



CASE LAW UPDATE FOR Q1 2022
ISSUE OF THE COURT CONNECTION

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Eleventh Circuit Cases

Jackson v. Le Centre on Fourth, LLC (In re Le Centre on Fourth, LLC)

17 F.4th 1326 (11th Cir. 2021)

The Eleventh Circuit held that when a creditor, through his attorney, received a copy of a plan and disclosure statement containing a release of non-debtor parties, due process was satisfied, even though a notice was not provided under Bankruptcy Rule 2002(c)(3), so long as the plan and disclosure statement contained the same information required by Rule 2002.

In *Le Centre on Fourth*, a creditor was injured by valet drivers at a hotel and sued the valet drivers and other parties in state court. The hotel owner filed for Chapter 11 bankruptcy and ultimately proposed a plan with broad releases of third parties, which was confirmed. Based on the releases, the non-debtor parties sought dismissal of the state court suit, which the creditor had obtained stay relief to continue pursuing. The creditor went to the bankruptcy court to modify the confirmation order to permit the suit against the non-debtors nominally to pursue insurance coverage. The creditor argued that he did not receive due process because the debtor did not provide a notice of the non-debtor releases as required under Rule 2002(c)(3). The bankruptcy court rejected this argument, and the district court affirmed. On appeal, the Eleventh Circuit also affirmed, relying on *Espinosa* in holding that receipt of the same information contained in the plan and disclosure statement was sufficient to satisfy due process.

Markland v. Davis (In re Centro Group, LLC)

2021 WL 5158001 (11th Cir. Nov. 5, 2021)

The Eleventh Circuit held that the bankruptcy court did not abuse its discretion in approving a bar order that released non-debtor third parties, concluding that the bankruptcy court correctly applied the *Munford* factors. In its opinion, the Eleventh Circuit explained that it effectively has two different standards for approving bar orders, depending on whether the bar order is sought in a settlement agreement (*Munford*) or in the context of a plan (*Seaside*).

Bankruptcy Court Cases

In re Defoor Centre, LLC

2021 WL 5829526 (Bankr. M.D. Fla. Dec. 7, 2021) (Williamson, J.)

Post-confirmation, a chapter 11 debtor sought discovery under Rule 2004 from a lender. The Rule 2004 discovery related to alleged prepetition claims the debtor had against the lender, which would fund the distribution to equity under the debtor's confirmed plan. The lender objected to the discovery because it believed the bankruptcy court lacked jurisdiction over the debtor's alleged claims. Judge Williamson declined to allow the requested discovery.

After acknowledging that a bankruptcy court must take into account its limited jurisdiction when considering whether to allow post-confirmation Rule 2004 discovery, Judge Williamson concluded the mere fact that the debtor's alleged causes *may* have fallen outside the bankruptcy court's limited jurisdiction was not, by itself, grounds for denying Rule 2004 discovery. Even so, Judge Williamson denied Rule 2004 discovery because the debtor failed to demonstrate the requisite good cause. According to Judge Williamson, Rule 2004 was intended to provide the debtor with the preliminary information it needed to file an adversary complaint, and Judge Williamson concluded the debtor already had that information. Allowing Rule 2004 discovery under those facts, Judge Williamson concluded, risked giving the debtor an unfair strategic advantage in what amounts to private litigation.

In re Le

633 B.R. 919 (Bankr. M.D. Fla. 2021) (Jennemann, J.)

A deficiency judgment entered after the foreclosure of the debtor's non-homestead real property may be avoided if it impairs a debtor's homestead.

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Volume No. 11 – Issue No. 1
January 2022

Judge Jennemann interpreted Bankruptcy Code § 522(f)(2)(C) as referring only to judgments authorizing the sale of a mortgaged premises, as opposed to non-consensual judgment liens such as deficiency judgments.

In re Rosinus

2021 WL 5627975 (Bankr. M.D. Fla. Nov. 17, 2021) (Delano, C.J.)

A chapter 7 debtor faced several complaints objecting to his discharge. After the chapter 7 trustee's original request for approval of a compromise was denied, a creditor substituted in the place of the trustee. The creditor, which had not previously challenged the debtor's discharge, sought approval of a new compromise in which its claim would survive the discharge and the other complaints would be dismissed. The U.S. Trustee objected. The Court declined to approve the new proposed settlement because it was unfair, provided no cognizable benefit to the estate, and violated the integrity of the bankruptcy process and public policy.