Court Connection
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CASE LAW UPDATE

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Eleventh Circuit Cases

Juravin v. Florida Bankruptcy Trustee
2024 WL 4677417 (11th Cir. Nov. 5, 2024).

Appellants contended that the bankruptcy trustee seized assets that did not belong to the debtor and filed an action in the United States District Court for the Middle District of Florida. The district court dismissed the case because the appellants did not comply with the *Barton* doctrine. On appeal, the Eleventh Circuit held that a bankruptcy trustee has judicial immunity when seizing assets pursuant to a court order if the trustee acts within the scope of their authority as a court-appointed officer. The Eleventh Circuit concluded that the bankruptcy trustee acted within the scope of his authority because the debtor prevented the trustee from performing his duties by withholding information about his assets and financial condition.

Richert v. Murphy (In re Richert)
2024 WL 4297798 (11th Cir. Sept. 26, 2024).

Debtor appealed a series of orders entered by the bankruptcy court which granted a creditor an extension of time to respond to a claim objection, involuntarily converted her chapter 13 case to chapter 7, and allowed the claims of certain creditors. The district court affirmed on appeal. The Eleventh Circuit also affirmed on appeal, concluding that the bankruptcy court did not err in converting the case to chapter 7 because the debtor consistently failed to comply with bankruptcy court orders and demonstrated bad faith.

Breland v. Commissioner of IRS
2024 WL 2796450 (11th Cir. May 31, 2024).

The Eleventh Circuit affirmed the tax court's determination that the consent order entered between the IRS and Breland during the pendency of his chapter 11 bankruptcy did not fix Breland's tax liability for the years at issue, as the order fixed the claim for plan confirmation and claims allowance purposes, but did not constitute a determination of tax liability under section 505 of the Bankruptcy Code. Therefore, the IRS was not barred from assessing additional taxes by the doctrines of collateral estoppel or res judicata.

Cannie v. Jacksonville Golf & Country Club Property Owners Assoc., Inc. (In re Cannie)
2024 WL 2783774 (11th Cir. May 30, 2024).

After completing her chapter 13 case and receiving a discharge, pro se debtor sought sanctions against her property owners' association for pursuing her for postpetition fees and expenses. However, during the pendency of the chapter 13 case, the bankruptcy court had overruled the debtor's objection to the association's claim, which included the postpetition fees and expenses. The bankruptcy court denied the debtor's motion for sanctions because the postpetition fees were not discharged since they were not provided for in the plan, and the doctrine of res judicata barred the debtor from relitigating the fee collection issue. The Eleventh Circuit affirmed the decision of the bankruptcy court under its well-settled standard of review because the decision was "unopposed" since the debtor failed to challenge it based on res judicata.

Lee v. U.S. Bank, N.A.
102 F.4th 1177 (11th Cir. 2024).

Chapter 11 debtor filed a plan seeking to modify a mortgage secured by a 43-acre parcel of land, which included her house and yard, but the principal use of the property was commercial. The bankruptcy court granted the mortgagee's motion for relief from stay, because the debtor's plan was not confirmable as a result of the anti-modification provisions of section 1125(a)(3) of the Bankruptcy Code. The district court affirmed the decision of the bankruptcy court, as did the Eleventh Circuit, in a split opinion.

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Bankruptcy Court Cases

GFRS Equip. Leasing Fund II, LLC v. Zebrowski (In re Zebrowski)
663 B.R. 776 (McEwen, J.).

Debtor failed to turn over medical equipment after attempted replevin and to comply with requests for discovery in aid of execution over a nearly two year period. The bankruptcy court found that the state court default judgment in excess of $350,000 for breach of contract and specific performance for return of the medical equipment was non-dischargeable under section 523(a)(6), based on the debtor's willful and malicious conduct.

In re NJ Criminal Interdiction LLC
Case No. 6:24-bk-00468-GER (Bankr. M.D. Fla. June 11, 2024) (Robson, J.).

