



CASE LAW UPDATE FOR Q2 2023

ISSUE OF THE COURT CONNECTION

Editor:

Bradley M. Saxton and Lauren M. Reynolds, Winderweedle, Haines, Ward & Woodman, P.A.

Bankruptcy Court Cases

In re Ingole

Case No. 2:22-bk-00395-FMD (Bankr. M.D. Fla. Mar. 31, 2023) (Delano, C.J.)

Addressing two separate accounts which debtor claimed exempt as tenancy by entireties property, Court found that debtor's release of his interest in one account terminated the TBE, but other account was TBE. Despite inconsistencies in the signature cards, the unities to create TBE existed, and the evidence showed the funds came from the sale of property which was TBE property.

Q & H Partners, LLC v. Gonzalez (In re Gonzalez)

2023 Bankr. LEXIS 583 (Bankr. M.D. Fla. Feb. 21, 2023) (Geyer, J.)

Court denied motion to extend the discovery deadline by defendant in a non-dischargeability adversary proceeding. Defendant was trying to avoid litigation expenses while awaiting a ruling on a summary judgment motion. Nonetheless, when the motion was filed on the date of the deadline, and defendant failed to show good cause as required by F.R.B.P. 7016(b)(4) to modify the prior scheduling order, the motion was denied.

In re Central Florida Civil, LLC

Case No. 3:22-bk-01736-BAJ (Bankr. M.D. Fla. Feb. 17, 2023) (Burgess, J.)

In a subchapter V chapter 11 case, the Court confirmed the chapter 11 plan over the objections of two creditors and approved the plan injunction which enjoined creditors from pursuing guaranty claims against the debtor's

principals. The Court thoroughly analyzed the *Dow Corning* factors and other recent case law from the Eleventh Circuit and other Middle District bankruptcy cases involving plan injunctions. The Court was persuaded by the evidence that the principals were essential to the reorganization, the number of affected creditors that approved the plan, and the temporary nature of the injunction.

SRQ Taxi Mgmt., LLC v. Sarasota Manatee Airport Auth. (In re SRQ Taxi Mgmt., LLC)

2023 Bankr. LEXIS 192 (Bankr. M.D. Fla. Jan. 26, 2023) (Delano, C.J.)

The Court conducted an extensive analysis of the potential expert testimony pursuant to a *Daubert* motion to exclude the expert opinion. The Court concluded that the expert testimony and the expert's damages calculations were legally unreliable and therefore inadmissible under F.R.E. 702. *Daubert* motion granted.

Q & H Partners, LLC v. Gonzalez (In re Gonzalez)

Adv. No. 6:21-ap-00157-TPG (Bankr. M.D. Fla. Jan. 26, 2023) (Geyer, J.)

Court analyzed the collateral estoppel effect of a prior state court judgment in an adversary proceeding seeking to except the debt from discharge under §523(a)(2)(A). Where the state court judgment contained only conclusive assertions, without findings regarding the specific elements of proof required under §523(a)(2)(A), the Court denied the plaintiff's motion for summary judgment.

In re Myers

Case No. 2:21-bk-00123-FMD (Bankr. M.D. Fla. Jan. 20, 2023) (Delano, C.J.)

Court denied debtor's motion for reconsideration, dismissed the chapter 13 case as a bad-faith filing, and barred the debtor from refiling for two years.

In re Morozov

Case No. 3:10-bk-00724-BAJ (Bankr. M.D. Fla. Jan. 20, 2023) (Burgess, J.)

Court held the unique circumstances of the case resulted in granting the creditor's motion to annul the automatic stay.