Court Connection
Volume No. 5 – Issue No. 1
January 2016

CASE LAW UPDATE FOR Q1 2016
ISSUE OF THE COURT CONNECTION

Editors:
Bradley M. Saxton
C. Andrew Roy

Supreme Court Cases

Husky Int'l Electronics v. Ritz, No. 15-145 [Argument set for March 1, 2016]

Case concerns section 523(a)(2)(A) and whether "actual fraud" contemplates only a false representation or also includes monies obtained through a fraudulent transfer scheme intended to defraud a creditor.

Eleventh Circuit Cases

Wallace v. McFarland (In re McFarland)
619 F. App'x 962 (11th Cir. 2015)

Trustee sought to avoid a transfer of real property from the debtor to his wife which occurred after a personal injury lawsuit had been filed against the debtor. The debtor and wife contended that the wife in fact was the equitable owner of one-half of the property which the debtor and his wife together had owned for approximately forty years and the deed was simply to correct the legal title and reflect the wife's existing ownership. The bankruptcy court rejected this argument and the district court affirmed. The Eleventh Circuit thoroughly analyzed the defendants' arguments, concluding that they failed to establish the existence of either a purchase money resulting trust or a constructive trust under Georgia law, and found that the bankruptcy court did not err in avoiding the transfer.

Mantiply v. Horne (In re Horne)
--- F. App'x ----, 2015 WL 6500754 (11th Cir. Oct. 28, 2015)

The Eleventh Circuit addressed the federal judge recusal statute, 28 U.S.C. § 455(a). The case involved a motion seeking damages against a creditor for violating the automatic stay and the discharge injunction. The bankruptcy court awarded damages to the debtor. The creditor later learned that a witness, a paralegal for the debtor's bankruptcy attorney who offered testimony by affidavit which contradicted the creditor's testimony, was the sister of the judge's courtroom deputy. Apparently, the creditor believed the judge credited the paralegal's testimony over that of the creditor. The Eleventh Circuit affirmed the district court's finding that recusal was not

warranted where there was no evidence in the record that the courtroom deputy had a role in the judge's substantive decision-making process. A mere connection or relationship to chambers is not enough to invoke recusal.

Bankruptcy Court Cases

Hanson v. Brown (In re Brown)
541 B.R. 906 (Bankr. M.D. Fla. 2015) (Jennemann, J.)

Bankruptcy court found that debt owed from debtor to her minor child, which arose from the debtor's unilateral closing of the child's college savings account and retaining the funds in the account, is non-dischargeable under both sections 523(a)(6) and 523(a)(15). Section 523(a)(15) applies to a debt owed to a child and should be construed broadly and liberally to this case where the child obtained a pre-petition judgment against the mother for the improper use of the funds.

In re Mullen
2015 WL 8252928 (Bankr. M.D. Fla. Nov. 16, 2015) (Glenn, J.)

In debtors' Chapter 13 case, bank did not timely file a proof of claim as to bank's first mortgage on debtors' property. The debtors filed a proof of claim on behalf of the bank, but the proof of claim was not timely under Rule 3004. Thereafter, the debtors amended their plan and provided for the bank's claim based on the amounts set forth in the claim filed by the debtors. Several months after the plan was confirmed, the bank filed its own proof of claim and moved the bankruptcy court to allow its claim as timely. The bankruptcy court held that, although a secured creditor is not required to file a proof of claim, the proof of claim "affects its right to receive payment under a Chapter 13 plan[,]" and equity demanded that the bank's untimely claim be disallowed, even as an amendment. The court did not discuss the effect, if any, on the bank's lien after the completion of the Chapter 13 plan.

In re HWA Properties, Inc.
2016 WL 67786 (Bankr. M.D. Fla. Jan. 6, 2016) (Delano, J.)

Bankruptcy court denied Chapter 11 debtor's request for bar order in conjunction with compromise and plan of reorganization. Among the many disputes with creditors, the debtor had made a number of pre-petition transfers, and its largest unsecured creditor contended that those transfers were avoidable under section 548. The debtor eventually reached a global compromise with the largest unsecured creditor and its primary secured creditors, which settlement included

the pre-petition transferees, the debtor's principals, and certain entities owned by the debtor's principals. The compromise afforded certain treatment to the debtor's creditors and also included non-debtor releases and a bar order in favor of the debtor's principals and their related entities. Based on the compromise, the plan proposed that the debtor would transfer its assets to another entity, leaving the reorganized debtor with no assets. The U.S. Trustee objected, as did creditors of the debtor's principals and their entities. The bankruptcy court thoroughly analyzed the *Dow Corning* factors as required by *Munford* and *Seaside Engineering.* Among the factors weighing against the releases and bar order, the court found that: (1) if the reorganized debtor was left with no assets, then the bar orders were not necessary for the reorganization, and (2) the released non-debtors contributed no substantial assets to the reorganization. Notably, the primary objectors were not creditors of the debtor, but the court found they were most affected by the plan – for the debtor's principals to try to resolve their issues with their own creditors in the context of the debtor's bankruptcy case was "a step too far."