
Florida Bankruptcy Case Law Update

December 2014 Cases

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Eleventh Circuit Opinions

Ghee v. Department of Human Resources (In re Ghee)

---Fed.Appx.---, 2014 WL 7271369 (11th Cir. Dec.. 23, 2014)

- Section/Rule/Keywords: 11 U.S.C. § 524, 11 U.S.C. § 523(a)(5), discharge
- Summary: A chapter 7 debtor listed a debt claimed by the Alabama Department of Human Resources for unpaid interest that had accrued on his child-support arrears. The bankruptcy court issued a discharge order and subsequently, the Alabama Department of Human Resources obtained a judgment for the unpaid child-support interest. The debtor filed an adversary proceeding arguing that the Alabama Department of Human Resources' activities violated the discharge injunction under 11 U.S.C. § 524. The bankruptcy court granted summary judgment for the Alabama Department of Human Resources. The district court affirmed the bankruptcy court's order. The Eleventh Circuit ruled that the bankruptcy court properly determined that any interest the debtor owed on child-support arrears was not discharged by the bankruptcy court's discharge order, as pre-petition child-support interest is part of a non-dischargeable child-support obligation under 11 U.S.C. § 523(a)(5).

Bank of America v. Hackbart, (In re Hackbart)

---Fed.Appx.---, 2014 WL 7015186 (11th Cir. Dec.. 15, 2014)

- Section/Rule/Keywords: 11 U.S.C. § 506(d), "strip off"

- Summary: The Eleventh Circuit affirmed the lower courts' granting the Chapter 7 debtor's motion to strip off second mortgage pursuant to 11 U.S.C. § 506(d), where first mortgage exceeded the current market value of the house.

Sportmans's Link v. Overstreet,

---Fed.Appx.---, 2014 WL 6910676 (11th Cir. Dec.. 10, 2014)

- Section/Rule/Keywords: Bank. Rule 2014(a), disgorgement, standing
- Summary: This case involves a business owner who individually paid bankruptcy attorneys a retainer fee to assist his company to file for chapter 11 bankruptcy, which was later converted to a chapter 7. During the bankruptcy case, the attorneys' failed to disclose its connections to two of the debtor's creditors. The bankruptcy court determined that the attorneys' failure to disclose its connection to the creditors during the Chapter 11 proceeding was purposeful and material and reduced the attorneys' fees in the Chapter 11 as well as the Chapter 7 case for the attorneys' ongoing failure to disclose its association with the creditors. The former individual business owner filed a pro se motion to disgorge the retainer he paid to the attorneys and requested a special investigation of the attorneys' representation of the debtor. The Eleventh Circuit affirmed the lower courts' rulings finding that the individual did not have a pecuniary interest in the retainer he paid and therefore lacked standing.

District Court Opinions

HDR Architecture, P.C., v. In re Maguire Grp. Holdings, Inc.
(In re Maguire Grp. Holdings, Inc.)

2014 WL 7366276 (S.D. Fla. Dec. 24, 2014) (Bloom, J.)

- Section/Rule/Keywords: 11 U.S.C. § 524, indemnification
- Summary: The district court considered whether the bankruptcy court correctly determined that allowing appellant to reopen the debtors' chapter 11 cases and modify the discharge injunction would impair the reorganized debtors' "fresh start" in violation of 11 U.S.C. § 524 and the prerogatives of the Bankruptcy Code. Appellant sought to pursue indemnification claims against the debtors solely for purposes of seeking available insurance proceeds. The bankruptcy court concluded that doing so would inevitably result in economic loss to the

debtors and, therefore, Appellant's post-discharge prosecution of its prepetition rights would result in a violation of the section 524(a) injunction. The district court reversed and found that the bankruptcy court order could not compromise a non-party's indemnification rights. The district court found that forcing a creditor seeking indemnification solely against a debtor's insurer to file a proof of claim and appear in the debtor's bankruptcy or risk losing its indemnification rights would upend the purpose of section 524(e) and remanded the case to consider the appellant's motions to reopen the chapter 11 cases and modify the discharge injunction.

La Paz At Boca Pointe Phase II Condominium Association v. Bandy

---B.R.---, 2014 WL 6908431 (S.D. Fla. Dec. 8, 2014) (Rosenberg, J.)

