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CASE LAW UPDATE FOR Q3 2021 ISSUE OF THE COURT CONNECTION

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Eleventh Circuit Cases

Chua v. Ekonomou
1 F.4th 948 (11th Cir. 2021)

Splitting with four other circuits, the Eleventh Circuit held that a trustee's protection from suit under the *Barton* doctrine ends when the case is over. The court grounded its ruling on subject-matter jurisdiction, reasoning that jurisdiction ends when there is no longer a *res* controlled by a single court. The Court declined to follow the other circuits, which placed significant weight on the policy concerns underlying *Barton* protection. Even so, the Court still upheld the dismissal of the case based upon a finding that the receiver was entitled to judicial immunity. Although the case involved a state court receiver, the holding is equally applicable to bankruptcy trustees. Therefore, under this decision, once a bankruptcy case is over, the trustee could be sued in another court.

Bankruptcy Court Cases

In re De Bauer
628 B.R. 355, 358 (Bankr. M.D. Fla. 2021) (Jennemann, J.)

The bankruptcy court held that the debtor, a non-citizen not legally permitted to reside in the United States, was entitled to a homestead exemption under

Florida law. Ordinarily, a debtor claiming the homestead must meet both an objective and subjective test: the debtor must actually occupy the home; and they must express an actual intent to live there permanently. Because of the debtor's immigration status, she could not form an *actual* intent to live in the home permanently. Even so, Judge Jennemann concluded that the debtor met the subjective test because at least one family member living in the home had made sufficient credible attempts to gain legal status of a permanent resident in the United States: the Debtor's daughter had lived continuously at the home since she arrived in the United States and had made a formal request to gain legal status by enrolling in the DACA program and applying for a green card after her marriage to a U.S. citizen. As a result, the Debtor's homestead exemption survives.

In re Givans
2021 WL 1991861 (Bankr. M.D. Fla. May 20, 2021) (Jennemann, J.)

The debtor claimed certain tax refunds owned by him and his non-filing spouse as tenants by the entireties exempt. The trustee objected because the debtor's wages were the sole source of the funds that generated the refund. Relying on her decisions in *In re Hinton* and *In re Freeman*, Judge Jennemann once again held that married couples can own tax refunds as TBE, regardless of which spouse contributed the most income. Judge Jennemann then overruled the trustee's objection because the trustee failed to rebut the presumption of TBE ownership.

In re Forrest
2021 WL 1784085, 2021 Bankr. LEXIS 1212 (Bankr. M.D. Fla. Apr. 2, 2021) (Colton, J.)

In a very thorough opinion addressing whether a debtor's violation of a PACA trust renders the debt nondischargeable under § 523(a)(4), Judge Colton rejected the majority view and sided with the minority view that such a debt can be discharged. In doing so, Judge Colton relied on the fact that PACA does not require the funds to be segregated. Ultimately, Judge Colton chose to err on the side of the "strict and narrow" interpretation of § 523(a)(4), concluding that "some clear lines of demarcation should exist before an individual is saddled with a business debt for eternity."

The Court certified the order for direct appeal to the Eleventh Circuit because of the importance of the issue and the split of authority within the Circuit.

In re Wildwood Villages, LLC

2021 WL 1784408, 2021 Bankr. LEXIS 1188 (Bankr. M.D. Fla. May 4, 2021) (Colton, J.)

> Judge Colton denied a motion by plaintiffs to allow a class claim under Bankruptcy Rule 7023 in a Subchapter V case. In doing so, Judge Colton rejected the debtor's contention that Subchapter V prohibits class claims altogether. Instead, Judge Colton held that bankruptcy courts have discretion to permit a class claim in a Subchapter V case. But in this particular case, Judge Colton exercised that discretion and decided not to permit a class claim. Judge Colton then established claims procedures to address the various claims.

In re ENKOGS1, LLC

626 B.R. 860 (Bankr. M.D. Fla. 2021) (Jennemann, J.)

> A creditor filed a motion to determine that the debtor, which owned and operated a 79-room hotel, was a "single asset real estate" project and therefore ineligible for relief under Subchapter V of Chapter 11. Judge Jennemann denied the motion, finding that hotels generally, and this hotel in particular, are distinguishable from apartment projects, and do not constitute single asset real estate projects. Judge Jennemann's decision was based on the fact that the debtor provided many services besides just renting rooms: the hotel employed fifteen persons; cleaned rooms every day; served breakfast; and provided a swimming pool, a fitness center, laundry, internet, and phone services. According to Judge Jennemann, these services constitute something more than "operating the real property and activities incidental thereto."