



CASE LAW UPDATE FOR Q1 2021
ISSUE OF THE COURT CONNECTION

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U.S. Supreme Court Opinions

City of Chicago v. Fulton

2021 WL 125106, 2021 U.S. LEXIS 496 (Supr. Ct. Jan. 14, 2021)

In an 8 - 0 unanimous opinion, the Supreme Court reversed the decisions of the bankruptcy court and the Seventh Circuit. The Court held that the mere retention of property does not violate the automatic stay under § 362(a)(3). In *Fulton*, the debtors had their cars impounded by the City of Chicago for failure to pay parking fines. After filing bankruptcy, the debtors demanded return of their cars. The City refused. The debtors prevailed in contempt proceedings in the bankruptcy court, which the Seventh Circuit affirmed. The Supreme Court accepted the case because of a significant circuit split over whether a creditor has an affirmative duty to turn over repossessed property once a debtor files for bankruptcy.

In an opinion by Justice Alito, the Court relied on statutory analysis of § 362(a)(3). The Court expressly avoided addressing the other subsections of § 362. Instead, the Court relied on the fact that ruling otherwise would render the § 542 turnover provision “superfluous” and would make § 542 and § 362(a)(3) contradictory. In a concurring opinion, Justice Sotomayor noted that the City of Chicago may have satisfied the “letter of the Code,” but it “hardly comport[ed] with its spirit.” Justice Sotomayor suggested that turnover under § 542 should be enhanced to benefit debtors to ensure prompt resolution of turnover demands.

Eleventh Circuit Opinions

USF Fed. Credit Union v. Gateway Radiology Consultants, P.A.
(In re Gateway Radiology Consultants, P.A.),
983 F.3d 1239 (11th Cir. Dec. 22, 2020)

The Eleventh Circuit is the first appeals court to weigh in on a bankrupt debtor's ability to obtain a Paycheck Protection Program ("PPP") loan under the CARES Act. The bankruptcy court held that the Small Business Administration exceeded its statutory authority and acted arbitrarily and capriciously by excluding debtors from the PPP loan program. On direct appeal to the Eleventh Circuit, however, the circuit court reversed. The Eleventh Circuit's 44-page opinion concludes that the SBA did not exceed its authority by declaring debtors ineligible for PPP loans and that the SBA acted reasonably—not arbitrarily and capriciously—in adopting its bankruptcy exclusion.

Wizenberg v. Wizenberg (In re Wizenberg)
2020 WL 7352578, 2020 U.S. App. LEXIS 39276 (11th Cir. Dec. 15, 2020)

The Eleventh Circuit upheld an award of sanctions, under 28 U.S.C. § 1927, against the debtor, a lawyer who was representing himself in litigation against his brother, where the debtor was "rude and unprofessional at depositions and trial," "asked repetitive and hostile questions," "ignored the Judge's rulings," and "filed voluminous and irrelevant motions." The Court rejected the debtor's argument that the bankruptcy court lacked subject-matter jurisdiction to award the sanctions. The circuit court even imposed sanctions under Rule 38, Federal Rules of Appellate Procedure, for filing a frivolous appeal.

Tufts v. Hay
977 F.3d 1204 (11th Cir. Oct. 20, 2020)

A Florida attorney acted as ostensible special counsel for a North Carolina debtor, believing he had been retained as such based on representations by the debtor's primary North Carolina bankruptcy counsel. After the North Carolina bankruptcy court disgorged the Florida counsel's fees because he had not been properly retained, the Florida attorney sued the North Carolina bankruptcy counsel in the Middle District of Florida for (among other things) negligent misrepresentation. Relying on the *Barton* doctrine, the district court dismissed the action for lack of subject-matter jurisdiction. On appeal, the Eleventh Circuit reversed, holding that the *Barton* doctrine did not apply because the North Carolina bankruptcy case had been dismissed, there was no longer any conceivable effect on the estate, and that the bankruptcy court no longer had jurisdiction.

Bankruptcy Court Opinions

Trujillo v. Moffitt (In re Moffitt)

2020 WL 7706920, 2020 Bankr. LEXIS 3592 (Bankr. M.D. Fla. Dec. 28, 2020) (McEwen, J.)

On its own motion under Bankruptcy Rule 7016, the bankruptcy court concluded that a complaint seeking to except debt from discharge was untimely. The plaintiff initiated the adversary proceeding with the filing of a Statement of Corporate Ownership. The statement was filed within the applicable filing deadline, but the complaint was not filed until the next day. The court distinguished the case of *Beem v. Ferguson*, in which the Eleventh Circuit permitted a “motion” to determine non-dischargeability to be deemed timely filed. Here, the Statement of Corporate Ownership failed to include a short and plain statement of the grounds for the court’s jurisdiction, the relief sought, and the basis for entitlement to relief. The bankruptcy court therefore concluded that the statement was not a “pleading” to which the later filed complaint could relate back. The bankruptcy court also ruled that, while certain deadlines may be extended under Rule 9006(b)(1) upon showing of “excusable neglect,” the deadline for filing a non-dischargeability complaint under Rule 4007(c) is not one of them.

In re Shumbera

2020 WL 7183540, 2020 Bankr. LEXIS 3438 (Bankr. M.D. Fla. Dec. 3, 2020) (Vaughan, J.)

The bankruptcy court denied the debtor’s motion to modify a confirmed plan, agreeing with the majority of courts that § 1325(a)(5)(B)(iii)(I) does not permit a balloon payment absent consent by the secured creditor.

In re Rivera

2020 WL 7333588, 2020 Bankr. LEXIS 3502 (Bankr. M.D. Fla. Nov. 20, 2020) (Colton, J.)

The bankruptcy court sustained the Chapter 13 Trustee’s objection to confirmation where the Trustee showed that the debtor’s income from “bonuses” was “virtually certain” such that the debtor failed to dedicate all of his projected disposable income to the plan.

In re Watkins

620 B.R. 377 (Bankr. M.D. Fla. Oct. 5, 2020) (Williamson, J.)

The bankruptcy court held that a tax certificate expired because the seven-year statute of limitations was no longer tolled by the debtor’s bankruptcy case once the subject property was no longer property of the estate via the debtor’s claim of exemption, which went without timely objection.