- Section/Rule/Keywords: jurisdiction, lien stripping
- Summary: This case involved a chapter 7 debtor who filed a motion to value and determine secured status of lien claimed by the creditor condominium association in an effort to “strip off” the lien. The chapter 7 trustee previously filed a notice of abandonment of the property. The bankruptcy court first held that the abandonment by the trustee had no impact on the court’s jurisdiction. Then, the bankruptcy court, relying on the McNeal opinion, held that the lien of the creditor could be stripped off entirely notwithstanding the prior abandonment of the property by the trustee. The district court reversed the bankruptcy court order and found that the bankruptcy court's application of that case was in error because McNeal did not address abandonment and it did not address jurisdiction in the context of abandonment. The Court stated, “In the event property remains within the jurisdiction of a bankruptcy court in the Eleventh Circuit, McNeal is certainly binding authority that stands for the proposition that unsecured liens may be stripped off.” However, the Court concluded that Dewsnap controls the lien strip issue where property has been abandoned and removed from the jurisdiction of the bankruptcy court. Therefore, the bankruptcy court had no jurisdiction to enter an order stripping the lien. With respect to jurisdiction and abandoned property, the district court found finds that Dewsnap—not McNeal—controls and therefore the bankruptcy court did not have jurisdiction to enter the order.

Bankruptcy Court Opinions

Garvin v. Diebolt (In re Aldrich)

---B.R.---, 2014 WL 7162230 (N.D. Fla. Dec. 25, 2014) (Mahoney, J.)

- Section/Rule/Keywords: jury trial, fraudulent transfer, jurisdiction
- Summary: The trustee filed a fraudulent transfer action against the defendant who did not request a jury trial in his answer and did not file a proof of claim in the bankruptcy case. The Defendant later sought leave to amend his answer to include an affirmative defense—good faith and reasonably equivalent value. However, the bankruptcy court found that the amendment did not raise any new issues on which a jury demand could be founded. Moreover, under the Parrott elements identified by the Eleventh Circuit, 1) the bankruptcy court is better suited to determine the issue of value; 2) the motion would disrupt the case management schedule, and 3) the defendant did not offer a good reason why he did not make a timely jury trial demand. As a result, the court ruled that it has constitutional authority to enter a final order on the plaintiff's fraudulent transfer claims and the defendant waived its rights to a jury trial.

In re Swarup

---B.R.---, 2014 WL 7146358 (M.D. Fla. Dec. 15, 2014) (Jennemann, J.)

Slip Opinion, 2014 WL 7171286 (M.D. Fla. Dec. 15, 2014) (Jennemann, J.)

- Section/Rule/Keywords: 11 U.S.C.A. § 522, Fla. Stat. § 222.21(2), exemptions
- Summary: The chapter 7 trustee and creditor objected to Florida exemptions that debtor claimed on three retirement accounts she received through a division of marital assets. The bankruptcy court ruled that Chapter 7 debtor's interest in three retirement accounts were exempt under Florida statute providing exemption from creditors' claims for any interest of owner, beneficiary, or participant in enumerated tax-preferred funds or accounts; accounts undisputedly were the type of accounts exemptible under the statute, objectors did not dispute that debtor had sufficient interest for accounts to be deemed property of the estate, and even if, due to timing of rulings issued by Indiana bankruptcy court which divided the marital assets of debtor and her former husband, debtor's interest in the accounts was inchoate or contingent on the petition date, her interest was sufficient to claim an exemption in the accounts, as under Indiana

law, debtor had an equitable interest in the accounts once petition for dissolution was filed, and Florida's exemptions did not prohibit her from claiming an exemption in her equitable or contingent interest. Fla. Stat. Ann. § 222.21(2).

Sanchez v. Sanchez (In re Sanchez)

Slip Copy, 2014 WL 7184461, (Bankr. M.D. Fla. Dec. 18, 2014) (Jennemann, J.)

