Eleventh Circuit Case Law Update
Analysis of Recent Cases in the Eleventh Circuit

By: Bradley M. Saxton, Esq. Winderweedle, Haines, Ward & Woodman, PA
C. Andrew Roy, Esq., Winderweedle, Haines, Ward & Woodman, PA

Supreme Court Cases

Bullard v. Blue Hills Bank
135 S. Ct. 1686 (May 4, 2015)

A bankruptcy court's order which denied confirmation of a chapter 13 plan but permitted the debtor leave to amend is not a "final" order that could be immediately appealed by the debtor.

Harris v. Viegelahn
135 S. Ct. 1829 (May 18, 2015)

Undistributed chapter 13 plan payments made by a debtor from his or her wages and held by the chapter 13 trustee at the time of the conversion of the case to chapter 7 must be returned to the debtor and not distributed to creditors.

Wellness Int'l Network, Ltd. v. Sharif
135 S.Ct. 1932 (May 26, 2015)

Parties can expressly or impliedly consent to a bankruptcy court adjudicating Article III "*Stern*" claims, and such consent does not run afoul of the separation of powers and the vesting of the judicial power in Article III courts only.

Eleventh Circuit Cases

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

Eleventh Circuit reversed bankruptcy court and district court, and upheld Chapter 13 debtors' claim of "wildcard" exemption under Florida law, finding that the automatic stay, not the Florida homestead exemption, was protecting debtors' interest in their home for purposes of determining whether the "wildcard" exemption was available.

Lorenzo v. Wells Fargo (In re Lorenzo)
--- Fed. Appx. ---- (11th Cir. June 4, 2015)

The 11th Circuit affirmed both the district court and the bankruptcy court which denied the debtor's motion for extension of time to respond to the creditor's adversary preceding complaint and granted creditor's motion for entry of default and also entered a default judgment against the debtor. The bankruptcy court properly concluded that debtor's failure to timely answer the complaint was willful and its refusal to set aside the default was based on the finding of willfulness and the lack of a meritorious defense. Further, the entry of a default judgment was proper because, as a result of the default, the debtor admitted the plaintiff's well-pleaded allegation of fact.

Coen v. Stutz (In re CDC Corporation)
--- Fed. Appx.---- (11th Cir. June 11, 2015)

The Barton doctrine applies and the plaintiff was required to obtain permission from the bankruptcy court to sue the general counsel of a liquidating trust under a chapter 11 confirmed plan, where the defendant was sufficiently connected to the bankruptcy estate, where, among other things, his employment was approved by the bankruptcy court.

Bankruptcy Court Cases

Estate of Jackson v. Gen. Elec. Cap. Corp.
(In re Fundamental Long Term Care, Inc.)
527 B.R. 497 (Bank. M.D. Fla. Mar. 20, 2015) (Williamson, J.)

In an interesting twist on the recent cases involving bar orders, the bankruptcy court turns to the All Writs Act and the Anti-Injunction Act for authority to issue an injunction prohibiting parties from future litigation where the enjoined litigation arises out of the same nucleus of facts before the court, and the injunction is necessary to preserve a compromise and bring finality to complex and lengthy litigation.

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.)

Trustee proved at trial that transfers by debtor into trust were fraudulent and bankruptcy court avoided those transfers for the benefit of the chapter 7 estate. The court, however, declined to pierce the trust to expose all of its assets, beyond the fraudulently transferred assets, because it was an irrevocable trust.

In re Metzler
530 B.R. 894 (Bankr. M.D. Fla. May 13, 2015) (Williamson, J.)

The bankruptcy court interpreted the meaning of the term "surrender" in the context of both a chapter 7 case (interpreting §521 of the code) and a chapter 13 case (interpreting §1325(a)(5)(C)). The court holds that "surrender" means that a debtor must relinquish secured property and make it available to the secured creditor by refraining from taking any overt act that impedes a secured creditor's ability to foreclose its interest in secured property.

In re Fazzary
530 B.R. 903 (Bankr. M.D. Fla. May 21, 2015) (Glenn, J.)

Bankruptcy court found that debtor filed chapter 13 petition in bad faith and for an improper purpose. Upon creditor's motion for sanctions against the debtor and the debtor's counsel, bankruptcy court concluded that the court has authority to impose sanctions for a bad faith filing but those sanctions should be "limited to what is sufficient to deter repetition". The court concluded that the written finding of bad faith contained in the order dismissing the case was sufficient to deter the debtor and debtor's attorney from filing any future bankruptcy cases for an improper purpose.

In re Walls v. Hicks
530 B.R. 912 (Bankr. M.D. Fla. May 22, 2015) (Jennemann, C.J.)

Debtor's obligation to remit 10% of his military retirement pay to his ex-spouse is a debt which resulted from the enforcement of obligations imposed by a divorce decree and therefore falls within §523(a)(15) because it is "in connection" with the divorce decree and any judgment that results from the debtor's failure to pay is inseparable from the divorce decree and therefore is within the broad scope of §523(a)(15) and is not dischargeable.

In re Park
--- B.R. ---- (Bankr. M.D. Fla. June 19, 2015) (Delano, J.)

The bankruptcy court addressed the issue of whether a mortgage debt that was to be paid outside the plan in a chapter 13 case was "provided for" by the plan in accordance with §1328. The court held that where the chapter 13 plan does not modify the rights of the secured creditor and the rights of a holder of claim are left unaffected, the claim is not discharged. Therefore, the court denied the debtor's motion for an order to show cause why the mortgage holder and its counsel should not be held in contempt for continuing the creditor's suit against the debtors to foreclose the mortgage debt and collect on the underlying promissory note as a violation of the discharge injunction.

Digestive Health Center v. DeMasi (In re DeMasi)
2015 WL 3956135 (Bankr. M.D. Fla. June 26, 2015) (Williamson, J.)

Upon analysis of the prior State Court judgment which determined that the debtor defrauded his creditor, the bankruptcy court concluded that all of the elements of §523(a)(2)(A) are met and the State Court Judgement is entitled to collateral estoppel effect and full faith and credit and therefore the debtor's liability to the creditor is non dischargeable and creditor is entitled to summary judgment.

In re Curtis
2015 WL 4065260 (Bankr. M.D. Fla. June 30, 2015) (Jennemann, C.J.)

Bankruptcy court rejects the debtor's contention that following the confirmation of a chapter 13 plan, §1327 vests property of the estate in the debtors, and holds that upon conversion to chapter 7, §348(f) controls and the debtor's unencumbered, nonexempt personal property the debtor's still held after conversion is property of the estate and subject to administration by the chapter 7 trustee.