Court Connection
Volume No. 8 – Issue No. 1
January 2019

CASE LAW UPDATE FOR Q1 2019
ISSUE OF THE COURT CONNECTION

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Eleventh Circuit Cases

Dukes v. Suncoast Credit Union (In re Dukes),
909 F.3d 1306 (11th Cir. 2018).

Eleventh Circuit affirmed both the bankruptcy court and the district court holding that residential mortgage debt was not discharged under a confirmed Chapter 13 plan where the debt was not "provided for" in the plan. The debt was not "provided for" in the plan where the plan merely stated the debtor would continue making direct mortgage payments outside the plan. The court concluded that for payments to be "provided for" by the plan under § 1328(a), the plan "must, in some way, affect or govern the debt's repayment." Additionally, the court held that even if the debt was "provided for" by the plan, discharging the debt would violate § 1322(b)(2)'s anti-modification provision which prohibits a Chapter 13 plan from modifying a claim secured only by the debtor's principal residence.

Bertram v. HSBC Mortgage Services, Inc. (In re Bertram),
2018 WL 5797725 (11th Cir. Nov. 5, 2018) (unpublished).

Eleventh Circuit held that the *Rooker-Feldman* doctrine barred the pro se debtor's claims seeking to invalidate the state court's final judgment of foreclosure. However, the doctrine did not bar claims challenging the foreclosure sale and the mortgage lender's conduct regarding the sale because these claims focused on conduct that occurred after the foreclosure judgment was entered and the time for appeal expired. These claims were not actually raised or inextricably intertwined with the issues resolved by the state court's final judgment.

Bankruptcy Court Cases

Luria v. ADP, Inc. (In re Taylor, Bean & Whitaker Mortgage Corp.),
593 B.R. 862 (Bankr. M.D. Fla. 2018) (Colton, J.).

In an opinion arising from the massive fraud by Taylor, Bean & Whitaker, the country's largest independent mortgage lender, Judge Colton found that the "mere conduit" defense applied to the defendant ADP, which was being sued to recover $34 million it received from the debtor for payroll processing services prior to the bankruptcy filing. The court found the mere conduit exception, to the liability imposed on initial transferees under § 550(a)(1), applies where the transferee shows that: (1) it did not have control over the asset it received; and (2) it acted in good faith and as an innocent participant in the fraudulent transfer.

In re Carr,
591 B.R. 474 (Bankr. M.D. Fla. 2018) (McEwen, J.).

The court suspended debtor's attorney and law firm for an indefinite period from practicing before the United States Bankruptcy Court for the Middle District of Florida. The attorney had been suspended from practice by the Florida Supreme Court but failed to notify the bankruptcy court of the disciplinary action. He also failed to notify his bankruptcy clients, opposing counsel, and trustees that he was ineligible to practice law, which he was required to do upon his suspension from the Florida Bar.

In re Harris,
2018 WL 4944990 (Bankr. M.D. Fla. Oct. 11, 2018) (Jackson, J.).

The court found bankruptcy petition preparer in civil contempt for failure to comply with the court's prior injunction issued under § 110 of the Bankruptcy Code and for additional violations of § 110. In this case, the court issued a permanent nationwide injunction barring the contemnor from acting as a bankruptcy petition preparer. The court further ordered sanctions in the total amount of $48,991 to be tendered to the U.S. Trustee.