

## CASE LAW UPDATE

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### Eleventh Circuit Cases

***Title Max v. Northington (In re Northington)***

876 F.3d 1302 (11th Cir. 2017)

The Eleventh Circuit held that, despite a confirmed Chapter 13 Plan to which the secured creditor (a lender with a lien on the debtor's vehicle pursuant to Georgia's "title loan" statute) never objected, the vehicle dropped out of the estate once the debtor's redemption period under state law expired. The dissent stated that the case should have been easily decided based upon the finality of the confirmation order.

***Mantiplay v. Horne (In re Horne)***

876 F.3d 1076 (11th Cir. 2017)

The Eleventh Circuit held that the debtor was entitled to recover attorneys' fees incurred in upholding a judgment for a violation of the automatic stay, concluding that § 362(k) authorizes the recovery, including the fees incurred in obtaining damages for the stay violation and for defending the award on multiple appeals of the issue.

### Bankruptcy Court Cases

***Shek v. Massachusetts Department of Revenue (In re Shek)***

2017 WL 6759401, Case No. 6:15-bk-8569-KSJ (Bankr. M.D. Fla. Dec. 21, 2017) (Jennemann, J.)

The Court denied cross motions for summary judgment in adversary proceeding dealing with the non-dischargeability of tax liability where state returns were filed late. The Court rejected the tax authority's position that tax returns filed after the deadline are automatically excepted from discharge. The Court analyzed the "hanging paragraph" from BAPCPA, the Eleventh Circuit's ruling in Justice, and other precedent, applying the Beard test. The Court concluded that to apply the "one day late" rule defies common sense and the long-standing Beard test and so the Court must inquire into whether the debtor made an "honest and reasonable" attempt to satisfy the tax law.

***In re Cheatham***

2017 WL 5614910, Case No. 9:17-bk-01169-FMD (Bankr. M.D. Fla. Nov. 20, 2017) (Delano, J.)

The Court held that a debtor in a Chapter 13 case, where the trustee or an unsecured creditor objects, must either submit all disposable income to the plan or pay unsecured claims in full with interest.

***Feshbach v. United States Department of Treasury (In re Feshbach)***

576 B.R. 660 (Bankr. M.D. Fla. 2017) (McEwen, J.)

In an opinion which provides for interesting reading regarding the debtors' lavish lifestyle over a decade in which they amassed a large tax liability, the Court concluded that the debtors willfully attempted to evade their tax liability for 2001 within the meaning of § 523(a)(1)(c) and found the debt to be nondischargeable.