- Section/Rule/Keywords: 11 U.S.C. §727(a)(2)(A), 11 U.S.C. §727(a)(4)(A), discharge
- Summary: Plaintiff, a former spouse, contended that the debtor defendant knowingly and fraudulently failed to disclose in her bankruptcy schedules valuable personal property she obtained both before and after their divorce. The bankruptcy court found that the debtor was entitled to her discharge because the plaintiff failed to prove that the defendant made any material false oaths or accounts with any knowing or fraudulent intent as required by § 727(a)(4)(A) of the Bankruptcy Code or to show any transfer or concealment intending to hinder, delay, or defraud creditors as required by § 727(a)(2)(A).

In re Simmons

520 B.R. 136 (Bankr. M.D. Fla. Dec. 2, 2014) (Jennemann, J.)

- Section/Rule/Keywords: 11 U.S.C.A. § 541(a)(1); Fla. Stat. Ann. § 624.155; property of estate.
- Summary: Chapter 7 trustee sought court approval for settlement that she had negotiated of debtors' "bad faith" claim against their insurer, and debtors objected based not only on reasonableness of settlement amount, but on whether claim was included in "property of the estate." The bankruptcy court concluded that the bad faith claim was property of the estate because all conduct giving rise to the claim occurred pre-petition.

In re Simmons

Slip Opinion, 2014 WL 6808613 (Bankr. M.D. Fla. Dec. 2, 2014) (Jennemann, J.)

- Section/Rule/Keywords: 11 U.S.C. § 706(a), Fla. Stat. §624.155

- Summary: Bankruptcy court denied debtor's motion to vacate discharge and notice of reversion to Chapter 13. The court found the debtors' attempt to vacate their discharge and reconvert clearly was an attempt to assert control over the bad faith claim, which was property of the estate.

In re Crisalie Dela Cruz Fitzpatrick

---B.R.---, 2014 WL 7184248 (Bankr. M.D. Fla. Dec. 18, 2014) (Jennemann, J.)

- Section/Rule/Keywords: 11 U.S.C.A. § 522(b)(3)(B); Fla. Stat. §222.25(4), exemptions
- Summary A chapter 7 debtor who had not claimed the Florida homestead exemption, but only an entireties exemption, for residential property that she owned as tenant by the entireties with a non-debtor spouse, and whose spouse had affirmatively waived Florida homestead exemption for property, was not “claiming or receiving the benefits” of the Florida homestead exemption. As a result, the court ruled that the debtor satisfied the statutory prerequisites for claiming wildcard exemption.

In re Bayou Shores SNF, LLC

Slip Copy, 2014 WL 7452363 (Bankr. M.D. Fla. Dec. 31, 2014) (Williamson, J.)

- Section/Rule/Keywords: 11 U.S.C § 365, feasibility, plan confirmation
- Summary: Prior to the debtor, who operates a skilled nursing facility, filing for chapter 11 bankruptcy, the United States Department of Health & Human Services (“HHS”), through the Center for Medicare & Medicaid Services (“CMS”), gave the debtor notice it was terminating its Medicare provider agreement prepetition. The debtor proposed a chapter 11 plan that was funded from its continued operations and assumption of its Medicare provider agreements. However, the bankruptcy court concluded that the debtor's plan was feasible because the debtor had the right to assume the Medicare provider agreement under Bankruptcy Code § 365 because the pre-petition termination was not complete and irreversible until the appeals process was complete, which did not occur pre-petition.

In re Meddock

Slip Copy, 2014 WL 6998096 (Bankr. M.D. Fla. Dec. 10, 2014) (Jennemann, J.)

Slip Copy, 2014 WL 6968772 (Bankr. M.D. Fla. Dec. 10, 2014) (Jennemann, J.)

- Section/Rule/Keywords: 11 U.S.C. § 506, lien stripping
- Summary: Debtor reopened his chapter 7 and sought to strip off a junior lien encumbering his home in bankruptcy. The bank argued that *McNeal* was wrongly decided, and that the proper time for valuation is the date the debtor filed his motion to strip, not the petition date. The bankruptcy court granted the debtor's motion holding that the petition date is the proper date for valuing real property to determine whether a junior mortgage is secured or unsecured in Chapter 7 and subject to strip-off by § 506(d).

In re Bailly

Slip Copy, 2014 WL 7148716 (Bankr. M.D. Fla. Dec. 11, 2014) (Jennemann, J.)

