

CASE LAW UPDATE FOR Q2 2018

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Supreme Court Cases

U.S. Bank v. Village at Lakeridge, LLC

138 S.Ct. 960 (2018)

The Supreme Court determined that the appropriate standard of review for “insider” status – as mixed issue of law and fact – is clear error. The opinion appears to be limited to this standard of review issue.

Merit Mgmt. v. FTI Consulting, Inc.

138 S.Ct. 883 (2018)

Section 546(e) “securities safe-harbor” only applies to overarching transaction and does not save ultimate transferee from liability simply because intermediate transfers were between financial institutions. Thus, Supreme Court held that safe-harbor did not protect seller of stock that received \$16.5 million as part of transaction, which trustee of litigation trust sought to avoid as constructively fraudulent.

Eleventh Circuit Cases

Beem v. Ferguson

713 F. App’x 974 (11th Cir. 2018)

Creditor’s motion to dismiss case, with alternative asking to find debt nondischargeable, was sufficient to permit relation back once discharge deadline expired. Creditor also entitled to preclusive effect of abuse of process judgment from state court.

Bankruptcy Court Cases

In re Rome

2018 WL 1631251 (April 2, 2018) (Jennemann, J.)

Bankruptcy Court denied discharge under Sections 727(a)(3), (4), and (5). “Former business partners and the United States Trustee contend the Debtors should not receive a discharge of their debts under various provisions

Court Connection**Volume No. 7 – Issue No. 2****April 2018**

of the Bankruptcy Code because they hid assets before and during this bankruptcy case, failed to keep or withheld business records preventing the parties from determining the Debtors' true financial condition, cannot explain their loss of assets, and lied on their bankruptcy pleadings. Debtors vehemently deny these allegations arguing failed businesses, a fire, a computer crash, multiple foreclosures, and in Mr. Rome's words, 'hookers and blow,' caused their financial decline and inability to produce any meaningful financial records. After a multi-day trial, the Court finds that the Debtors are not entitled to a discharge...."

In re Doganis**Case No. 3:17-bk-3086 (March 14, 2018) (Glenn, J.)**

Chapter 13 debtor did not file his case in bad faith, and the bankruptcy court denied the creditors' motion to dismiss. This was the debtor's first bankruptcy case. Although the debtor's schedules that he prepared pro se were incorrect, the debtor hired an attorney after filing and the schedules were corrected. The bankruptcy court also found that the debtor's proposed plan to pay secured creditors, including the creditors seeking dismissal, was an indicator that the debtor was not acting in bad faith.

In re McHale**Case No. 6:10-bk-02527, Doc. No. 80 (March 9, 2018) (Jennemann, J.)**

Bankruptcy court denied creditor's motion to reopen Chapter 7 bankruptcy case – so creditor could compel surrender – six years after discharge, four years after the debtor died, and three and a half years after creditor filed foreclosure.

In re Seguinot**Case No. 6:10-bk-05336, Doc. No. 34 (March 9, 2018) (Jennemann, J.)**

Creditor moved to reopen Chapter 7 bankruptcy case in 2017. The court granted creditor's motion to reopen and compel surrender. Debtors had surrendered property in the case, were not current when bankruptcy case was filed, and had not made a payment since March 2010. Debtors defended foreclosure action filed in 2014 and argued that defenses arose post-petition. .

In re Holland**Case No. 6:13-bk-14751, Doc. No. 119 (March 8, 2018) (Jennemann, J.)**

Court Connection**Volume No. 7 – Issue No. 2****April 2018**

Bankruptcy court granted creditor's motion to reopen Chapter 13 bankruptcy case and compel surrender. Debtor surrendered property in confirmed Chapter 13 plan, defended foreclosure action, then "changed his mind" and

filed a new Chapter 13 case proposing to pay the creditor in full. Under the circumstances, bankruptcy court did not allow debtor to change his mind.

In re Advanced Telecommunication Network, Inc.

Case No. 6:05-ap-00006, Doc. No. 304 (January 31, 2018) (Jennemann, J.)

- [Doc. No. 304] Collateral estoppel does not establish debtor's insolvency established in other litigation when defendant was not a part to that litigation.
- [Doc. No. 303] Defendant/transferee could not rely on "mere conduit" defense when facts at summary judgment indisputably demonstrated that transferee objectively had knowledge of the debtor's unfavorable financial condition.
- [Doc. No. 300] Contractual indemnity, and disputes surrounding it, precluded summary judgment concerning reasonably equivalent value aspect of transferee's defense.

In re Murphy

Case No. 9:17-bk-07843-FMD (Bankr. M.D. Fla. January 18, 2018) (Delano, J.)

The court addressed the attorney-client privilege relating to certain documents subject to discovery requests. First, the court found that the privilege was not destroyed where a third party was copied on the communication if that party is an agent of the client. Next, the court concluded that the privilege was not waived due to the inadvertent disclosure of a small number of documents where the attorney showed that he took adequate steps to prevent disclosure of privileged information, and he acted promptly in sending a claw back letter.