

CASE LAW UPDATE

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Eleventh Circuit Cases

In re Narcisi

691 F. App'x 606 (11th Cir. 2017)

Affirmed bankruptcy court's *sua sponte* summary judgment in favor of debtor. Creditor failed to show existence of a fiduciary duty under consignment arrangement with the debtor or state law. Further, the creditor's claim for larceny was not supported because plaintiff voluntarily gave its property to debtor under consignment arrangement.

Bankruptcy Court Cases

In re Southside Church of Christ of Jacksonville, Inc.

572 B.R. 384 (Bankr. M.D. Fla. 2017) (Funk, J.)

The court refused to dismiss the debtor's single asset case (a church) as a bad faith filing under 11 U.S.C. § 1112 (b)(1) even though almost all the *Phoenix Picadilly* factors were present. The court also ruled the creditor was not entitled to relief from stay under § 362(d)(3). While an equity cushion existed, it was minimal; therefore, the court entered a separate order requiring adequate protection payments.

In re Thompson

2017 WL 3475011 (Bankr. M.D. Fla. Aug. 11, 2017) (Funk, J.)

Court dismissed Chapter 13 case under 11 U.S.C. § 1307(c) based upon bad faith in seeking to prolong litigation and failing to comply with virtually all the Court's directives in the case. Good faith is an implicit requirement when filing a case.

In re Oyola

571 B.R. 874 (Bankr. M.D. Fla. 2017) (Williamson, C.J.)

Even though debtor, who was not a citizen or lawful permanent resident, could not legally intend to reside here permanently, she was living as a "family in fact" with

Court Connection
Volume No. 6 – Issue No. 4
October 2017

her daughter. Because the debtor intended to make her home her family's permanent residence, the court ruled the debtor could claim the homestead exemption.

In re Crusaw

Case No. 3:16-bk-3105-JAF (Bankr. M.D. Fla. July 14, 2017) (Funk, J.)

Creditor and Chapter 13 Trustee objected to debtor's claimed homestead exemption. It was undisputed that debtor lived on the parcel for many years. The objectors argued that because debtor's parcel was subject to a judgment and the debtor did not legally own the property (it was the subject of a lengthy partition battle among several heirs) until after the judgment was recorded, the property did not qualify as homestead. The court overruled the objection, ruling that the debtor's ownership, while not fee simple, gave him the right to use and occupy the parcel and that he clearly intended to reside there for the rest of his life.

In re Migell

569 B.R. 918 (Bankr. M.D. Fla. 2017) (Jennemann, J.)

The mere fact that debtor received mail at Massachusetts house and filed a declaration of homestead in Massachusetts did not overcome the debtor's claim of the Florida homestead exemption. Debtor had resided in the Florida house for years and showed every intention to maintain the Florida house as his homestead.

In re Bhalla

573 B.R. 265 (Bankr. M.D. Fla. 2017) (May, J.)

Trademark and copyright infringement damages deemed nondischargeable under 11 U.S.C. § 523(a)(6).

In re Fravala

2017 WL 3447936 (Bankr. M.D. Fla. Aug. 10, 2017) (Glenn, J.)

In Chapter 13 case, debt was excepted from discharge under 11 U.S.C. § 523(a)(3) because debtor did not notify creditor of bankruptcy until filing a suggestion of bankruptcy in state court three years after bar date for filing claims. A debtor claiming damages under § 362(k) has a duty to mitigate damages.