Florida Bankruptcy Case Law Update

April 2015 Cases

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Supreme Court of the United States Opinions

Wellness Int'l Network, Ltd. v. Sharif

135 S.Ct. 1932 (May 26, 2015)

- Section/Rule/Keywords: 11 U.S.C. § 157(b).

- Summary: The case presented the question whether Article III allows bankruptcy judges to adjudicate claims with the parties' consent. The Supreme Court, in a 6-3 decision with Justices Roberts, Thomas, and Scalia dissenting, held that Article III is not violated when the parties knowingly and voluntarily consent to adjudication by a bankruptcy judge. The Court determined that bankruptcy courts do not need parties' express written consent to decide claims but, instead, that the consent be "knowing and voluntary" (*i.e.,* may be based on "actions rather than words").

Eleventh Circuit Opinions

In re Haley

601 Fed. Appx. 900, 2015 WL 1515614 (11th Cir. April 6, 2015)

- Section/Rule/Keywords: 28 U.S.C. § 157(c)(1)

- Summary: Plaintiff brought adversary proceeding in debtor's bankruptcy case either to except debt from discharge on theory that debtor had fraudulently fabricated invoices on which it had obtained payment from Plaintiff or, in alternative, to recover from debtor's customer on invoices. The Bankruptcy Court entered judgment for debtor on nondischargeability claim because Plaintiff failed to prove fraud by a preponderance of the evidence and issued proposed findings of fact in favor of customer on Plaintiff's non-core, alternate contract claims. The District Court adopted the Bankruptcy Court's proposed findings and conclusions that the customer did not have sufficient notice under the UCC of Plaintiff's factoring agreement. Plaintiff appealed. The Eleventh Circuit held that (1) Plaintiff failed to show that the District Court, despite its express statement to the contrary, had failed to conduct de novo review of Bankruptcy Court's proposed findings of fact and conclusions of law; and (2) Bankruptcy Court did not clearly err in finding in favor of customer on Plaintiff's claims.

In re Valone
--- F.3d ---, 2015 WL 1918138 (11th Cir. April 29, 2015)

- Section/Rule/Keywords: "wildcard" exemption, homestead exemption

- Summary: The debtors appealed a district court order affirming a bankruptcy court order disallowing the debtors' "wildcard" exemption for personal property under Section 222.25(4), Florida Statutes. The debtors owned a home, but did not claim the homestead exemption in their petition. The Chapter 13 trustee objected to the debtors' wildcard exemption claim arguing that because the chapter 13 bankruptcy case protects debtors' homes, debtors who file under Chapter 13 receive the benefits of homestead exemption and cannot claim the wildcard exemption. The Eleventh Circuit held that courts should consider the facts of each case to determine whether the residence is protected by the Florida homestead exemption or some other source, because the filing of a petition under Chapter 13 by a Florida debtor who owns homestead property does not foreclose the availability of Florida's wildcard exemption to that debtor. In the instant case, the debtors' home was protected from creditors by the automatic stay, not by the homestead exemption, and thus, they were eligible to claim the wildcard exemption. The phrase in Section 222.25(4), Florida Statutes, "or receive the benefits of a homestead exemption under s. 4, Art. X of the State Constitution," is triggered only if the homestead exemption – and the homestead exemption alone – protects the debtor's home from creditors. Because it does not reference the Bankruptcy Code, receiving the protection of the automatic stay

cannot trigger the limiting phrase. Such a situation, where the debtor "receive[s] the benefits of a homestead exemption," may arise when a married debtor does not claim the homestead exemption but his non-debtor spouse retains the right to the homestead exemption.

District Court Opinions

Gould v. Furr

2015 WL 1587449 (S.D. Fla. April 9, 2015) (Bloom, J.)

- Section/Rule/Keywords: withdrawal of reference, reconsideration, 28 U.S.C. § 157(d); Fed. R. Bankr. P. 9024

- Summary: *Pro se* appellant filed a nearly incomprehensible motion for relief from an order denying his motion for mandatory withdrawal. The district court may withdraw, in whole or in part, any case proceedings under the referral authority of Title 28, Section 157, which vests the district court with the authority to refer any cases under title 11 to the bankruptcy judges of the district. Pursuant to 28 U.S.C. § 157(d), the district court may withdraw the case or proceedings on its own motion on timely motion of a party, for cause. The movant's motion for withdrawal was without merit. It was untimely, and failed to address how resolution of the proceedings required consideration of both title 11 and other laws of the United States and failed to address the elements considered to demonstrate cause under the standard for permissible withdrawal. The movant then filed a motion for relief citing Bankruptcy Rule 9024, which applies Federal Rule of Civil Procedure 60, allowing for reconsideration in certain instances. The motion simply reargues his earlier points and fails to set forth any mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, misrepresentation, other misconduct, or any other reason for justifying relief from the order denying his motion for mandatory withdrawal, therefore the motion for relief was denied.

Myhre v. TLFO, LLC

2015 WL 1722866 (S.D. Fla. April 15, 2015) (Cohn, J.)

- Section/Rule/Keywords: "good cause" for extension of discovery deadline.

- Summary: Creditor who filed proof of claim in Debtor's Ch. 11 case sought a second extension of the discovery deadline in order to conduct a forensic

examination of the Debtor's computers. The bankruptcy court denied the motion and creditor appealed to the District Court. The District Court held that the creditor's "relaxed approach" to discovery did not present good cause for the extension where the creditor did not explain why the Debtor's discovery responses revealed for the first time why the creditor needed to examine the Debtor's computers.

In re Colony Beach & Tennis Club Ass'n, Inc.