Court denied confirmation of a Chapter 11 plan which contained a "conditional injunction" that sought to enjoin creditors and parties in interest from taking actions against debtor's managing member, a non-debtor, as long as debtor complied with the plan. Court recognized that the Bankruptcy Code does not explicitly prohibit or authorize a bankruptcy court to enjoin claims against non-debtors to facilitate a plan. To obtain an injunction, the party seeking relief must satisfy the standards for a preliminary injunction, which were not met in this case. (Note – this case was decided prior to *Purdue Pharma*).

In re Tampa Hyde Park Café Properties, LLC
660 B.R. 322 (Bankr. M.D. Fla. 2024) (Delano, C.J.).

Court held that because the debtor's alleged use of an alter ego to avoid taxes injured the IRS and not the debtor, the trustee lacked standing to release alter ego claims as part of a settlement.

In re Crutcher
2024 WL 1994071 (Bankr. M.D. Fla. May 6, 2024) (Geyer, J.).

Court dismissed Chapter 13 case, finding debtor exceeded the Chapter 13 debt limits, where court found it was clear that amount debtor scheduled for a certain creditor's debt was inaccurate, and debtor failed to produce any

evidence to rebut the validity of the creditor's filed claim amount, which caused the debtor to exceed the debt limits.

In re Fundamental Long Term Care, Inc.
2024 WL 1855776 (Bankr. M.D. Fla. Apr. 29, 2024) (Delano, C.J.).

Trustee's counsel filed motion for sanctions under 28 U.S.C. § 1927 against law firm for unreasonable and vexatious litigation in connection with the firm's filing of a motion to disqualify trustee's counsel and a motion to recuse the bankruptcy judge. While court was sympathetic to trustee's counsel's frustrations, court denied the motion because the unreasonable and vexatious litigation complained of occurred in appeals and a petition for writ of mandamus, but did not occur in the bankruptcy court. Therefore, court concluded it lacked jurisdiction to sanction the conduct.

NG Solutions, LLC v. Senturk (In re Senturk)
660 B.R. 726 (Bankr. M.D. Fla. 2024) (Geyer, J.).

In adversary proceeding to deny debtor's discharge, court granted creditor's motion for summary judgment on counts under 11 U.S.C. § 727(a)(2), (a)(3), and (a)(4), finding that creditor met its burden of proof with references to the debtor's schedules and SOFA and transcript of 2004 testimony. Significantly, the debtor failed to file a response to the motion.

In re Burdock & Assocs., Inc.
662 B.R. 16 (Bankr. M.D. Fla. 2024) (Vaughan, J.).

Creditor with $14 million claim arising from disputes related to a consulting agreement objected to debtor's Subchapter V election and its plan of reorganization. The debtor argued that the debt was unliquidated because it would require looking beyond the consulting agreement, and lost profits were the only measure of damages available to the creditor. In overruling the objection to the debtor's subchapter V election, the Court opined that not all contractual disputes result in a liquidated claim and held that a lost profits calculation goes beyond the consideration of simply the amounts contracted for the sale or purchase of a product and requires the exercise of judgment or discretion, thereby rendering the claim unliquidated.

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In re Crawford
2024 WL 1773425 (Bankr. M.D. Fla. Apr. 24, 2024) (Burgess, J.).

Debtor's former spouse sought dismissal of chapter 13 case for bad faith. Based on numerous findings by the state court in the underlying marital dissolution action, coupled with the debtor's failures in the bankruptcy case, the Court granted the motion to dismiss, finding that the debtor had engaged in a pattern of divesting himself of assets and income to avoid paying the former spouse's money judgment.

In re Wieder
659 B.R. 21 (Bankr. M.D. Fla. 2024) (Delano, C.J.).

Court held that an objection to a claim filed by a credit union may be served by first-class mail upon the person most recently designated on its proof of claim, rather than the heightened service of process on an officer by certified mail because a credit union is not an "insured depository institution."