Court Connection
Volume No. 6 – Issue No. 3
July 2017

CASE LAW UPDATE

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Supreme Court Cases

Henson v. Santander Consumer USA, Inc.
Case No. 16-349 (June 12, 2017)

The Supreme Court held that under the plain language of the Fair Debt Collection Practices Act, one who purchases a debt is not a "debt collector" and is not subject to the FDCPA.

Midland Funding LLC v. Johnson
Case No. 16-348 (May 15, 2017)

The Supreme Court addressed the issue of the filing of time-barred or "stale" claims by debt collectors in bankruptcy cases. The Supreme Court reversed the recent Eleventh Circuit opinion from 2016 and held that a debt collector who files a claim that is clearly barred by the statute of limitations does not violate the federal Fair Debt Collection Practices Act.

Eleventh Circuit Cases

Pollitzer v. Gebhardt
Case No. 16-11506 (11th Cir. June 27, 2017)

The Eleventh Circuit affirmed both the district court and the bankruptcy court and held that §707(b) and its means test apply to a case that was initially filed under Chapter 13 but later converted to Chapter 7. Thus, where the debtor made payments under his Chapter 13 plan for two years, then converted to Chapter 7, his case would be dismissed where he failed to meet the means test.

Bankruptcy Court Cases

In re Roscoe
Case No. 8:13-bk-06517-RCT (Bankr. M.D. Fla. June 28, 2017) (Colton, J.)

Debtors, husband and wife, were performing under a Chapter 13 plan for several years when the debtor wife passed away. Debtor husband was then the beneficiary of life insurance proceeds. These proceeds arose more than 180 days after the petition date, so the debtor argued the proceeds were not property of the estate while the

Trustee argued they were property of the estate. The Court analyzed the issue and sided with the majority of courts, and with the plain meaning of the bankruptcy code, that §1306(a) supports the Trustee that the insurance proceeds are property of the estate.

In re Howard Avenue Station, LLC
Case No. 8:12-bk-08821-CPM (Bankr. M.D. Fla. April 28, 2017) (McEwen, J.)

Attorney employed as special counsel to the estate had retainer paid by a third party and later had additional fees paid by a third party, which were not disclosed in accordance with §329(a) and Rule 2016(b). The Court acknowledged that "ample authority" exists that might compel a rigid "zero-tolerance" approach that would require the very severe sanctions of denial of compensation and disgorgement of fees already paid, but found this to be an exceptional case which required the Court to exercise discretion under a "case-by-case" approach based on sufficient mitigating circumstances.

In re Kraz
2017 WL 1401273 (Bankr. M.D. Fla. April 18, 2017) (Williamson, C.J.)

Where creditor failed to provide debtor with an accurate estoppel letter, and therefore forced the debtor to file Chapter 11 to stop the foreclosure, the Court determined that debtor is entitled to damages that would effectively put the debtor in the same position it would have been if an accurate estoppel letter was provided. Court awards $1,180,000.00 in damages which is netted against the claim and provides an interesting discussion of the lender's tactics operating under the FDIC's shared loss agreement after it acquired the loan from a failed bank.