

Case Law Update For Q4 2023

Editors:

Bradley M. Saxton and Lauren M. Reynolds
Winderweedle, Haines, Ward & Woodman, P.A.
and
Kathleen L. DiSanto
Bush Ross, P.A.

In re Ariman

653 B.R. 685 (Bankr. M.D. Fla. 2023) (Geyer, J.)

Chapter 7 debtor sought to redeem windows, which she valued at \$500.00 but were subject to a secured claim of \$24,542.00. The creditor contended that the windows did not constitute tangible personal property and, therefore, were not eligible for redemption under section 722 of the Bankruptcy Code. In evaluating whether the windows were personal property or a fixture, the court focused on the intention of the parties in annexing the chattel to realty. Based on the fact that the contract between the parties described the windows as goods, the bankruptcy court granted the debtor's motion to redeem.

In re Padilla

2023 WL 5770143 (Bankr. M.D. Fla. Aug. 25, 2023) (Colton, J.)

Court granted chapter 7 debtors' motion for sanctions for willful violation of the discharge injunction against a Florida holding company for certain gyms located in Puerto Rico. The company was listed as a creditor on the debtors' schedules and was served with a copy of the discharge order. Despite this, the company made at least five threatening phone calls to the debtors in an effort to collect the prepetition debt. The holding company failed to appear at the hearing or otherwise respond to the motion or multiple orders to show cause issued by the bankruptcy court. The bankruptcy court awarded the debtors their attorney's fees and costs, lost wages, and emotional distress damages, for a total sanction in excess of \$15,000.00.

In re Tampa Hyde Park Café Properties, LLC

2023 WL 5425243 (Bankr. M.D. Fla. Aug. 23, 2023) (Delano, C.J.)

Debtor's motion for order enjoining clerk of the state court to disburse funds was denied as procedurally improper, as proceedings to obtain an injunction or other equitable relief must be commenced by adversary proceeding. The court further noted that the motion was due to be denied on the merits, as the debtor lacked standing and could not demonstrate irreparable harm.

In re Friends of Citrus and the Nature Coast, Inc.

2023 WL 5374399 (Bankr. M.D. Fla. Aug. 22, 2023) (Delano, C.J.)

Real estate purchase contract included a prevailing party attorney's fee provision, where related asset purchase agreement did not. Bankruptcy court treated asset purchase agreement and real estate purchase agreement as single contract for purposes of awarding prevailing party attorney's fees. The bankruptcy court denied motion for reconsideration of order awarding prevailing party attorney's fees, where movant argued for the first time that the asset purchase agreement and real estate purchase agreement could not be treated as a single integrated contract.

In re Lubin

2023 WL 5775729 (Bankr. M.D. Fla. Aug. 18, 2023) (Colton, J.)

A physician filed a petition seeking relief under chapter 11, subchapter V of the Bankruptcy Code on the eve of a trial on the United States' claims for civil damages under the False Claims Act based on his alleged receipt of illegal kickbacks by participating in a sham speaker program to induce him to prescribe fentanyl medication, regardless of medical necessity. The United States sought a determination that its claims under the False Claims Act were excepted from the automatic stay as a police or regulatory action under section 362(b)(4) of the Bankruptcy Code to allow the trial to proceed in district court. The bankruptcy court concluded that the claims were excepted from the automatic stay as a police or regulatory action under both the pecuniary purpose and public policy tests, even though the United States sought a monetary judgment against the debtor. Alternatively, even if such actions were not excepted from the stay under the police or regulatory action exception, the bankruptcy court determined that cause existed to lift the stay under the totality of the circumstances, when considering the conservation of judicial resources, in light of the time the case had been pending in district court and the nature of the claims asserted in the litigation, the lack of interference of

the litigation with the bankruptcy case, lack of prejudice to the debtor and other creditors, and the likelihood of success on the merits.

In re Huckleberry Partners LLC

2023 WL 5321704 (Bankr. M.D. Fla. Aug. 15, 2023) (Robson, J.)

Liquidating agent sought approval of mediated settlement agreement, and creditor objected. Bankruptcy court approved compromise under Bankruptcy Rule 9019, over the objection of the creditor, finding that the settlement did not fall below the lowest point in the range of reasonableness and satisfied the *Justice Oaks* factors.

In re Worrell

2023 WL 5096081 (Bankr. M.D. Fla. Aug. 8, 2023) (Geyer, J.)

Chapter 13 debtor sought to enforce discharge against the IRS. The IRS contended that its claim was not dischargeable because the debtor filed her 2012 through 2015 tax returns after the date they were due and after two years before the petition date, and the debtor did not oppose these assertions. The bankruptcy court denied the motion, concluding that the taxes were not dischargeable under section 1328(a) or section 523(a)(1)(B)(ii) of the Bankruptcy Code.

In re Gilbert

652 B.R. 817 (Bankr. M.D. Fla. Aug. 4, 2023) (Geyer, J.)

More than six years after the entry of the confirmation order, chapter 13 debtor sought to modify confirmed plan to include a secured creditor who was inadvertently omitted from the schedules and was not provided for in the chapter 13 plan. Debtor also sought to vacate the confirmation order to allow her to strip the lien of the secured creditor and treat the claim as unsecured, and the secured creditor objected. The bankruptcy court denied the motion to modify the confirmed plan, finding that there was no authority under section 1329 to modify the plan for the purpose of reclassifying a claim. The bankruptcy court also denied the motion to vacate the confirmation order, finding that section 1330 provides the only basis for revoking a confirmation order and that such relief must be sought within 180 days of the entry of the confirmation order and is limited to situations where the order was procured by fraud. The time periods for seeking relief from an order in Bankruptcy Rule 9024 and Rule 60(b) do not trump the time limitations set forth in section 1330.

The court specifically rejected applying section 105(a) to vacate a confirmation order in a chapter 13 case.

In re Wilson

2023 WL 4759515 (Bankr. M.D. Fla. July 12, 2023) (Vaughan, J.)

Court granted debtor's motion for sanctions against IRS for violating the discharge injunction, where IRS, after discharge was entered, applied tax refunds owed to debtor to 2015 taxes that were discharged.

In re Scohy

2023 WL 4535110 (Bankr. M.D. Fla. July 12, 2023) (McEwen, J.)

Court conditionally granted a motion to avoid lien that impairs exemption. The lien at issue was a Pinellas County code enforcement lien, which the court concluded arises only after an administrative proceeding takes place, which precedes the enforcement board's ability to issue and record an order imposing a fine. Therefore, the lien is a judicial lien, not a statutory lien, which can therefore be avoided under section 522(f) if it impairs the homestead.

In re Mulholland

2023 WL 4412061 (Bankr. M.D. Fla. July 6, 2023) (Brown, J.)

Court granted trustee's motion for summary judgment in preference case, finding no issues of material fact with respect to all elements of the preference claim. Defendant, transferee, was the debtors' daughter and is therefore a statutory insider despite daughter's claim of estrangement with the debtors.