# Florida Bankruptcy Case Law Update

October 2014 Cases

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## Eleventh Circuit Opinions

### *In re Brown*

---Fed. Appx.---, 2014 WL 5437356 (11th Cir. Oct. 28, 2014)

### *In re Glaspie*

---Fed. Appx.---, 2014 WL 5462421 (11th Cir. Oct. 29, 2014)

### *In re Farmer*

---Fed. Appx.---, 2014 WL 5316277 (11th Cir. Oct. 20, 2014)

### *In re Lang*

---Fed. Appx.---, 2014 WL 5285631 (11th Cir. Oct. 16, 2014)

- Section/Rule/Keywords: 11 U.S.C. § 506(a), 11 U.S.C § 506(d), lien stripping

- Summary: These cases all involve appeals by second mortgagees. In each case, it was undisputed that the value of the debtor's home was less than the balance of the first mortgage. In each case, the debtor sought a determination by the bankruptcy court that the second mortgage was wholly unsecured and, therefore, void under section 506(a) and (d). The bankruptcy court granted each motion, and the district court affirmed. Relying on *Dewsnup v. Timm,* 502 U.S. 410, 112 S.Ct. 773 (1992), the second mortgagees appealed to the Eleventh Circuit. The Eleventh Circuit affirmed, holding that *Folendore v. United States Small Bus. Admin.* 862 F.2d 1537 (11th Cir. 1989) and *In re McNeal,* 735 F.3d 1263 (11th Cir. 2012) control in these cases.

# District Court Opinions

## *Davis v. NCO Financial Systems, Inc.*

2014 WL 4954705 (M.D. Fla. Oct. 2, 2014) (Bucklew, J.)

- Section/Rule/Keywords: 11 U.S.C. § 362, Fair Debt Collection Practices Act

- Summary: Several years prior to the lawsuit, Plaintiff had filed a chapter 13 bankruptcy case listing defendant as a creditor in Plaintiff's bankruptcy schedules. Subsequently, Defendant, a debt collection company, commenced efforts to collect the debt owed by Plaintiff, including making multiple phone calls per day to Plaintiff's business phone number and leaving approximately one voicemail per day for Plaintiff. Plaintiff filed suit in the district court asserting claims against Defendant for violation of the Fair Debt Collection Practices Act ("FDCPA") and the Florida Consumer Collections Practices Act ("FCCPA"). In addition, Plaintiff filed an adversary proceeding in the bankruptcy court asserting that Defendant's debt collection activities violated the automatic stay. The facts underlying both lawsuits were the same. In the district court case, Defendant filed a motion for judgment on the pleadings, arguing that, by filing the adversary proceeding, Plaintiff elected to proceed under the Bankruptcy Code and, therefore, was precluded from proceeding against Defendant on the FDCPA and FCCPA claims asserted in the district court case. The district court denied the motion, holding that Plaintiff could maintain an action for violation of the FDCPA and FCCPA against Defendant while simultaneously pursuing a claim for violation of the automatic stay in the bankruptcy court.

## *Bombart v. Family Center at Sunrise, LLC*

--- B.R. ---, 2014 WL 5017996 (S.D. Fla. Oct. 6, 2014) (Rosenberg, J.)

- Section/Rule/Keywords: 28 U.S.C. § 2283

- Summary: Involuntary debtors' principal appealed from a judgment on the pleadings, which judgment directed him to dismiss a state court action relating to property that was subject to a sale order entered in the consolidated involuntary bankruptcy cases. In the involuntary bankruptcy cases, the bankruptcy court entered an order approving the sale of certain property belonging to the consolidated debtors. Approximately four years later, the debtors' principal filed an action in the state court against a third party transferee of the property requesting to have title in the property transferred back to debtors' principal via

specific performance. The original transferee of the property, although not a party to the state court action, filed suit in the bankruptcy court to uphold the sale order and enjoin the principal from proceeding in the state court. The bankruptcy court entered judgment for the transferee, enjoining the debtors' principal from interfering with the property and ordering him to withdraw the state court claims that involved the sale order. The district court affirmed the bankruptcy court order. Because the state court action amounted to a collateral attack of the bankruptcy court's sale order, the bankruptcy court had the authority, pursuant to 28 U.S.C. § 2283, to stay the state court proceedings in order to protect or enforce the sale order.

