

CASE LAW UPDATE FOR Q3 2023

Editor:

Bradley M. Saxton, Winderweedle, Haines, Ward & Woodman, P.A., with special thanks to summer associates Kim Ciarcia (Florida State College of Law, Spring '25) and Michael Romano (University of Florida College of Law, Spring '25) for assistance with this issue.

Bankruptcy Court Cases

BenShot, LLC v. 2 Monkey Trading, LLC (In re 2 Monkey Trading, LLC)

2023 WL 3947494 (Bankr. M.D. Fla. June 12, 2023) (Geyer, J.)

In a subchapter V chapter 11 case, the Court certified a direct appeal to the Eleventh Circuit Court of Appeals where Plaintiff appealed the Court's prior conclusion that Plaintiff could not maintain an action for denial of discharge under § 523(a)(6) because Plaintiff is an LLC. The Eleventh Circuit has not yet ruled on whether § 523(a) applies to corporate debtors.

In re Smart Baking Co., LLC

2023 WL 3813506 (Bankr. M.D. Fla. June 1, 2023) (Robson, J.)

The Court granted motion to compel in part, holding that debtor did not reject lease until the locks to the premises were changed, even though debtor had stopped using the premises previously, because there was no sublease or agreement that relieved debtor of its lessee obligations when it stopped using premises. The Court held that damages occurring prior to lease rejection were recoverable along with reasonable attorneys' fees.

SCCY Indus. v. Hickman (In re Hickman)

2023 WL 3521648 (Bankr. M.D. Fla. May 17, 2023) (Geyer, J.)

The Court granted Plaintiff's motion to dismiss debtor's amended counterclaim with eleven claims, holding that debtor lacked standing to bring ten of the claims that accrued pre-petition and that debtor could not bring a claim for defamation because Plaintiff was protected by the litigation privilege.

In re Smart Baking Co., LLC

2023 WL 3614644 (Bankr. M.D. Fla. May 16, 2023) (Robson, J.)

The Court sustained objection to use of deposition testimony in lieu of live testimony at trial. The Court held that debtor did not exercise the requisite “reasonable diligence” necessary to permit the use of deposition testimony under Federal Rule of Civil Procedure 32(a)(4)(D) when debtor did not subpoena witness until a day or two before the trial.

In re Hall

650 B.R. 595 (Bankr. M.D. Fla. 2023) (Burgess, J.)

The Court granted the creditor’s motion for summary judgment, holding that disputed debt amounts counted towards the \$7.5M limit for subchapter V bankruptcy under § 1182 regardless of the magnitude of the dispute. Further, the Court held that eligibility is determined based on what a debtor actually owes, not what is included on their schedules. Lastly, the Court held that debtor, who guaranteed a debt individually and on behalf of an LLC, created an obligation for the debt for herself and the LLC.

In re Summit II, LLC

2023 WL 3295003 (Bankr. M.D. Fla. May 4, 2023) (Colton, J.)

In a subchapter V chapter 11 case, the Court held that debtor was able to assume an executory contract under § 365(a) (made applicable to Subchapter V debtor-in-possession by § 1184) because the contract had not expired, and it was in the best interest of the estate to assume the contract.

In re Huckleberry Partners LLC

2023 WL 3244778 (Bankr. M.D. Fla. May 2, 2023) (Robson, J.)

The Court denied the motion for reconsideration of the Court’s prior order denying affirmative defenses. The Court held that the date an order is entered on the docket is the time from which the timeline to make motions or appeals is measured, not the date an order is signed.

BenShot, LLC v. 2 Monkey Trading, LLC (In re 2 Monkey Trading, LLC)

650 B.R. 521 (Bankr. M.D. Fla. 2023) (Geyer, J.)

The Court granted defendant’s motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). The Court concluded that, as a matter of law, Plaintiff could not maintain an action for denial of discharge under 11 U.S.C. § 523(a)(6) against the Debtors/Defendants, who were

proceeding under Subchapter V of Chapter 11, because they are not “individuals” but rather are limited liability corporations.

In re Bravo

2023 WL 3035382 (Bankr. M.D. Fla. Apr. 21, 2023) (Delano, C.J.)

The Court concluded Florida’s homestead exemption does not require a travel trailer to be “permitted” or “built and permanently placed on the premises in accordance with applicable law and building code requirements” to qualify as the debtor’s exempt homestead. To qualify for a homestead exemption, an individual must have an ownership interest in a residence, must use and occupy the residence, and must intend to live there permanently.

Nutrien Ag Solutions, Inc. v. Hall (In re Hall)

651 B.R. 62 (Bankr. M.D. Fla. 2023) (Burgess, J.)

Using statutory interpretation tools, the Court rejected the Fourth Circuit’s conclusion and held that the exceptions to discharge under § 523(a) do not apply to corporate debtors receiving a discharge under § 1192.

In re Christopher

2023 WL 2911655 (Bankr. M.D. Fla. Apr. 12, 2023) (Delano, C.J.)

The Court found that debtor’s confirmed Chapter 13 Plan explicitly provided that the proceeds from the sale of real property would be returned to debtor upon confirmation. The party opposing the release of the funds had notice of debtor’s plan and sufficient time to object but failed to do so. Thus, the objector was bound by the plan’s terms.

In re Robles

2023 WL 2809882 (Bankr. M.D. Fla. Apr. 6, 2023) (Geyer, J.)

The Court concluded that denying debtor’s motion to vacate his discharge would deprive him of the fresh start he was entitled to as a good-faith debtor.

In re Namen

649 B.R. 603 (Bankr. M.D. Fla. Apr. 5, 2023) (Burgess, J.)

The Court ruled that a creditor who failed to take affirmative steps to end garnishments after debtor filed for Chapter 11 reorganization was subject to sanctions for violating bankruptcy’s automatic stay.