



CASE LAW UPDATE FOR Q3 2020

Editors:

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Eleventh Circuit Cases

Medley v. Dish Network, LLC

958 F.3d 1063 (11th Cir. May 1, 2020)

Debtor filed suit against Dish Network, claiming violations of the Florida Consumer Collection Practices Act (“FCCPA”) and the Telephone Consumer Practices Act (TCPA”), seeking damages under those acts for Dish’s attempts to collect a discharged debt and by contacting her by phone after she had revoked her consent. District court granted summary judgment for Dish on all claims, but Eleventh Circuit reversed and remanded, with respect to the FCCPA claims, on the basis that district court erroneously concluded that a certain portion of the debt was not discharged, and to determine Dish’s knowledge of whether the debt was invalid and whether debtor was represented by counsel. Moreover, the Court concluded that the failure to schedule an executory contract on Schedule G did not prevent the contract’s “deemed rejection.”

Bankruptcy Court Cases

Gateway Radiology Consultants, P.A. v. Carranza* ***(In re Gateway Radiology Consultants, P.A.)**

2020 WL 3048197, 2020 Bankr. LEXIS 1508 (Bankr. M.D. Fla. June 8, 2020) (Williamson, J.)

Judge Williamson addressed the ability of a debtor in bankruptcy to qualify for the government loan program adopted by Congress in the Coronavirus Aid, Relief, and Economic Security Act (“CARES” Act). Judge Williamson held that

the Small Business Administration violated the Administrative Procedures Act by exceeding its authority and was arbitrary and capricious in excluding debtors from the program.

In re Errico

2020 WL 3454242, 2020 Bankr. LEXIS 1625 (Bankr. M.D. Fla. June 22, 2020) (Delano, C.J.)

Debtor had filed nine bankruptcy cases between 2008 and 2019. Court granted stay-relief motions and dismissed Chapter 13 case where Court found that both the debtor's petition and plan were not filed in good faith. Further, Court issued a one-year prohibition against refiling a bankruptcy case.

In re Dupree

Case No. 6:19-bk-07126-KSJ (Bankr. M.D. Fla. June 16, 2020) (Jennemann, J.)

Court sustained Trustee's objection to exemption and resolved that the debtor cannot exempt a Child Tax Credit, which is granted under § 24 of the Internal Revenue Code, where section 222.25(3), Florida Statutes, only exempts federal credits received under § 32 of the Internal Revenue Code.

In re Ojeda

Case No. 9:19-bk-06611-FMD (Bankr. M.D. Fla. June 1, 2020) (Delano, C.J.)

Court sustained objection to claim, finding that finance company does not have a claim secured by debtor's swimming pool. The Court analyzed chapter 679, Florida Statutes, Florida's UCC provisions, and concluded that a swimming pool is not a "good" and therefore cannot be a "fixture." Therefore, chapter 679 did not apply, and creditor does not have a security interest in the swimming pool.