



CASE LAW UPDATE FOR Q1 2020
ISSUE OF THE COURT CONNECTION

Editors:

Bradley M. Saxton & C. Andrew Roy, Winderweedle, Haines, Ward & Woodman, P.A.

Eleventh Circuit Cases

Smith v. Haynes & Haynes, P.C.

940 F.3d 635 (11th Cir. Oct. 25, 2019)

District Court, in a ruling issued prior to the 11th Circuit's ruling in *Slater v. U.S. Steel Corp.*, 871 F.3d 1174 (11th Cir. 2017), granted summary judgment to defendant on basis that debtor's failure to schedule a claim in her bankruptcy case was a bar to her pursuing that claim later under the principle of judicial estoppel. The Eleventh Circuit reversed in part and held that following *Slater* an evidentiary hearing is required to determine whether the debtor's failure to list the claim was intended to make a mockery of the courts.

Randolph Sellers, et al v. Rushmore Loan Management Services, LLC

941 F.3d 1031 (11th Cir. Oct. 29, 2019)

Chapter 7 debtors received a discharge. After the discharge, the servicer of their mortgage continued sending monthly statements which showed the amount due. Debtors filed suit in District Court under the FDCPA and FCCPA and sought class status. Servicer raised as a defense that the Bankruptcy Code precluded or preempted the FDCPA and FCCPA. The District Court denied class certification, concluding that the question of whether the Bankruptcy Code precluded and/or preempted the FDCPA and FCCPA presented an individualized rather than a common issue. The Eleventh Circuit reversed and remanded, finding the District Court abused its discretion in determining that the servicer's preclusion/preemption defense raised an individualized issue.

District Court Cases

In re O'Steen

2019 WL 6001891 (M.D. Fla. Nov. 14, 2019)

On appeal from bankruptcy court's ruling that debtors, who successfully defended a discharge action, were not entitled to fees under the reciprocal fees provision of Fla. Stat. § 57.105, district court (reluctantly) concluded that, despite the plainly permissive language of § 57.105, case law almost universally treats the reciprocal fees provision as mandatory.

Thus, the district court reversed and remanded for the bankruptcy court to award the debtor's their fees.

Bankruptcy Court Cases

In re Paul C. Larsen, P.A.

2019 WL 6208658 (Bankr. M.D. Fla. Nov. 20, 2019) (Delano, C.J.)

After trial in which trustee sought to hold corporate principal liable for debts of debtor corporation under alter ego theory, bankruptcy court determined that evidence presented did not support a finding of alter ego.

In re Ferris

2019 WL 6690564 (Bankr. M.D. Fla. Dec. 6, 2019) (Funk, J.)

After trial, bankruptcy court concluded that mortgage servicer willfully failed to credit Chapter 13 debtors' pre-discharge mortgage payments under plan and caused damage (including emotional distress) to debtors. Court awarded debtors their attorneys' fees, \$10,000 in emotional distress damages, and \$25,000 in punitive damages.

In re Palm Ave. Partners, LLC

2019 WL 6971160 (Bankr. M.D. Fla. Dec. 17, 2019) (Williamson, J.)

Bankruptcy court concluded that investor-creditors held certain direct claims against debtor's principal, but other claims, like breach of fiduciary duty claim, were derivative claims that ordinarily could only be pursued by debtor-in-possession or trustee. In this case, the bankruptcy court permitted the investor-creditors to pursue the derivative claims for the benefit of the estate.