### *In re DeMasi*

2014 WL 5179500 (M.D. Fla. Oct. 14, 2014) (Covington, J.)

- Section/Rule/Keywords: 28 U.S.C. § 158(a)(3), 28 U.S.C. § 1292(b), abatement

- Summary: The creditor held a state court judgment against the debtor and filed an adversary proceeding against the debtor seeking a determination of non-dischargeability. The debtor filed a motion to dismiss the adversary proceeding to the extent it sought a determination that attorneys' fees were non-dischargeable. The motion to dismiss was granted by the bankruptcy court, and the creditor filed a motion for leave to appeal. The district court entered an order abating the motion for leave to appeal for a period of sixty days due to a pending motion for summary judgment on the remaining claims in the adversary proceeding and a pending appeal of the creditor's state court judgment.

## Bankruptcy Court Opinions

### *Matthew Wortley Trust v. Bakst*

2014 WL 5473514 (Bankr. S.D. Fla. Oct. 27, 2014) (Cristol, J.)

- Section/Rule/Keywords: Rule 7012, Barton Doctrine

- Summary: Plaintiff filed an action in state court against a chapter 7 trustee's attorneys asserting tort claims against the attorneys arising out of the attorneys' conduct in the course of representing the trustee. Defendants removed the case to the bankruptcy court and filed a motion to dismiss. As grounds for the motion to dismiss, the defendants alleged that (i) the plaintiff failed to seek leave of the bankruptcy court pursuant to the Barton doctrine, (ii) the purported causes of

action did not exist, and (iii) the claims were barred by Florida's litigation privilege. The court granted the motion to dismiss, holding that all bases asserted by the defendants independently established grounds for dismissal. Most notably, the court found that defendants' removal of the case from state court to bankruptcy court did not cure the plaintiff's failure to comply with the Barton doctrine. The court followed a line of cases which hold that a case filed in state court without first obtaining leave from the bankruptcy court is void *ab initio*. Thus, the failure to obtain leave of court cannot be cured by removing the case back to bankruptcy court, and the case must be dismissed.

### *In re 412 Boardwalk, Inc.*

2014 WL 5425625 (Bankr. M.D. Fla. Oct. 24, 2014) (Funk, J.)

- Section/Rule/Keywords: 11 U.S.C. § 362(d), 11 U.S.C. § 1112, Bad Faith

- Summary: The secured creditor sought dismissal of two related chapter 11 cases and relief from stay for cause alleging that the cases amounted to bad faith filings. The court found that many *Phoenix Picadilly* factors were present, including the properties were the debtors' sole assets, the properties were subject to foreclosure as a result of the debtors' failure to pay property taxes, and the debtors had no employees. The court found that the cases were filed in good faith, finding several factors that demonstrated the debtors' good faith. First, prior to the loan defaults, the debtors' principal, along with several investors, invested more than $1 million in the properties to create an opportunity for the debtors to generate income. Additionally, upon receiving the secured creditor's notice of default, the principal requested an opportunity to pay the delinquent property taxes within 30 days; however, the secured creditor refused the request for additional time and accelerated the debt after only 10 days. Finally, the debtors engaged in settlement negotiations with the secured creditor for a period of 8 months, while the creditor was accruing default interest, in an attempt to resolve the dispute. Given these findings, the court denied the motion to dismiss and motion for relief from stay.

## Florida Court Opinions

### *Baggett Bros. Farm, Inc. v. Altha Farmers Co-op, Inc.*

---So.3d---, 2014 WL 503350 (Fla. 1st DCA Oct. 9, 2014)

- Section/Rule/Keywords: Chapter 11; Default under confirmed plan

- Summary: The appellant had previously filed a Chapter 11 bankruptcy case in which it obtained confirmation of a reorganization plan. The creditor later filed suit in state court alleging that the appellant breached the confirmed plan by paying only the first payment due under the plan and failing to make any payments thereafter. The circuit court ruled in favor of the creditor, awarding damages in the amount of the debt owed under the confirmed plan, less the single payment the appellant paid. The appellant appealed to the First DCA. The DCA found that the circuit court had subject matter jurisdiction because a chapter 11 reorganization plan is a contract that may be enforced by the state court. However, the DCA found that the state court erred in its damages calculation because the confirmed plan did not contain an acceleration provision that permitted accelerating the full amount of the debt in the event of default. Thus, the creditor was only entitled to a judgment in the amount of the missed payments.