

**The University of Texas School of Law
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CONSUMER BANKRUPTCY CASES
Recent Developments in Consumer Bankruptcy Law
July 2017 – June 2018

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

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Appeals

United Healthcare Insurance Co. v. Holley, 2018 WL 775291 (5th Cir. 2018)

Appeals

The claim at issue arose from \$2,065,115.87 in overpayments for medical services by Plaintiffs, which Plaintiffs alleged were induced by a misrepresentation of the scope of services performed by Defendants. Plaintiffs, in a letter to Defendants, detailed over 22 attempts to contact Defendants. Plaintiffs sent a pre-suit demand letter to Defendants, which Defendants ignored. Plaintiffs filed suit alleging various claims for fraud, negligent misrepresentation, money had and received, and unjust enrichment. Defendants were then served. Defendants answered neither the summons nor the complaint. The district court entered default judgement against Defendants and entered a final judgement for the full amount of the alleged overpayments. Plaintiffs posted Defendants' property for sale to satisfy the default judgment. Defendants consequently filed emergency motions to vacate the clerk's entry of default and to set aside the default judgment. At this point, Defendants filed for chapter 13 bankruptcy. After application of the automatic stay to the pre-existing suits, Defendants voluntarily dismissed the bankruptcy case. The district court lifted the stay and denied Defendants' motions to vacate the clerk's entry of default and to set aside the default judgment. Defendants then appealed these denials pursuant to Federal Rule of Civil Procedure 55(c) and 60(b).

On appeal, Defendants argued that (i) the district court erred in failing to consider whether they had a meritorious defense, and (ii) that the court erred in failing to conduct a hearing on damages. The Fifth Circuit affirmed the lower court's rulings because (i) the damages were a certain sum supported by affidavits; (ii) the damages were a sum that could be made available by computation; and (iii) Defendants' failure to appeal the default judgement and hold a hearing on damages until a year after the judgment was not an independent basis for reversal.

Matter of Beach v. Beach, 2018 WL 2251672 (5th Cir. May 16, 2018)

Appeals

Debtor formed a partnership with Creditor to drill for oil. After the partnership turned sour, Debtor sued Creditor to seize control of the partnership's assets. The jury found in favor of Creditor and Creditor was awarded \$800,000.00 in damages. Debtor later filed for bankruptcy. Creditor filed a claim in Debtor's bankruptcy case and an adversary proceeding in which it alleged that Debtor was not entitled to a discharge of the state court damages under 11 U.S.C. § 727(a)(2) because he fraudulently transferred assets. Creditor's adversary proceeding was later joined with the bankruptcy Trustee's adversary proceeding that sought to avoid and recover the value of the same allegedly fraudulently transferred assets. Specifically, Creditor and the Trustee alleged that Debtor fraudulently transferred assets from a family trust to shield them from his creditors. The bankruptcy court ordered the parties into mediation, which led to a settlement between the Trustee and Debtor; Creditor received a recovery of 93% of its initial claims against Debtor's bankruptcy estate under the settlement, and Creditor could still pursue collection efforts on any unpaid amounts remaining on its claims. Creditor objected to the settlement, arguing that the settlement did not maximize value for Debtor's creditors.

The bankruptcy court approved the settlement, which Creditor appealed. The district court affirmed. The Fifth Circuit also affirmed under an abuse of discretion standard, finding the settlement to be fair and equitable and in the best interest of the estate because: Creditor cited no authorities to support its view that the bankruptcy court need not weigh the Trustee's probability of success in litigating its claims, nor that the probability of success was certain; the case's contentious history allowed the bankruptcy court to reasonably expect a protracted and expensive litigation; and because it was within the bankruptcy court's discretion to determine that the value of the transferred assets was speculative, making the settlement—which valued the assets at 30 cents on the dollar—a fair and equitable alternative to continued litigation.

In re Monge, 700 F. App'x 354 (5th Cir. 2017)

Appeals

Debtors engaged Counsel to pursue various qui tam actions. When Debtors ran out of money, they declared bankruptcy. Counsel sued Debtors for unpaid legal fees, but also continued to pursue the qui tam actions. When Debtors learned that Counsel was still pursuing the actions, they countersued in bankruptcy court, arguing that such action was a violation of the automatic stay. Counsel argued that the retainer agreement required arbitration of all of Debtors' claims. The bankruptcy court issued three orders, one of which held that Debtors' claim against Counsel for violation of the automatic stay could not go to arbitration. The bankruptcy court accordingly denied Counsel's motion to stay pending arbitration.

Counsel appealed the three orders to the district court, but before the district court ruled on the appeal the bankruptcy court issued a final judgment. In a separate action, Counsel also appealed that final judgment. The district court consolidated the two appeals, dismissed the appeal containing the three interlocutory orders, and rendered final judgment in that action. The district court stated that it intended to consider those interlocutory orders in the separate action with the final judgment, which remained pending. Counsel appealed the dismissed action to the Fifth Circuit. The Fifth Circuit held that, although a bankruptcy court's decision to deny a motion to stay is appealable and the district court had rendered final judgment, the district court had not had an opportunity to consider the issues because it had consolidated the cases. As such, dismissal was consistent with the statutory scheme of district court appellate review of bankruptcy decisions.

In re Dorsey, 870 F.3d 359 (5th Cir. 2017)

Appeals/Proofs of Claim

The bankruptcy court entered orders reopening Debtor's chapter 7 case in order to allow student loan Creditors to move for leave to file proofs of claim. Debtor appealed. While the appeal was pending, the bankruptcy court entered judgment against Debtor in a pending undue hardship proceeding, prompting Debtor to amend his statement of issues and designation of record on appeal to include that decision. The district court affirmed the bankruptcy court's order and judgment, and Debtor appealed to the Fifth Circuit. The Fifth Circuit affirmed the bankruptcy court and district court, finding that the notice of appeal and amended statement of issues from the order reopening the case for the filing of student loan proofs of claim did not qualify as a notice of appeal from the order later entered in the separate undue hardship proceeding. The

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First appeared as part of the conference materials for the
14th Annual Consumer Bankruptcy Practice session

"Case Law Update (Part I)"