Court Connection
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Case Law Update for Q3 2022
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Editors:
Bradley M. Saxton, C. Andrew Roy, and Lauren M. Reynolds, Winderweedle, Haines, Ward & Woodman, P.A., with special thanks to summer associate Phillip Latham for his help with this issue

Bankruptcy Court Cases

Vista Money v. Stevenson (In re Stevenson)
2022 WL 1537457 (Bankr. M.D. Fla. Apr. 26, 2022) (Colton, J.)

> After noting that, for purposes of § 523(a)(6), "willful" and "malicious" are distinct requirements, Judge Colton found that the debtor acted recklessly (as opposed to willfully and maliciously) when he made statements to third parties regarding Vista Money. Judge Colton found that the debtor honestly believed the statements he made were true, and he did not intend to injure Vista Money's reputation when he made them. Judge Colton therefore concluded that § 523(a)(6) did not apply and that the debt was dischargeable.

In re Clements
2022 WL 1309948 (Bankr. M.D. Fla. Apr. 28, 2022) (Robson, J.)

> Judge Robson dismissed a chapter 13 case because the debtor's unsecured debt exceeded the § 109(e) limits. In making that determination, Judge Robson concluded it was appropriate to include a proof of claim that had been objected to. Judge Robson noted that the amount set forth in the proof of claim, which had been objected to based on its priority status, not the amount, was liquidated and readily ascertainable by the debtor.

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Webber II v. Garcia (In re Valdes)
2022 WL 1309940 (Bankr. M.D. Fla. May 2, 2022) (Robson, J.)

The Chapter 7 Trustee sued to avoid and recover the debtor's transfer of her interest in homestead property. The debtor sought summary judgment on the Trustee's claims because, according to the debtor, the Trustee lacked standing since there was no unsecured creditor who could force the sale of the debtor's property. In response, the Trustee argued that the transfer could be avoided because the debtor had taken out an unsecured loan with a credit union to fund repairs or improvements to her homestead, which, according to the Trustee, is one of the recognized exceptions to the homestead exemption.

Judge Robson concluded that the "repair and improvement" exception to the homestead exemption applies narrowly to debt incurred by entities who perform the services that improve or repair the homestead—not to entities providing loans to pay for such improvements and repairs. So the Trustee did not have standing under § 544(b) to avoid the transfer of the debtor's homestead. And, since "a homestead cannot be fraudulently transferred" under Florida law, there was no "transfer" of an "asset" subject to avoidance under the UFTA.

In re Castillo
2022 WL 1537990 (Bankr. M.D. Fla. May 9, 2022) (Colton, J.)

Judge Colton permitted a retroactive extension of the deadline for the debtor to file a Subchapter V plan of reorganization under the more stringent standards of § 1189(b) because the debtor needed information from his businesses' tax returns to propose a feasible plan, and that information was not reasonably available before the plan filing deadline.

Pinero v. Rodriguez (In re Rodriguez)
2022 WL 1599970 (Bankr. M.D. Fla. May 10, 2022) (Colton, J.)

The plaintiff, a title agent who closed the sale of the debtors' home, sought to impose a constructive trust on a new home the debtors bought with the proceeds from the sale of their first home. The debtors had two mortgages on their first home: one with Wells Fargo and another with the Secretary of Housing and Urban Development. Because the debtors had only been paying Wells Fargo, they believed that is who both mortgages were with. And when the Plaintiff asked Wells Fargo for a payoff, the bank provided a payoff for only its mortgage—not the HUD mortgage. So the HUD mortgage was not paid off at closing, although everyone believed both mortgages had been satisfied.

HUD looked to the title agent for reimbursement. The title agent, in turn, looked to the Plaintiff, who sought a constructive trust against the debtors' new home, which they purchased and renovated (at least in part) with sales proceeds that should have gone to HUD. Because the facts showed that there was no fraud or egregious conduct by the debtors in obtaining the funds used to buy and renovate their home, rather it was an innocent mistake by all parties, Judge Colton refused to impose a constructive trust or equitable lien against the debtors' homestead property.

In re Carr
2022 WL 2176293 (Bankr. M.D. Fla. June 3, 2022) (Robson, J.)

Judge Robson was asked to reinstate a dismissed chapter 13 case. In considering the request, Judge Robson noted that reinstatement is a "judicially created fiction, designed to spare debtors the burden of filing a new case." And, while reinstatement is a "common practice," Judge Robson noted that there is no provision in the Bankruptcy Code or Bankruptcy Rules that provides for reinstatement of a dismissed case.

Looking to Bankruptcy Rules 9023 and 9024, which incorporate Federal Rules of Civil Procedure 59(e) and 60, Judge Robson concluded bankruptcy courts can vacate a dismissal order in its "sound discretion." Exercising that discretion, Judge Robson concluded vacating the dismissal order would be in the best interest of all parties.

In re Purkiss
2022 WL 2442306 (Bankr. M.D. Fla. June 29, 2022) (Geyer, J.)

Judge Geyer denied a chapter 13 debtor's motion to reopen her case and expunge the case from the public records. The debtor contended that she had filed the case based on bad advice; after the case was dismissed, she paid all creditors; and the existence of the case was causing her irreparable harm. Noting that expungement is an extraordinary remedy, Judge Geyer rejected the debtor's argument. Judge Geyer explained that bankruptcy courts typically expunge cases only when they were filed without the debtor's knowledge or authorization. Although she was sympathetic to the debtor's plight, Judge Geyer denied the debtor's motion because the debtor had intentionally filed the chapter 13 case; actively participated in it; opposed its dismissal; and benefitted from the automatic stay.