

**CASE LAW UPDATE FOR Q4 2016**

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**Eleventh Circuit Cases**

***Failla v. Citibank, N.A. (In re Failla)***  
2016 WL 5750666 (11<sup>th</sup> Cir. Oct. 4, 2016)

The Eleventh Circuit held that “surrender” under §521(a)(2) prevents a debtor from opposing a foreclosure action in state court and that the bankruptcy court had authority to order a debtor to stop opposing the foreclosure action. In this Chapter 7 case, the debtors acknowledged the mortgage on their home was valid, that the balance of the mortgage exceeded the value of the house, and they filed a statement of intention under § 521(a)(2) indicating they would surrender the house. When the debtors contested the lender’s foreclosure in state court, the lender filed a motion in the bankruptcy court to compel surrender. The bankruptcy court granted the creditor’s motion and ordered the debtors to stop opposing the foreclosure action, which ruling was affirmed by the district court. The Eleventh Circuit affirmed, holding the “text and the context of the statute” requires that surrender must be both to the trustee and the lender. Next, the Court analyzed the meaning of “surrender” and concluded that surrender means giving up a right or a claim, although it does not mean to deliver possession. Finally, the Court rejected the debtors’ argument that the lender’s only remedy was to obtain relief from the stay, finding that bankruptcy courts have broad powers under § 105(a) to enforce a debtor’s duties under § 521(a).

***Gowdy v. Mitchell (In re Ocean Warrior, Inc.)***  
2016 WL 4490489 (11<sup>th</sup> Cir. Aug. 26, 2016)

The Eleventh Circuit upheld the Bankruptcy Court’s authority under §105 to impose sanctions for civil contempt. In a case which spanned over 25 years, the Court upheld the Bankruptcy Court’s civil contempt sanction against the president of the Debtor for failing to turn over a vessel that was property of the estate. The civil contempt sanctions must be either compensatory or designed to coerce compliance.

***DiMaria Properties, LLC v. 3400 Atlantic LLC (In re DiMaria Properties, LLC)***  
2016 WL 3688946 (11<sup>th</sup> Cir. July 12, 2016)

The Eleventh Circuit affirmed the decisions below holding that the bankruptcy court did not commit error in denying a motion for reconsideration. The only basis for such a motion is newly discovered evidence or manifest errors of law or fact. Here, the arguments asserted by the debtor in the motion for reconsideration were arguments that the debtor had every opportunity to make earlier.

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***In re Bayou Shores SNF, LLC***  
828 F.3d 1297 (11<sup>th</sup> Cir. July 11, 2016)

In a Chapter 11 case involving a skilled nursing facility, the bankruptcy court enjoined the Secretary of Department of Health and Human Services from terminating the debtor's Medicare and Medicaid provider agreements, which accounted for over ninety percent of the debtor's revenue. HHS argued that the bankruptcy court lacked jurisdiction to enjoin the termination. After the district court reversed the bankruptcy court, the Eleventh Circuit affirmed the district court, concluding that as a result of a codification error, the operative statute, 42 U.S.C. §405(h), does not refer to §1334, and that the proper construction of the statute requires the exhaustion of administrative remedies before a Medicare claim is properly before a district court. Therefore, the bankruptcy court lacked jurisdiction over the termination of the provider agreements. The Court also rejected the debtor's arguments that constitutional mootness and equitable mootness compel the reversal of the district court's order.

***Soderstrom v. J. Thompson Investments, LLC (In re Soderstrom)***  
2016 WL 3611542 (11<sup>th</sup> Cir. July 6, 2016)

Debtor challenged the bankruptcy court's factual findings that resulted in a judgment of nondischargeability under §523(a)(2)(A). The Eleventh Circuit affirmed, finding that in a "he said – she said" factual dispute, deference must be given to the bankruptcy court's assessments of credibility in reaching its conclusion that a misrepresentation was made and that the creditor justifiably relied on the misrepresentation.

**Bankruptcy Court Cases**

***In re Cole***  
2016 WL 5173215 (Bankr. M.D. Fla. Sept. 20, 2016) (Williamson, C.J.)

Relying on the adage "a tie goes to the runner," Judge Williamson concluded that the homestead exemption prevails over the Trustee's status as a hypothetical lien creditor under §544 where the debtor's homestead exemption attached to the property two weeks after the petition was filed, which is the same time that the Trustee's hypothetical judgment lien attached to the property.

***In re Roth***  
2016 WL 4991500 (Bankr. M.D. Fla. Sept. 16, 2016) (Delano, J.)

Debtor's motion for sanctions for violation of the discharge injunction is denied where the Court found the "Informational Statement" sent to the debtor from the mortgage lender after the debtor

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completed her chapter 13 plan and received a discharge contained conspicuous language that the statement was sent for informational purposes only and was not intended as a demand for payment.

***In re Bradley***

2016 WL 4159264 (Bankr. M.D. Fla. Aug. 3, 2016) (Jennemann, J.)

The Court overruled Trustee's objection to exemption and allowed the debtor/wife to claim the wildcard exemption where the debtors live together in a home owned only by the debtor/husband and the debtor/husband claimed the homestead exemption. The Court found it "crucial" that the deed was titled in the debtor/husband's name only, and therefore the debtor/wife had no present ownership interest in the home.

***In re Uche***

555 B.R. 57 (Bankr. M.D. Fla. July 28, 2016) (Jackson, J.)

The Court denied creditor's motion to dismiss case under §707(a), finding the facts of the case did not meet the *Piazza* standard for bad faith.

***In re Allen***

553 B.R. 916 (Bankr. M.D. Fla. 2016) (Funk, J.)

The bankruptcy court denied the debtor's discharge under §727(a)(3) for failing to keep books and records and not adequately explaining the failure. The Court stated, "the price of a Chapter 7 discharge is complete and utter transparency. The Court and creditors should not be required to guess or speculate as to a debtor's income and expenditures."