CASE LAW UPDATE FOR Q4 2020
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Eleventh Circuit Opinions

SE Property Holdings, LLC v. Gaddy (In re Gaddy)
2020 WL 5793082, 2020 U.S. App. LEXIS 30973 (11th Cir. Sept. 29, 2020)

In an opinion authored by Judge John Antoon, U.S. District Judge for the Middle District of Florida, sitting by designation, the Eleventh Circuit narrowly applied the Supreme Court's opinion in Husky International Electronics, Inc. v. Ritz, 136 S. Ct. 1581 (2016), and affirmed the lower court's judgment on the pleadings dismissing the creditor's claims brought against the debtor under §§ 523(a)(2)(A) and (a)(6) of the Bankruptcy Code.

The debtor was one of several guarantors of a $12.5 million corporate debt. After the company experienced financial difficulties, and just two weeks after demand on the guaranty from the creditor, the debtor began transferring assets to his wife and daughter. The debtor continued the transfers even after the creditor sued on the guaranty. After the creditor sued to set aside fraudulent transfers under state law, the debtor filed a Chapter 7 petition. The creditor sought to except the guaranty debt from discharge under §§ 523(a)(2)(A) and (a)(6).

The Eleventh Circuit upheld the judgment on the pleadings and, thus, allowed the debtor to discharge the guaranty indebtedness. The circuit court rejected the creditor's reliance on Husky, calling the creditor's position a "strained interpretation of" Husky. The court concluded there was no fraud or willful and malicious injury at the time the debt was created. Unlike Husky, the fraudulent acts did not create the debt; the debt existed prior to the fraudulent acts. Therefore, the debt was not "obtained by" fraud as required by § 523(a)(2)(A). As to § 523(a)(6), even assuming the debtor attempted "to thwart a creditor's collection efforts by fraudulently conveying assets," the underlying debt did not arise "as a result of" a willful and malicious injury.

Whaley v. Guillen (In re Guillen)
972 F.3d 1221 (11th Cir. Aug. 25, 2020)

Chapter 13 debtor sought to modify confirmed Chapter 13 plan to include additional attorney's fees incurred in connection with an adversary proceeding to challenge the validity of bank's mortgage lien. The Chapter 13 Trustee objected to modification, contending the modified plan violated the best interest of creditors test and that res judicata barred the modification. In affirming the Bankruptcy Court's order modifying the plan, the Eleventh Circuit held that "a debtor need not make any threshold showing of a change in circumstances before proposing a modification to a confirmed plan under § 1329."

Law Solutions of Chicago, LLC v. Corbett
971 F.3d 1299 (11th Cir. Aug. 21, 2020)

Chicago-based law firm, which qualified as a debt relief agency, solicited clients through the internet and referred the clients to "partners" located where the client resides. The firm charged a flat fee to cover representation in a Chapter 7 bankruptcy case, but the attorney disclosures excluded certain services that a Chapter 7 debtor might need. The Bankruptcy Administrator asserted various claims against the firm, which were ultimately settled. Among other things, the firm agreed to provide the excluded services without additional charge, pursuant to the terms of the settlement agreement. During an audit of the firm's cases, the Bankruptcy Administrator discovered the firm was continuing to file disclosures excluding certain services. The Bankruptcy Administrator filed motions to examine, which sought a determination as to whether the law firm violated the terms of the settlement agreement. The firm immediately filed amended disclosures that were in compliance with the settlement agreement. Based on the inaccurate attorney disclosures filed by the firm and the non-compliance with the terms of the court-approved settlement, the Eleventh Circuit held that the Bankruptcy Court had the power to impose civil sanctions under Bankruptcy Rule 9011, its statutory contempt power under § 105 of the Bankruptcy Code, or its inherent contempt authority under § 526 and § 707 of the Bankruptcy Code.

Bankruptcy Court Opinions

In re: Thomas
618 B.R. 585 (Bankr. M.D. Fla. Aug. 20, 2020) (McEwen, J.)

Creditor Amscot's refusal to cash a check based on the debtors' outstanding debt owed to Amscot was not a violation of the automatic stay because the "sliver of the stay" terminated by operation of law thirty days after the filing of the bankruptcy case, as the debtors had one prior case pending within one year of the current case filing. In adopting the majority position, the Court acknowledged the circuit split existing with respect to the extent of the

expiration of the stay for a debtor who had one prior case pending within one year of the current case filing and whether the automatic stay terminated in its entirety or only the sliver of the stay terminated as to the debtor and property of the debtor.