



CASE LAW UPDATE FOR Q4 2021 **ISSUE OF THE COURT CONNECTION**

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Eleventh Circuit Cases

Harris v. Jayo (In re Harris)

3 F.4th 1339 (11th Cir. 2021)

The Eleventh Circuit reversed the district court and bankruptcy court and held that a prior state court default judgment should not be given preclusive effect. The underlying default judgment was based on a complaint that included several alternative theories. Since the judgment was not clear as to which theories gave rise to the judgment, collateral estoppel did not apply to render the debt nondischargeable under § 523(a)(2)(A).

Cutuli v. Elie (In re Cutuli)

13 F.4th 1342 (11th Cir. 2021)

The Plaintiff timely filed a complaint to except a debt from the discharge. Because of unusual circumstances, however, the Plaintiff was unable to properly serve the summons and complaint for over two years. The Eleventh Circuit held that the bankruptcy court had discretion under Rule 7004(m) to extend the time for service.

Bankruptcy Court Cases

In re Vertical Mac Construction, LLC

2021 WL 3668037, Case No. 6:21-bk-01520-LVV (Bankr. M.D. Fla. July 23, 2021)
(Vaughan, J.)

The United States Trustee objected to the debtor’s Subchapter V election, contending that the debtor, a contractor that had shut down its operations before filing, was not “engaged in commercial or business activities.” Judge Vaughan overruled the objection by looking to the definitions of “commercial” and “business” and interpreting these terms more broadly than proposed by the objection. Judge Vaughan determined that, although the debtor was not operating its business, it still maintained bank accounts, had accounts receivable, and was analyzing claims and winding down its business. Thus, the debtor could proceed as a Subchapter V debtor.

In re 218 Jackson LLC

2021 WL 3662377, Case No. 6:21-bk-00983-LVV (Bankr. M.D. Fla. August 17, 2021)
(Vaughan, J.)

Stating that “a conflicted trustee hinders the very purpose of Subchapter V and cannot be tolerated,” Judge Vaughan removed a Subchapter V Trustee because the Trustee was not disinterested. In doing so, Judge Vaughan found the Trustee was “openly and actively” adverse to the debtor and spent his time objecting to the debtor’s efforts to reorganize and taking the side of the secured creditor—which is not the role of a Subchapter V Trustee—rather than trying to encourage a consensual plan. Not only did the Court find cause existed to remove the Trustee under § 324, the Court also denied all compensation to the Trustee.

Creative Enterprises HK, LTD. v. Simmons (In re Simmons)

2021 WL 3744890, Case No.: 3:20-ap-00081-JAF (Bankr. M.D. Fla. August 24, 2021)
(Funk, J.)

A creditor filed an adversary proceeding alleging that its debt should be excepted from discharge under § 523(a)(3)(A) because the debt was not initially scheduled by the debtors. The debt was only scheduled by an amendment to the schedules filed a year and a half after the case was filed—and over a year after the debtors received their discharge. Reading § 523(a)(3)(A) in conjunction with § 726(a)(2)(C), Judge Funk concluded the debt was not excepted from the discharge since the creditor ultimately filed a claim in time to share in any distributions from the estate.

In re Consolidated Land Holdings, LLC

2021 WL 3701799, Case No. 6:19-bk-04760-KSJ (Bankr. M.D. Fla. August 20, 2021)
(Jennemann, J.)

Judge Jennemann denied confirmation of a plan where the only accepting class, which consisted of the allowed general unsecured claim of one creditor, was receiving more than the class of remaining general unsecured creditors. Judge Jennemann found that the plan unfairly discriminated in favor of the accepting class. She reasoned that the separate classification was not supported by a legitimate business reason because “there [was] no legal or logical reason for unsecured creditors of equal priority to receive disproportionately different pro rata portions of the Equity Infusion” and that “[t]he only real reason to separate the two [was] to gerrymander an accepting impaired class of votes.”

In re Murphy

2021 WL 3013099, Case No. 2:17-bk-07843-FMD (Bankr. M.D. Fla. July 16, 2021)
(Delano, C.J.)

Based on the overwhelming evidence presented by the petitioning creditors regarding the debtor’s accumulated debts, and with a lack of evidence by the debtor that his debts were being paid or were in bona fide dispute, Chief Judge Delano granted summary judgment in favor of petitioning creditors, finding they sufficiently met their burden under § 303(h) that debtor is generally not paying his debts as they come due.