Court Connection
Volume No. 11 – Issue No. 4
October 2022

Case Law Update for Q4 2022
Issue of the Court Connection

Editors:
Bradley M. Saxton, C. Andrew Roy, Lauren M. Reynolds, Winderweedle, Haines, Ward & Woodman, P.A.

Eleventh Circuit Cases

1944 Beach Boulevard, LLC v. Live Oak Banking Co. (In re NRP Lease Holdings, LLC)
2022 WL 4545539 (11th Cir. Sep. 29, 2022)

The debtor gave Live Oak Banking Company a blanket lien on all its assets. To perfect its lien, Live Oak's recorded a UCC-1, which abbreviated the debtor's name from "1944 Beach Boulevard, LLC" to "1944 Beach Blvd. LLC." After filing for bankruptcy, the debtor filed a complaint to avoid Live Oak's security interest, asserting that the lien was not properly perfected because use of the abbreviated name made the UCC-1 "seriously misleading." The bankruptcy court and the district court held that the lien was properly perfected, finding that the abbreviation was a "minor error or omission." The Eleventh Circuit certified three questions to the Florida Supreme Court. The Florida Supreme Court, however, found a "dispositive threshold question" that was not expressly certified by the Eleventh Circuit: Is the filing office's use of a "standard search logic" necessary to trigger the safe harbor protections in section 679.5061, Florida Statutes, that are afforded to UCC-1 statements containing errors or omissions. The Florida Supreme Court answered that question in the affirmative. Then, after adopting the definition of "standard search logic" accepted in the secured transactions industry, which requires a search to identify specific hits (if there are any), the Florida Supreme Court held that the search option offered by the Florida Secured Transactions Registry did not employ "standard search logic" because the Registry's search option returns the entire index of names in the Registry. Thus, the Florida

Supreme Court concluded section 679.0561(3)'s safe harbor protection was unavailable in this case. Based on the Florida Supreme Court's holding, the Eleventh Circuit held that Live Oak's UCC-1 financing statement was "seriously misleading"; therefore, Live Oak did not perfect its security interest in the debtor's assets.

Auriga Polymers Inc. v. PMCM2, LLC
40 F. 4th 1273 (11th Cir. July 18, 2022)

Analyzing the "new value" defense under Bankruptcy Code § 547(c)(4), the Eleventh Circuit held that when a creditor provides goods within 20 days of the petition date, thus giving rise to an administrative priority claim under § 503(b)(9), the existence of the administrative claim does *not* offset the creditor's new value defense. Put another way, the post-petition payment of the 20-day 503(b)(9) administrative claim is not "an otherwise unavoidable transfer" under § 547(c)(4)(B) that would reduce the creditor's new value defense.

Bankruptcy Court Cases

In re Bizgistics, Inc.
2022 WL 2827551 (Bankr. M.D. Fla. July 13, 2022) (Colton, J.)

The debtor borrowed nearly $1.5 million from ReadyCap Lending to fund its acquisition of Banner Delivery, Inc. To secure the loan, the debtor gave ReadyCap a security interest in certain collateral. When the debtor filed for bankruptcy, it scheduled ReadyCap as a secured creditor with collateral worth $1.1 million. It also scheduled ReadyCap as having an unsecured claim in an unknown amount. ReadyCap filed a late-filed proof of claim in the amount of $1.5 million, which was secured by a lien on motor vehicles, business equipment, causes of action, and money held by a third party. The debtor objected to ReadyCap's claim and moved to determine ReadyCap's secured status. The debtor disputed that ReadyCap had a perfected security interest in any commercial tort claims; $150,000 in holdback funds being held in escrow; a truck that was damaged in an accident (and the insurance proceeds from the accident); or a truck and trailer. Judge Colton ruled that, as of the petition date, ReadyCap did not have a properly perfected security interest in commercial tort claims; holdback funds in escrow; a truck that had been damaged in an accident and the insurance proceeds from the accident; or the truck and trailer. Judge Colton therefore avoided ReadyCap's security interest in that collateral under Bankruptcy Code § 544.

Court Connection
Volume No. 11 – Issue No. 4
October 2022

In re Myers
2022 WL 2827475 (Bankr. M.D. Fla. July 15, 2022) (Delano, C.J.)

The debtor filed for bankruptcy in Maryland. While the Maryland case was pending, the debtor and U.S. Bank consented to a stay relief order. Under the stay relief order, the debtor was required to pay $5,000 into the court registry as adequate protection to pursue its appeal of a judgment in favor of U.S. Bank. The debtor later filed for bankruptcy in the Middle District of Florida; listed the funds held in the Maryland bankruptcy court registry, which totaled $70,000, as an asset of the estate; and claimed the $70,000 as exempt tenants-by-the-entireties property. Then the debtor moved to avoid U.S. Bank's interest in the $70,000 under § 522(f)(1)(A), alleging that the Maryland stay relief order constituted a "judicial lien" that was impairing his TBE exemption. Relying on the Eleventh Circuit's decision twenty years ago in *In re Washington*, Chief Judge Delano ruled that the Maryland stay relief order did not create a judicial lien against the $70,000 in adequate protection payments. Thus, Chief Judge Delano ruled that the debtor could not avoid U.S. Bank's interest in the $70,000.

Chambers v. Delta P'ship LLC (In re J.E.L. Site Dev.)
642 B.R. 471 (Bankr. M.D. Fla. 2022) (Vaughan, J.)

