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CASE LAW UPDATE FOR Q4 2018
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Eleventh Circuit Cases

Bennett v. Jefferson County (In re Jefferson County)
899 F.3d 1240 (11th Cir. Aug. 16, 2018)

In a case of first impression, the Eleventh Circuit held that the doctrine of equitable mootness applies in Chapter 9 cases. Applying that doctrine, the Eleventh Circuit dismissed an appeal of a confirmation order by sewer ratepayers.

Kaye v. Blue Bell Creameries, Inc. (In re BFW Liquidation, LLC)
899 F.3d 1178 (11th Cir. Aug. 14, 2018)

Previously, the Eleventh Circuit, in *In re Jet Florida System*, 841 F.2d 1082, 1083 (11th Cir. 1988), opined that a creditor could not assert a "new value" defense to a preference action unless the "new value" remained unpaid. But, in *In re BFW Liquidation*, the court observed that the "unpaid" requirement was dicta. Taking a fresh look at the issue, the Eleventh Circuit held that § 547(c)(4) does not require that "new value" remain unpaid in order to be a defense to preference liability.

Silva v. Pro Transport, Inc.
898 F.3d 1335 (11th Cir. Aug. 10, 2018)

Applying its decision in *Slater v. U.S. Steel Corp.*, 871 F.3d 1174 (11th Cir. 2017), which clarified the standard for applying judicial estoppel, the Eleventh Circuit held that the district court abused its discretion in imposing sanctions on a debtor who litigated a claim under FLSA after failing to list that claim on his bankruptcy schedules.

In re Daughtrey
896 F.3d 1255 (11th Cir. July 24, 2018)

The Eleventh Court held that the decision to dismiss or convert a case from chapter 7 to chapter 11 is within the "sound discretion of the court." The court also held that the bankruptcy court did not abuse its discretion in denying the debtors' request to convert to chapter 11 because "cause" existed to either dismiss the case or convert it back to chapter 7 given the overwhelming evidence that the motion to convert was a sham intended to cause further delay.

Bankruptcy Court Cases

Bryant and Company, LLC v. Kenny* (*In re Kenny)
2018 WL 4191477 (Bankr. M.D. Fla. Aug. 30, 2018) (Funk, J.)

A creditor sued to except $712,140 of an arbitration award from the debtors' discharge under § 523(a)(2)(A). Initially, the bankruptcy court ruled that collateral estoppel did not preclude the debtors from relitigating findings of fraud in the arbitration award. Assessing the merits of the § 523(a)(2)(A) claim, the bankruptcy court found that the debtors did not intend to deceive the creditor. The court also found that there was no justifiable reliance by the creditor because, although the parties were sophisticated businesspeople, the alleged promise was not memorialized in any writing even though the parties' negotiations spanned nearly one year. The Court concluded that justifiable reliance "requires something more than a mere onetime oral conversation."

In re Williams
588 B.R. 259 (Bankr. M.D. Fla. Aug. 16, 2018) (McEwen, J.)

The U.S. Trustee sued a non-attorney and his business alleging that they had been providing bankruptcy assistance services as a petition preparer in violation of §§ 110 and 526 – 28. The bankruptcy court ruled that even absent an intent to violate the Bankruptcy Code, the non-attorney and his business were required to refund all fees to debtors.

Coosemans Miami, Inc. v. *Arthur (In re Arthur)*
2018 WL 3816761 (Bankr. S.D. Fla. Aug. 7, 2018) (Mark, J.)

In what the Court described as a "close call," Judge Mark held that a PACA trust does not satisfy the requirements for finding "fiduciary capacity" under § 523(a)(4) because it does not require segregation of assets until ordered by a court, and the trust assets may be used for non-trust purposes.