



## **CASE LAW UPDATE FOR Q2 2021** **ISSUE OF THE COURT CONNECTION**

### **Editors:**

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### **Eleventh Circuit Cases**

#### ***Suvicmon Development, Inc. v. Morrison***

991 F. 3d 1213 (11th Cir. Mar. 25, 2021)

Prepetition, creditors sued the debtor for common law fraud and securities law violations. Their complaint also included fraudulent transfer claims against the debtor and his sons. A jury rendered a verdict in favor of the creditors on their common law fraud and securities law violation claims. The state court then entered judgment against the debtor on the fraud and securities law claims but dismissed the fraudulent transfer claims. After the debtor filed for bankruptcy, the state court judgment was found to be nondischargeable under § 523(a)(19), which excepts from the discharge debts for violating securities laws. During the case, the trustee filed a no-asset report, thus abandoning the fraudulent transfer claims. The creditors sought to continue pursuing the fraudulent transfer claims. The Eleventh Circuit, in an opinion authored by Judge Tjoflat, held that the discharge barred the continued pursuit of the fraudulent transfer claims: “[T]he fact that the underlying claim is non-dischargeable does not compel the conclusion that the fraudulent transfer claim is non-dischargeable.”

### **Bankruptcy Court Cases**

#### ***In re Greater Blessed Assurance Apostolic Temple, Inc.***

Case No. 6:20-bk-00148-KSJ (Bankr. M.D. Fla. Mar. 23, 2021) (Jennemann, J.)

The bankruptcy court held that because a Chapter 11 debtor’s attorney was not disinterested and failed to disclose that he was a creditor of the debtor, the

debtor had no obligation to pay the fees incurred by the attorney. Since other non-debtor individuals may have been obligated to pay fees incurred, though, the court went on to determine the reasonableness of the fees and costs incurred. Ultimately, the court concluded that only \$35,000 of the asserted \$92,050 in fees were reasonable.

***In re Rojas de Bauer***

625 B.R. 211 (Bankr. M.D. Fla. Mar. 8, 2021) (Jennemann, J.)

The bankruptcy court held that a Chapter 13 debtor who is not a U.S. Citizen was not entitled to the Florida homestead exemption. While a few courts have allowed non-citizens to claim the homestead exemption when a family member who was either a U.S. citizen or had lawful permanent residence was living in the home, none of the debtor's family members living in the home in this case were U.S. citizens or could claim lawful permanent residence. Therefore, the court concluded that the debtor could not subjectively formulate an intent to live in the home forever. Although the court sustained the trustee's objection to the homestead exemption, it urged the trustee to administer the home in a way that may avoid foreclosure.

***Feldy Boys, LLC v. Polasky (In re Polasky)***

2021 WL 614032, 2021 Bankr. LEXIS 362 (Bankr. M.D. Fla. Feb. 17, 2021) (Delano, C.J.)

In an interesting opinion in which the court discussed, in some detail, the legal differences between exceptions to discharge under § 523(a)(2)(A) and § 523(a)(2)(B), as well as the different "reliance" requirements under those two subsections, the court carefully construed the evidence and held that the plaintiff failed to meet its burden to establish that the debt was nondischargeable.

***Roberts v. McGrory (In re McGrory)***

625 B.R. 783 (Bankr. M.D. Fla. Feb. 3, 2021) (Vaughan, J.)

The bankruptcy court dismissed a one-count complaint that sought to impose an equitable lien on the debtor's homestead. After spending some time discussing the legal requirements for imposing an equitable lien on homestead property under the *Havoco* decision (and specifically the meaning of "invest in, purchase, or improve" the homestead), the court found that when a complaint fails to allege a fraudulent transfer and how the transferred funds ended up in

the homestead, the lack of any tracing is fatal to the cause of action. Therefore, the complaint was dismissed.

***In re Musto***

2021 WL 99343, 2021 Bankr. LEXIS 58 (Bankr. M.D. Fla. Jan. 6, 2021) (Colton, J.)

The bankruptcy court awarded sanctions against a law firm for violating the discharge injunction, where the law firm had nine communications with the debtor seeking to collect a discharged debt, all of which were made after receiving notice of the bankruptcy case and notice of entry of the discharge. Although the law firm stopped collection efforts after the debtor's attorney sent a cease-and-desist letter, the firm did not offer to pay sanctions for its discharge injunction violations. The court awarded the debtor \$10,570.00, which represented \$450.00 in sanctions (\$50.00 for each of the nine improper communications) and \$10,120.00 in attorneys' fees and costs.