

CASE LAW UPDATE

By Bradley M. Saxton and C. Andrew Roy

Eleventh Circuit Cases

Slater v. U.S. Steel Corp.

2016 WL 723012 (11th Cir. Feb. 24, 2016)

In an employment discrimination case, plaintiff was judicially estopped from pursuing the action because she failed to disclose the claim in her Chapter 7 case. Even after amending her schedules and SOFA, the district court still granted summary judgment in favor of the defendant based on judicial estoppel. Eleventh Circuit affirmed based on its past precedent. Judge Tjoflat with an excellent specially concurring opinion calling for an *en banc* review of the judicial estoppel doctrine.

Bankruptcy Court Cases

In re Juerakhan

544 B.R. 711 (Bankr. M.D. Fla. Feb. 4, 2016) (Williamson, C.J.)

Creditor sought to except a \$159,100 debt owed by debtor-bail bondsman from discharge under section 523(a)(4) based on the debtor's intentional failure to uphold his statutory fiduciary duty to the creditor. Creditor engaged debtor to post bail through bail bonds for creditor's son, and provided a \$100,000 cashier's check as collateral. Once creditor's son appeared in court, the debtor was to return the \$100,000. Instead, the debtor used the money for the operations of his business. The Bankruptcy Court granted summary judgment for the creditor, finding that a bail bondsman is a fiduciary under Florida Statutes, chapter 648, and that the debtor's actions constituted a defalcation within the meaning of section 523(a)(4).

In re Kraz, LLC

539 B.R. 887 (Bankr. M.D. Fla. Oct. 27, 2015) (Williamson, C.J.)

In Chapter 11 case Bankruptcy Court granted summary judgment for debtor finding that creditor not entitled to accrued interest or attorney's fees and costs as part of its claim, based on the Bankruptcy Court's interpretation of the state court judgment.

In re Quevedo

2016 WL 801386 (Bankr. M.D. Fla. Feb. 12, 2016) (Jackson, J.)

Debtor may not revoke his own discharge. Section 727(d) permits only the trustee, a creditor or the United States Trustee to seek revocation of a discharge.

Court Connection

Volume No. 5 – Issue No. 2

April 2016

In re Reynolds

546 B.R. 232 (Bankr. M.D. Fla. Feb. 12, 2016) (Jennemann, J.)

Bankruptcy Court found that only one of 3 separate obligations was non-dischargeable under Section 523(a)(15).

In re Jans

2016 WL 741884 (Bankr. M.D. Fla. Feb. 24, 2016) (Delano, J.)

Debtor's earnings, which were primarily from real estate sales as an independent contractor, satisfied the exception under F.S. 222.11 for earnings of a head of family.

In re Montalvo

2016 WL 769997 (Bankr. M.D. Fla. Feb. 25, 2016) (Jennemann, J.)

Debtor remained personally liable for association assessments accruing post-petition. Association assessments are based on covenant running with the land. Surrender did not relieve debtor of obligation for assessments because surrender did not cause a transfer of title.

In re Bremer

2016 WL 1072501 (Bankr. M.D. Fla. March 17, 2016) (Jackson, J.)

In Chapter 13 case, debtor sought to strip off both of creditor's mortgages based on negative valuation of investment property, which negative valuation resulted from debtor burying debris on property instead of cleaning it up. Bankruptcy Court accepted debtor's appraisal, but, relying on equity, did not accept the reduction for the damage the debtor himself caused to the property that resulted in the negative valuation.

In re Mojo Brands Media, LLC

2016 WL 1072508 (Bankr. M.D. Fla. March 16, 2016) (Jackson, J.)

Creditor with minority interest in debtor filed motion to dismiss Chapter 7 case because the filing was not properly authorized under the debtor's operating agreement. Bankruptcy Court denied motion, finding that creditor effectively ratified the filing by actively participating in the case and waiting three months to file motion.