- Section/Rule/Keywords: 11 U.S.C. § 365(p)(2), 11 U.S.C. § 524(c) car lease assumption, reaffirmation
- Summary: The debtor and Ford Motor Credit Company filed a stipulation for assumption of lease agreement and requested that the court approve the lease assumption without requiring a separate reaffirmation agreement. The court found that a debtor can assume a car lease under § 365(p)(2) of the Bankruptcy Code without also reaffirming a debt under § 524(c) of the Code. Moreover, the court stressed that parties do not need to file any motion or stipulation seeking approval for any lease assumption and that the only requirement is the parties agree to the lease assumption as allowed by § 365(p)(2).

In re Iskandar

Slip Copy, 2014 WL 7176467 (Bankr. S.D. Fla. Dec. 15, 2014) (Cristol, J.)

- Section/Rule/Keywords: Fla. Stat. § 45.0315, automatic stay, 11 U.S.C. § 362
- Summary: A foreclosure sale occurred on the debtor's property hours before the debtor filed its suggestion of bankruptcy with the state court. A certificate of sale was issued to the purchaser. The purchaser filed a motion for relief from stay with the bankruptcy court seeking the issuance of the certificate of title. Despite the debtor arguing that the purchaser assumed the risk at the sale, the bankruptcy court found that the rights of the innocent third party purchaser

outweighed the rights of the debtor. Additionally, the court found that granting the motion for stay relief was in the best interest of the creditors because the first mortgagee would receive payment in full and the second mortgagee would be paid down.

Cameron v. Lifsey (In re Carpets)

---B.R.---, 2014 WL 7354629 (Bankr. M.D. Fla. Dec. 23, 2014) (Williamson, J.)

- Section/Rule/Keywords: 11 U.S.C. § 548, Fla. Stat. §726.105, Fla. Stat. §726.106, fraudulent transfer, motion to dismiss
- Summary: Chapter 7 trustee filed fraudulent transfer actions pursuant to 11 U.S.C. § 548, Florida Statutes, §726.105, Florida Statutes, §726.106, alleging that the debtor, at a time that the defendants did not perform any services or work in the debtor's business, paid numerous living expenses for the benefit of the defendants. The court denied the defendants motion to dismiss the complaint finding that it is sufficient to simply allege sufficient facts to show a plausible case that the defendants were the beneficiaries of avoidable transfers.

In re Baltzer

Slip Copy, 2014 WL 7149724 (Bankr. M.D. Fla. Dec. 11, 2014) (Jennemann, J.)

- Section/Rule/Keywords: 11 U.S.C. § 524(a), discharge injunction
- Summary: The debtor filed a motion for sanctions against loan servicer for violating the discharge injunction. The court found that the servicer acted with actual knowledge of the violations and with a reckless disregard of the debtor's protected right of a discharge when the servicer, telephonically and in writing, continued to demand payment from the debtor. The court determined that the conduct was willful and awarded actual damages in the amount of \$112,465.90 and punitive damages in the same amount against the servicer.

In re Seminole Walls and Ceilings

Slip Copy, 2014 WL 6808316 (Bankr. M.D. Fla. Dec. 2, 2014) (Jennemann, J.)

- Section/Rule/Keywords: intervention, abstention, sanctions

- Summary: The movant filed one motion seeking intervention, immediate return of converted property, abstention, permission to file suit under the Barton Doctrine, and sanctions. The court denied, without prejudice, movant's motion finding that it was deficient because it combined multiple motions or requests for relief in a single motion that require different procedural implications.

In re Florida Eco-Safaris, Inc. v. David Jones Insurance, Inc.

Slip Copy, 2014 WL 7261545 (Bankr. M.D. Fla. Dec. 19, 2014) (Jennemann, J.)

- Section/Rule/Keywords: 11 U.S.C. §548(a)(1)(B), Fla. Stat. §726.106(1)
- Summary: Defendant filed a motion for summary judgment against the chapter 7 trustee who filed an adversary proceeding claiming actual and constructive fraud where the defendant received \$61,025 in insurance premium payments. The court granted the defendant's motion for summary judgment finding that the defendant gave value and accepted the repayment of its loan in good faith because: it received the debtor's financing request through an insurance broker and, consistent with its normal business practices, did not examine the debtor's business or the circumstances surrounding its financing request. Additionally, the defendant received the request and was only aware of the information listed on the Premium Financing Agreement, such as the name of the entity requesting financing, the amount of the premium, and the names of the insurers. Finally, the defendant never received the underlying insurance policies, and in the course of its typical business practices, it never sought information on the underlying policies.

