

17th Annual Conference on Consumer Bankruptcy Practice

Case law update

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***Lea v. Nissan Motor Acceptance Corporation*, 2022 WL 537959
(N.D. Texas, Dallas Division, February 23, 2022)**

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- **Issue presented in the District Court:**
- Nissan's 12(b)(6) motion presents the question whether plaintiff Lea is judicially estopped from pursuing age and disability discrimination claims against Nissan due to her failure to disclose the claims in her chapter 13 bankruptcy case.
- (1) ***Whether the position of the party to be estopped is plainly inconsistent with its previous position.***
 - Lea represented to the bankruptcy court that she had no claims against Nissan when she failed to disclose—either in her original schedule or through any amendments -- her EEOC charge against Nissan. Yet, in this lawsuit, she asserts the opposite: she alleges that she has federal-law discrimination claims against Nissan. The two positions are “plainly inconsistent.”

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Lea v. Nissan Motor Acceptance Corporation, 2022 WL 537959
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- (2) *Whether the court accepted the previous position.*
 - By confirming her chapter 13 plan, the bankruptcy court accepted Lea's position that she did not have the claims that she now asserts. This element requires “that the first court has adopted the position urged by the party, either as a preliminary matter or as part of the final disposition.
- (3) *Whether the party to be estopped acted inadvertently.*
 - Lea acted with a motive to conceal. Context alone can establish motive to conceal. “[T]he motivation sub-element is met if a debtor fails to disclose a claim or possible claim to the bankruptcy court. Motivation in this context is self-evident because of potential financial benefit resulting from the nondisclosure.”
- **District Court:** Yes, the equitable doctrine of judicial estoppel applies and the complaint was dismissed.

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Chow v. Lee (In re Lee),
2021 WL 5893991
(Bankr. E.D. Tex. Dec. 13,
2022)

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Q: Was the value of a home, for which the debtor provided the down payment and signed loan documents for remaining purchase price, subject to turnover under § 542?

Held: No. Court found that the down payment paid by debtor and non-debtor spouse was a gift and concluded that debtor and his spouse were included on the title of deed of trust to aid debtor's parents and not because they intended to retain any beneficial interest in the property.

Under Texas law, a resulting trust arose where title was conveyed to debtor, non-debtor spouse, and debtor's parents, but purchase price was paid by debtor's parents. Thus, although debtor held a legal interest in the property, it was not property of his bankruptcy estate and not subject to turnover under § 542.

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In re Sparks, 2021 WL 2638602 (Bankr. N.D. Tex. Jun. 25, 2021)

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Facts

- Debtor requested approval to purchase, from his bankruptcy estate, real property and personal property including two vehicles and other accounts from proceeds of sale of prior homestead
- Debtor had sold prior home and realized proceeds of about \$347,000
- Debtor proposed purchasing real property for \$170,000, giving himself a \$10,000 discount on sale since no realtor was involved
- Bank objected and argued funds could not be used for non-exempt purchases while retaining exempt status

Holding

- Court conditionally approved purchase of real property, requiring price of sale to increase to \$180,000, and court denied purchase of the various personal property using exempt proceeds

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Bywaters v. Alhuneidi, 2022 WL 200366
(E.D. Tex. January 21, 2022) (Kernolde)

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- **Background:** Appeal from Bankruptcy court's order denying Bywater's motion to extend time to (1) object to discharge and (2) bring an action to determine his claim is not dischargeable.
- One day before the deadline to object to discharge, Appellant moved to extend the time to file an objection by 90 days. Bywater argued that the delay in the meeting of creditors hindered his ability to timely prepare an objection.
- **Bankruptcy Court:** Denied the motion because Bywater "failed to conduct any discovery" before the June 15 deadline, the Court found that Bywater "failed to show cause to extend the discharge deadline."
- **Issue presented:** was the denial of a motion for extension of time an abuse of the Bankruptcy Court's discretion?
- **District Court:** Affirmed.

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