

## **CASE LAW UPDATE**

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### **Supreme Court Cases**

***Czyzewski v. Jevic Holding Corp.***  
137 S.Ct. 973 (March 22, 2017)

The Supreme Court reversed the Third Circuit and held that the bankruptcy court may not approve a structured dismissal of a Chapter 11 case that provides for distributions that do not follow the rules of priority without the consent of the affected creditors.

### **Eleventh Circuit Cases**

***In re Lunsford***  
848 F.3d 963 (11th Cir. February 15, 2017)

The Eleventh Circuit held debt is excepted from discharge under § 523(a)(19) “for the violation of” federal securities laws where bankruptcy court found that debtor himself committed the violation. The exception would also apply where the debtor himself was not the violator of the securities laws as long as the securities violation caused the debt.

***In re Appling***  
848 F.3d 953 (11th Cir. February 15, 2017)

The Eleventh Circuit applied a statutory construction analysis and concluded that § 523(a)(2)(B) should be read broadly such that a statement about a single asset can be a “statement respecting a debtor’s financial condition,” and where that statement is not in writing, it cannot provide a basis to except the debt from discharge.

### **Bankruptcy Court Cases**

***In re Progressive Plumbing, Inc.***  
6:15-BK-07275 (Bankr. M.D. Fla. March 2, 2017) (Jennemann, J.)

Claim objection sustained where claim was filed four days after claims bar date. Rule 9006(b)(1) allows a claimant to file a late-filed claim when (1) request is made before the deadline, or (2) on motion made after expiration of the deadline where the failure to act was a result of excusable neglect. To satisfy the Pioneer excusable neglect standard requires a motion.

***In re Rothenbush***

2017 WL 933019 (Bankr. M.D. Fla. February 27, 2017) (Colton, J.)

A Chapter 13 debtor can obtain derivative standing to pursue an avoidance action if the trustee unreasonably declines to do so.

***In re Aye***

2017 WL 713566 (Bankr. M.D. Fla. February 22, 2017) (Colton, J.)

While schedules are initially viewed at face value for section 109(e) eligibility, other factors, like a debtor's bad faith, may require the court look into other matters, including filed proofs of claim and state court stipulations.

***In re Stanton***

2017 WL 587983 (Bankr. M.D. Fla. February 14, 2017) (Williamson, J.)

Court holds U.S. Trustee waived its *Baker Botts* objection to supplemental fee request, finding that the Supreme Court's ruling in *Baker Botts* was consistent with long standing Eleventh Circuit precedent, so the objection raised by the UST was available even if the *Baker Botts* decision had not intervened.

***In re Kaschkadayev***

2017 WL 587982 (Bankr. M.D. Fla. February 14, 2017) (Williamson, J.)

Court grants stay relief to towing and storage company to foreclose its statutory storage lien but only for the pre-petition storage charges. The post-petition storage charges were incurred in violation of the stay where debtor surrendered his vehicle to the towing and storage company before filing bankruptcy.

***In re Rhodes***

563 B.R. 380 (Bankr. M.D. Fla. February 3, 2017) (Briskman, J.)

Court awards substantial sanctions, including compensatory damages for attorney's fees, accountant fees, and emotional distress, and awards punitive damages of \$25,000 against mortgage company, which failed to release its liens for over two years after receipt of payment on its claims in Chapter 13 case.

***In re Ferrer***

2017 WL 401188 (Bankr. M.D. Fla. January 30, 2017) (Funk, J.)

Debtor filed bankruptcy two days after purchasing a vehicle from creditor, yet did not list the creditor in original petition. Court denied complaint alleging a stay violation for the creditor's actions in contacting the debtor regarding the vehicle.

***In re Dunning***

Adv. 8:16-AP-00343 (Bankr. M.D. Fla. January 25, 2017) (Colton, J.)

Attorneys' fees incurred in proceeding to reduce child support do not constitute a "domestic support obligation" for purposes of section 523.

***In re Bell***

2017 WL 384678 (Bankr. M.D. Fla. January 25, 2017) (Glenn, J.)

Applying the 11th Circuit's holding in *In re Justice*, the bankruptcy court finds that the Debtor's filing of his 1040 tax forms late, after the IRS had issued Notices of Deficiency and assessed the tax liabilities, and considering the totality of the Debtor's conduct, was not an honest and reasonable effort to satisfy the tax laws. The late filed 1040s do not constitute "returns" under applicable non-bankruptcy law. Therefore, the debtor's tax liability is excepted from discharge under §523(a)(1)(B)(i).

***In re Fohrmeister***

8:13-BK-14728 (Bankr. M.D. Fla. December 30, 2016) (Colton, J.)

Court awards nominal damages of \$200, \$100 for each of two default notices sent in violation of the automatic stay. Court declines to award additional damages where debtor did not prove that additional amounts claimed were actual damages for the stay violations.

***In re Petsch***

8:16-BK-01766 (Bankr. M.D. Fla. December 13, 2016) (Colton, J.)

Court denies creditor's motion to allow a late filed claim in a Chapter 13 case. After pointing out that the "excusable neglect" option for allowing a late filed claim is not available in a Chapter 13 case, the Court rejects the creditor's contention that a claim it filed in a prior case (which was dismissed) involving the same debtors could be deemed an informal Proof of Claim.