In re Sanders

---B.R.---, 2014 WL 6980479 (Bankr. S.D. Fla. Dec. 8, 2014) (Olson, J.)

- Section/Rule/Keywords: 11 U.S.C. §330, fee application
- Summary: The court required the debtor's attorney seeking compensation for her representation of debtor and debtor-in- possession to account for all trust account transactions related to debtor or debtor's case because there was a discrepancy between the amount of the fee retainer paid by debtor, and the balance purportedly remaining in the fee retainer account. Additionally, based

upon her “shockingly sloppy” performance in the case, the court lowered the attorney's hourly rate from \$450 an hour to \$250.

In re Gibson

Slip Copy, 2014 WL 6985147 (Bankr. S.D. Fla. Dec. 9, 2014) (Mark, J.)

- Section/Rule/Keywords: 11 U.S.C. § 1325(b), 11 U.S.C. § 707(b)(2)(A)(iii), disposable income
- **Summary:** The dispute in this case is between the chapter 13 trustee and the debtor over the amount of deductions available for regular mortgage payments and arrears payments. Specifically, in a cure and maintain plan in which the debtor is making his regular mortgage payment and a payment each month to cure prepetition arrears, whether the cure payment listed in line 48 of the CMI Form should be deducted from the IRS Standard Allowance in line 25B. The court found that the debtor inappropriately reduced his Monthly Disposable Income by \$1,990.72, instead of the IRS Standard of \$1,870, by not including the \$120.72 arrears payment in sub-line b of line 25B and then including it in line 48 of the CMI Form.

Markwood Investments, Ltd., et al. v. Neves (In re Neves)

Slip Copy, 2014 WL 7012674 (Bankr. S.D. Fla. Dec. 11, 2014) (Isicoff, J.)

- Section/Rule/Keywords: Fed. R. Civ. P. 43, deposition, video testimony
- **Summary:** In this case, after many years of litigation between the parties, the adversary plaintiffs requested leave to take the deposition of a witness and to allow another to testify at trial by contemporaneous video transmission as a fact witness pursuant to Rule 43 of the Federal Rules of Civil Procedure. The court denied the plaintiffs' request finding that the plaintiffs' made a conscious choice to wait until the last possible moment to deal with the unavailability of their key witness. Allowing the deposition and video testimony would have adverse consequences for the other party or parties in the case.

Markwood Investments, Ltd., et al. v. Neves (In re Neves)

Slip Copy, 2014 WL 7070938 (Bankr. S.D. Fla. Dec. 11, 2014) (Isicoff, J.)

- Section/Rule/Keywords: Fifth Amendment, Fed. R. Bankr. P. 15, fraud, promissory notes, usury
- Summary: Adversary plaintiffs brought numerous claims against the defendant, including fraud and enforcement of promissory notes, alleging that the defendant masterminded a scheme through which plaintiffs were tricked into wiring \$20 million to a Panamanian brokerdealer, in which the Plaintiffs claimed defendant had an interest. At trial, the court addressed two threshold issues prior to reviewing the evidence; 1) the framework under which the plaintiffs may use, and rely on, the adverse inference arising from the defendant's invocation of his Fifth Amendment right against self-incrimination; and 2) plaintiffs' rule 15 motion that seeks to amend the Complaint to add a separate count for conspiracy and additional allegations. As to the defendant's fifth amendment right, the court found that where a plaintiff has offered independent evidence tending to establish the defendant's fraudulent intent and the defendant has denied the court access to the only direct evidence of his intent by refusing to testify on Fifth Amendment grounds, the court may draw an adverse inference, adding to the weight of the plaintiff's evidence. The court granted the plaintiffs' rule 15 motion finding that the defendant had enough notice to conduct discovery on the matters.

On plaintiffs' fraud claim, the court found that, despite having enough evidence to prove that the defendant was involved in the theft of the money at issue, a claim not alleged by the plaintiffs, plaintiffs failed to prove there was a scheme to defraud. Finally, the court ruled that the plaintiffs were entitled to a judgment under the promissory notes and that the interest charged was not usurious.