

**The University of Texas School of Law  
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**CONSUMER BANKRUPTCY CASES**  
**Recent Developments in Consumer Bankruptcy Law**  
**July 2016 – May 2017**

United States Supreme Court  
5th Circuit Court of Appeal  
Texas Federal District Courts  
Texas Bankruptcy Courts

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## **Abuse**

*Carroll v. Abide (Matter of Carroll)*, 850 F.3d 811 (5th Cir. 2017)

### **Abuse**

Debtors filed a chapter 13 bankruptcy petition in the same year as a company whose membership consisted solely of Debtors filed for chapter 11 bankruptcy. These two cases were substantially consolidated. The Trustee sought relief against Debtors due to abusive conduct in the bankruptcy cases. The bankruptcy court granted the Trustee's motion in part based upon a finding that Debtors' true motives in their bankruptcy case were to harass the trustee and thereby delay the proper administration of the estate; these motives were illustrated by Debtors' seeking to frustrate the sale of a tract of land, orders for contempt entered against them, attempts to frustrate the sale of their residence and movables, and other acts of harassment. The bankruptcy court accordingly enjoined Debtors from filing any pleading or document in their bankruptcy case and from filing any future bankruptcy cases without obtaining the bankruptcy court's permission. The bankruptcy court also assessed monetary sanctions against Debtors. Debtors appealed to the district court and then to the Fifth Circuit. The Fifth Circuit affirmed the lower courts' rulings as not erroneous by determining that the record supported the finding of bad faith and the imposition of civil sanctions as punishment for Debtors' abuses of the bankruptcy process.

*In re Cardwell*, 2017 WL 2304220 (Bankr. E.D. Tex. May 25, 2017)

### **Abuse**

Debtor filed a chapter 7 bankruptcy case and claimed a homestead exemption on a portion of the land on which he lived. Debtor disclosed in his schedules that the remaining portion of his land was encumbered by a \$600,000.00 lien in favor of Lienholder. Lienholder filed a proof of claim. Lienholder's financial advisor later formed a company, which then offered to buy the encumbered land from Debtor's bankruptcy estate. The Chapter 7 Trustee filed a motion to sell the land to the company and the bankruptcy court approved it. Ultimately, the company leased back the property to Debtor for a nominal amount. After the bankruptcy case closed, Creditor commenced a post-judgment collection action in state court for a breach of fiduciary duty claim. Creditor then filed a fraudulent transfer claim in state against Debtor, Lienholder, Lienholder's financial advisor, and the company with respect to the sale of the land. The bankruptcy court granted Creditor's motion to reopen Debtor's bankruptcy case for the purpose of setting aside the sale order. The bankruptcy court found that the state court's findings established that Debtor filed false bankruptcy schedules that deliberately misrepresented his liabilities with respect to the encumbered portion of his land, and that Debtor and Lienholder's financial advisor conspired to file a false proof of claim. Accordingly, the bankruptcy court vacated the order authorizing the sale of the property to the company.

## Appeals

*Parker v. Wells Fargo Bank, N.A. (In re Parker)*, 2016 WL 3771837 (5th Cir. 2016)

### Appeals

Debtors filed suit to quiet title on their home and sought to recover damages in related causes of action over a dispute regarding the mortgage loan on the home. Debtors moved for summary judgement, which was denied by the district court. Creditors moved to dismiss Debtor's suit, the district court granted the dismissal, and Debtors appealed. The following claims remained in Debtors' suit prior to the district court's dismissal: (i) claim to quiet title, (ii) claim of fraud, (iii) violation of RESPA, (iv) contractual breach and (v) intentional infliction of emotional distress. The Fifth Circuit upheld the district court's dismissal of all of Debtors' claims because the claims were based on conclusory allegations, alleged no factual injury, and failed to properly address claims in brief format.

*Husky International Electronics, Inc. v. Ritz (Matter of Ritz)*, 832 F.3d 560 (5th Cir. 2016)

### Appeals

Creditor, a seller of electronic device components, brought this adversary proceeding against Debtor, the individual who was in financial control of the company that had purchased components from Creditor, after Debtor filed for chapter 7 bankruptcy. Creditor sought to pierce the corporate veil in order to hold Debtor personally liable on the corporate debt after Debtor caused funds to be transferred from his company and effectively rendered it unable to pay its debt to Creditor, and to except the debt from discharge under 11 U.S.C. § 523(a)(2)(A). Following trial, the bankruptcy court entered judgment in favor of Debtor by finding Debtor owed no debt to Creditor under Texas law. The district court affirmed, explaining that, while Debtor owed a debt to Creditor under Texas law, Creditor could not prevail on its objection under the Bankruptcy Code because a misrepresentation is required to succeed on an objection under Section 523(a)(2)(A). The Fifth Circuit affirmed the district court by agreeing that Creditor could not succeed on its objection under the Bankruptcy Code because Section 523(a)(2)(A) required Debtor to have made a misrepresentation, but did not address the state law issue. Certiorari was granted and the Supreme Court reversed and remanded the case back to the 5th Circuit, holding that no misrepresentation was required to object successfully to a discharge under Section 523(a)(2)(A).

On remand, the Fifth Circuit considered whether Debtor owed a debt to Creditor under state law because the Supreme Court's decision caused the deniability of discharge under the Code to be moot. The Fifth Circuit vacated the district court's judgement insofar as it held Debtor was liable to Creditor under Texas law because the district court relied on fact findings not actually made by the bankruptcy court. However, the Fifth Circuit agreed with the district court's legal conclusion that, under Texas law, depending on subsequent fact findings, Creditor may be able to show that Debtor was liable to it. The Fifth Circuit accordingly remanded to the district court for additional fact-finding as to whether Creditor may successfully establish Debtor's liability under Texas law.

Also available as part of the eCourse

[2017 Consumer Bankruptcy eConference](#)

First appeared as part of the conference materials for the  
13<sup>th</sup> Annual Consumer Bankruptcy Practice session

"Case Law Review (Part I)"