The debtor, a construction site preparation company, was run by James E. Lucas, III, who was also the debtor's only underground utility license holder, which meant the company could not run without him. Within 90 days of the petition date, the debtor transferred $150,000 to Delta Partnership, LLC as a commission for site development jobs it obtained for the debtor. The debtor transferred another $300,000 to Delta during the one year before the petition date. The Trustee sought to avoid the $450,000 in transfers. The sole issue for trial was whether Delta was an insider of the debtor. Although Judge Vaughan concluded Delta was not a statutory insider of the debtor because the Trustee failed to prove Lucas was a member of Delta, she concluded Delta was a non-statutory insider of the debtor. According to Judge Vaughan, the evidence at trial showed that the debtor and Delta had a close relationship: Lucas (the debtor's owner) was "good friends" with Delta's owners; Delta's owners encouraged Lucas to start a new business, even offering him a rent-free office to start the business; the debtor made $20,000 in donations to nonprofits Delta's owners were associated with; and all Delta's revenues came from the debtor. Moreover, the transactions between the debtor and Delta were not arms'-length transactions.

Court Connection
Volume No. 11 – Issue No. 4
October 2022

In re Weber
2022 WL 2827474 (Bankr. M.D. Fla. July 20, 2022) (Delano, C.J.)

The debtor received a $5,500 tax refund for 2021. On his schedules, the debtor claimed $3,750 of the refund as exempt. According to the debtor, that amount represented a refund for amounts he withheld from his social security benefits, which are exempt from execution, levy, attachment, garnishment, or other legal process under 42 U.S.C. § 407, to pay his taxes. Chief Judge Delano ruled that the debtor's election to withhold funds from social security benefits for taxes did not affect the protection of those benefits from creditors under 42 U.S.C. § 407. Therefore, Chief Judge Delano ruled the refund of the overpayment was exempt to the extent traceable to social security benefits.

In re AGV Partners, Inc.
642 B.R. 871 (Bankr. M.D. Fla. 2022) (Williamson, J.)

The debtor gave the U.S. Small Business Administration a security interest in all its property—as well as the "proceeds" of that property—to secure an Economic Injury Disaster Loan. The debtor also agreed to insure the SBA's collateral. After the debtor's property was destroyed in a fire, the insurance company paid $110,000. The debtor's landlord, which held a $25,000 administrative expense claim for unpaid rent, claimed it had a superior landlord's lien on the insurance proceeds under section 83.08(2), Florida Statutes. Judge Williamson acknowledged that the landlord had a landlord's lien on all the debtor's property found (or usually kept) on the leased premises and that the lien was superior to any lien acquired after the debtor brought property on the premises. But Judge Williamson concluded, based on the plain language of section 83.08(2), that the landlord's lien only extended to the debtor's property—not *proceeds* of the property. Therefore, Judge Williamson concluded the landlord did not have a lien on the insurance proceeds.

Patton v. Benevides (In re Benevides)
2022 WL 3364849 (Bankr. M.D. Fla. Aug. 12, 2022) (Robson, J.)

Judge Robson denied the debtor his discharge because he listed assets on schedules that were not owned by him and he filed numerous false proofs of claim on behalf of his children and family trusts.

In re Wildwood Villages
2022 WL 3681253 (Bankr. M.D. Fla. Aug. 15, 2022) (Colton, J.)

The debtor, a mobile home subdivision developer, sold certain recreational facilities and common areas during the bankruptcy case with court approval.

Existing lot owners asserted administrative priority claims for damages they suffered from the loss of the recreational facilities and common areas. Judge Colton previously found that the lot owners' damages claims were entitled to administrative priority and then set a trial to determine the amount of damages. At the trial on damages, the lot owners argued that, because the recreational facilities were eliminated, they were overcharged for their monthly maintenance fee. And they argued that the value of their lots decreased as a result of the recreational facilities being eliminated. Judge Colton found that the debtor overcharged the lot owners ($61.03/month for six months and $158.55/month for nine months) for their monthly maintenance fee. But Judge Colton did not find the lot owners' expert on diminution-in-value credible or reliable. So she rejected the lot owners' diminution-in-value damages because they were not proven with reasonable certainty.

Fernandez v. IRS (In re Fernandez)
2022 WL 3639887 (Bankr. M.D. Fla. Aug. 23, 2022) (Williamson, J.)

The debtor filed an adversary proceeding seeking to discharge hundreds of thousands of dollars in unpaid taxes. The United States argued the unpaid taxes were nondischargeable under § 523(a)(1)(C) because the debtor willfully attempted to evade or defeat his taxes. Based on the totality of evidence presented at trial, Judge Williamson found that the United States failed to prove by a preponderance of the evidence that the debtor acted willfully in not paying his tax obligations. Although the debtor had high discretionary spending, it was not necessarily lavish. What's more, the debtor's initial failure to pay his taxes was the result of a mistake; he dealt with the IRS in good faith; and he did not attempt to conceal assets.

Hollman v. Morales (In re Morales)
2022 WL 4005335 (Bankr. M.D. Fla. Aug. 26, 2022) (Colton, J.)

The plaintiff hired the debtor to perform repairs on his mobile home and paid him $25,000 for his services. When the repairs did not fix the mobile home, the debtor claimed the mobile home was possessed by evil spirits and offered to perform a séance to eliminate them. The plaintiff ultimately declined when he learned the séance required animal sacrifice. The plaintiff later sued the debtor in state court for breach of contract, breach of warranty, and fraud. After the debtor filed for bankruptcy, the plaintiff sued to have his breach of contract, breach of warranty, and fraud claims determined to be nondischargeable. Judge Colton ruled that the breach of contract and breach of warranty claims could not give rise to nondischargeable debts under §§ 523(a)(2) and 523(a)(6). As for the fraud claim, Judge Colton found the plaintiff failed to prove the

debtor intended to deceive him when he represented to the plaintiff that he had the necessary skills and ability to do the repair work; that he was a "licensed handyman"; that his company was "insured"; and that the plaintiff's home was possessed.