CASE LAW UPDATE

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Eleventh Circuit Cases

Daniel J. Stermer v. Old Republic Nat'l Title Ins. Co. (In re ATIF, Inc.), 160 F.4th 1124 (11th Cir. 2025).

Fifteen months prior to the petition date, at a time when the debtor was solvent, the debtor transferred its trade names and marks to its parent company, Attorneys' Title Insurance Fund. Pursuant to a confirmed plan of reorganization, Daniel Stermer was appointed as the Creditor Trustee to pursue claims for the benefit of creditors. The Creditor Trustee initiated an adversary proceeding, alleging that the defendants did not pay reasonably equivalent value for the debtor's cash and investments, intellectual property, and real estate. The Creditor Trustee also pursued alter ego and successor liability claims. The defendants filed a motion for summary judgment, and the Creditor Trustee filed a motion for partial summary judgment. The bankruptcy court conducted a six-day bifurcated trial on whether the debtor received reasonably equivalent value for the assets that it transferred to the OR defendants. Post-trial, the bankruptcy court excluded the Creditor Trustee's valuation expert, finding that the expert's valuation included assets that the debtor did not possess as of date of the master agreement. The bankruptcy court ruled that the Creditor Trustee had not established that the debtor did not receive less than equivalent value and disposed of the remaining claims on summary judgment, finding that the Creditor Trustee failed to prove the debtor entered into the transaction with a fraudulent intent, based on the document benefits to policyholders, and ATFS was not the debtor's successor in interest as a result of the lack of shared assets or continuity of ownership. The Creditor Trustee appealed, and the district court affirmed, concluding that the bankruptcy court did not err in excluding the expert's testimony and that the evidence supported the factual finding that the parties exchanged reasonably equivalent value in connection with the master agreement.

The Eleventh Circuit affirmed the bankruptcy court's ruling that the debtor transferred intangible assets for reasonably equivalent value, as the

bankruptcy court did not err in excluding the Creditor Trustee's valuation expert and opinion post-trial, and held that the bankruptcy court properly rejected the Creditor Trustee's successor liability and alter ego claims on summary judgment.

Storey Mountain v. Del Amo (In re Del Amo),
158 F.4th 1335 (11th Cir. 2025).

Three years before the petition date, the debtor opened a bank account with his spouse. The debtor and his wife executed a signature card to open the account which stated, "[j]oint accounts are owned as joint tenants with right of survivorship." In the debtor's 2022 bankruptcy case, the debtor claimed the account exempt as tenancy by the entirety property. The creditor objected, arguing that the account was not tenancy by the entirety property because of the language on the signature card and that the Florida Supreme Court's decision in *Beal Bank* was abrogated by the 2008 amendments to section 655.79(1), Florida Statutes. In response, the debtor relied on *Beal Bank*, and contended that language at the bottom of the signature card was not an express disclaimer of tenancy by the entirety ownership and did not change the account's form of ownership from tenancy by the entirety. The bankruptcy court overruled the objection to the debtor's claim of exemption, and the creditor appealed. The district court also affirmed, and the creditor appealed to the Eleventh Circuit. In affirming the rulings of the lower courts, the Eleventh Circuit concluded that section 655.79(1), Florida Statutes, did not abrogate *Beal Bank*.

Bankruptcy Court Cases

In re IVF Orlando, Inc.,
2025 WL 2831400 (Bankr. M.D. Fla. Oct. 3, 2025) (Geyer, J.).

Merchant cash advance funders objected to confirmation of the debtor's plan of organization, arguing that the plan was not proposed in good faith because the plan was funded by future receivables, which the funders contended they had purchased. Alternatively, the funders contended that their claims were fully secured and must be treated in compliance with sections 1129(b)(2)(A)(i)(II) and 1191(c), and the plan was not proposed in good faith because it treated the funders' claims as wholly unsecured. In overruling the funders' objections, the court concluded that the funders did not own the debtor's post-petition receivables or have a security interest in the receivables. With respect to future receivables derived from future services, the debtor only had an expectancy interest, which could not be sold or serve as collateral. The court also analyzed the funders' documents and concluded that the transactions were loans, rather

than sales, as the documents included recourse to the debtor's principal, who unconditionally guaranteed the obligations.

A2MH4 Props. USA, LLC v. Kenny (In re Feltrim Balmoral Estates, LLC), 2025 WL 3172762 (Bankr. M.D. Fla. Nov. 6, 2025) (McEwen, J.).

Though the bankruptcy court remanded a removed action to state court, it retained jurisdiction to determine whether the claims asserted in the action were property of the estate. With respect to the alter ego claims, the bankruptcy court applied the Eleventh Circuit's two-prong test and determined that the claims were property of the estate and could not be pursued in state court because the claims were general claims common to all creditors and that Florida law recognizes a cause of action by a corporation against its own principals for alter ego liability. However, the bankruptcy court concluded that that the claims for negligence, violation of Florida's Deceptive and Unfair Trade Practices Act ("FUDPTA"), and conspiracy to violate FDUPTA were not property of the estate, because they only allege direct harm to the plaintiff, and, therefore, plaintiff could pursue those claims against the non-debtor defendants in the state court action.

Thrower v. Godwin (In re Godwin),
2025 WL 2937341 (Bankr. M.D. Fla. Oct. 15, 2025) (McEwen, J.).

Plaintiffs alleged that the debtor committed defalcation in a fiduciary capacity in connection with the administration of employee benefit pension funds and sought a determination that their debt was non-dischargeable under section 523(a)(4) of the Bankruptcy Code. Prior to the petition date, the debtor and his business partner were embroiled in a dispute. The business partner initiated a payment to the union to bring current past due contributions to an employee benefit pension fund. The debtor believed the business partner was attempting to steal the funds, so he stopped payment and transferred the funds to his personal account. Plaintiffs asked the debtor to return the funds, but did not expressly inform the debtor that he had a fiduciary obligation to do so. The bankruptcy court ruled that plaintiffs failed to prove that the debtor committed defalcation because plaintiffs' communications did not place the debtor on notice of his fiduciary duty with respect to the funds, nor did plaintiffs establish when the debtor learned of his fiduciary obligation to the plaintiffs relative to the funds. Therefore, given the insufficient proof as to the debtor's state of mind when he transferred the funds, the court concluded that the debt was dischargeable because the debtor did not act with knowledge of the impropriety of his fiduciary duty with respect to the funds or with gross recklessness.