2015 WL 1815839 (M.D. Fla. April 22, 2015) (Covington, J.)

- Section/Rule/Keywords: Fed. R. Civ P. 60(b), vacate, reconsider

- Summary: Creditor moved to vacate a bankruptcy court order which denied the creditor's administrative claim. The bankruptcy court denied the motion to vacate and the creditor appealed. The district court affirmed the bankruptcy court's order after a discussion of the particular facts of the case and an analysis of Fed. R. Civ. P. 60(b). The court relied on the Eleventh Circuit's position that "the bankruptcy judge who has presided over a case from its inception is in the best position to clarify any apparent inconsistencies in the court's rulings."

In re Westward Ho II, LLC

2015 WL 1927513 (M.D. Fla. April 28, 2015) (Covington, J.)

- Section/Rule/Keywords: 28 U.S.C. § 157(b) and (c), withdrawal of reference.

- Summary: Chapter 7 trustee moved the district court to withdraw the reference in the adversary proceeding filed by the Chapter 7 trustee. The district court denied the motion stating withdrawal of the reference would result in the court losing the benefit of the bankruptcy court's experience in both the law and facts, and leading to an inefficient allocation of judicial resources. Therefore, the district court concluded that the adversary proceeding would continue in the bankruptcy court for all pretrial matters.

Bankruptcy Court Opinions

Henkel v. Brothers Mill, Ltd. and Henkel v. Eddy, et al. (In re Eddy)

2015 WL 1585513 (Bankr. M.D. Fla. April 3, 2015) (Jackson, J.)

- Section/Rule/Keywords: 11 U.S.C. § 548(a), badges of fraud, property of the estate, irrevocable trust

- Summary: Chapter 7 trustee filed lawsuits against (i) debtors' relatives as trustee and beneficiaries of a family trust, seeking to avoid and recover the debtor-husband's transfer of individually owned assets into a trust under fraudulent transfer and preference theories, and (ii) a partnership partially owned by debtor-husband, seeking to collect on a shareholder loan due to the debtor-husband and to avoid and recover certain fraudulent transfers into the partnership. After reviewing the badges and incidents of fraud under both proceedings, the court found sufficient evidence to avoid the transfers into the partnership, but held that the trust is an irrevocable trust and therefore, with the exception of the fraudulent transfer, its assets are not property of the bankruptcy estate.

In re Delois Gray

2015 WL 1956802 (Bankr. S.D. Fla. April 8, 2015) (Mark, J.)

- Section/Rule/Keywords: 11 U.S.C. §§ 1322(b) and (c), 11 U.S.C. § 1325(a), reverse mortgages, strip down

- Summary: Chapter 13 debtor who currently resided on real property subject to a reverse mortgage which had been accelerated prepetition could modify the reverse mortgage debt and pay it according to section 1325(a)(5) because the debt was due prior to the petition date. Additionally, the mortgage could be stripped down to the value of the property. The debtor also had standing to treat the bifurcated residential mortgage debt on the reverse mortgage that had been accelerated prepetition through her Chapter 13 plan, even though the debtor was not personally obligated on that mortgage.

In re Rivera

2015 WL 1743707 (Bankr. M.D. Fla. April 17, 2015) (Jennemann, C.J.)

- Section/Rule/Keywords: 11 U.S.C. § 110, petition preparer

- Summary: Judgment entered on complaint by U.S. Trustee seeking disgorgement, imposition of fine, and injunction against a bankruptcy petition preparer for failure to comply with regulations governing bankruptcy petition preparers provided in 11 U.S.C. § 110. Defendant required to pay $1,000 fine, $500 payment to debtor as disgorged fees, and enjoined from preparing or filing any documents on behalf of another person without complying with the requirements of 11 U.S.C. § 110.

In re Petroforte Brasileiro de Petoleo Ltda.

2015 WL 2265918 (Bankr. S.D. Fla. April 20, 2015) (Mark, J.)

- Section/Rule/Keywords: 11 U.S.C. § 107(b)(1), 11 U.S.C. § 1522, seal and gag orders, secret discovery

- Summary: The law firm representing a subpoenaed entity filed a motion for relief from a bankruptcy court order authorizing the trustee to issue subpoenas on discovery targets and prohibiting the subpoenaed parties from disclosing the existence or contents of the subpoenas to any other parties, except their own attorneys. The historical wrongdoing and foul play of some of the targets was not sufficient justification for the seal and gag order allowing the trustee to take discovery in secret. 11 U.S.C. § 107(b)(1) limits the presumption that all papers filed with the court are public record by noting that a bankruptcy court may protect an entity with respect to a trade secret or confidential research, developments, or commercial information, but the trustee's subpoenas did not constitute "confidential research." The court found that the gag provisions of the order did not seek to protect the fair trial rights of anyone, but rather sought to prevent the targets from knowing who has been subpoenaed to provide information about them and to prevent them from seeing the contents of the subpoenas. This reasoning, according to the court, seeks to bar the targets, the debtor and other adverse parties from even participating in the discovery process and deprives the targets of the opportunity to seek a protective order from discovery of privileged or confidential matters. Balancing the interests of the trustee to obtain secret discovery against the due process rights of the targets, the court found that the compelling interest necessary to obtain exceptional relief in the seal and gag order was absent and the seal and gag order were not sufficiently limited in scope and duration, therefore, the motion for relief was granted in part.

In re Rauseo

2015 WL 1956230 (Bankr. S.D. Fla. April 28, 2015) (Mark, J.)

- Section/Rule/Keywords: 11 U.S.C. § 350, lien stripping, strip off, motion to reopen

- Summary: Debtors filed motion to reopen their chapter 7 case to value their homestead property and strip off wholly unsecured junior liens while the *Bank of America* cases were pending before the Supreme Court. The bankruptcy court denied the Motion where the case was 6 years old, even though the lienholder did not object. The court found the time lapse was too long to be equitable under the circumstances.