitled to collateral estoppel effect and also established a section 523(a)(2) nondischargeable debt. The bankruptcy court agreed that the state court judgment was entitled to collateral estoppel effect, but it did not decide whether the judgment-creditor justifiably relied on the debtor's misrepresentations. Accordingly, the bankruptcy court held an evidentiary hearing to decide the matter for itself. Concluding that the judgment-creditor did in fact justifiably rely upon the debtor's misrepresentations, with the aid of the findings of the state court, the bankruptcy court entered judgment for the judgment-creditor.

In re Trussel

2015 WL 1058253 (Bankr. N.D. Fla. Mar. 5, 2015) (Jennemann, C.J.*)
*sitting by designation

- Section/Rule/Keywords: 11 U.S.C. § 521(a)(2), debtor duties

- Summary: The debtor indicated on his section 521(a)(2)(A) statement of intentions that he wanted to reaffirm the debt that was secured by a first mortgage on his real property. For reasons that the parties did not explain to the bankruptcy court, the debtor and the mortgagee never reached a reaffirmation agreement. Thus, following the close of the debtor's bankruptcy case, the mortgagee continued its state foreclosure action, which it had started prior to the debtor filing his bankruptcy petition. In the foreclosure proceedings, the debtor asserted two affirmative defenses. The mortgagee thought that this was improper

because the debtor did not follow through with the reaffirmation process and moved the bankruptcy court for an order requiring the debtor to immediately surrender the real property. The bankruptcy court denied the mortgagee's motion, explaining that relief from stay is the best remedy to enforce a debtor's obligations to comply with his or her section 521(a)(2) duties. Injunctions compelling the surrender of collateral are appropriate only in extreme cases, the bankruptcy court explained.