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Recent Developments in Consumer Bankruptcy 2020

R. Byrn Bass Jr.
Attorney at Law
Lubbock, Texas

Deborah B. Langehennig
Chapter 13 Trustee
Austin, Texas

Authors:

Brian T. Cumings
Graves Dougherty Hearon & Moody
Austin, Texas

Sarah D. McHaney
Attorney at Law
Austin, Texas

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MISCELLANEOUS

***Allen v. Cooper*, 140 S.Ct. 994 (2020)**. *Congress does not have the authority to abrogate states' immunity from copyright infringement suits through the Copyright Remedy Clarification Act of 1990 because Congress may not use its Article I powers to abrogate a state's sovereign immunity, even if it has legitimate Article I concerns, as decided in Seminole Tribe.* There is little evidence that states' infringement of copyrights is significant enough to justify abrogating states' sovereign immunity. This lack of evidence causes the CRCA to fail the "congruence and proportionality" test that must necessarily be satisfied the abrogation of states' sovereign immunity to fall within Congress's 14th Amendment, Section 5 authority. For a suit to move forward against a nonconsenting state in federal court, a federal statute must unequivocally abrogate states' immunity and a constitutional provision must allow Congress to encroach on states' sovereign immunity. The Intellectual Property Clause does not empower Congress to abrogate states' sovereign immunity in copyright infringement cases and *Central Virginia Community College v. Katz* does not invite a clause-by-clause analysis of Article I to determine whether each clause allows abrogation of states' sovereign immunity. In that case, the Court decided that Article I's Bankruptcy Clause was unique in many ones and that the Clause itself abrogated states' sovereign immunity in bankruptcy proceedings—there was no need for Congress to do so. The Court held that the same is not true for the Intellectual Property Clause. Furthermore, the Court decided in *Florida Prepaid* that the Patent Remedy's Act abrogation was not allowed under the Intellectual Property Clause and because copyrights and patents are treated the same under the Clause, holding that the CRCA's abrogation was constitutionally permissible would require the Court to overrule *Florida Prepaid*. The Court adheres to stare decisis and does not overrule cases merely because it believes a prior case was wrongly decided. There must be a "special justification." Just like in *Florida Prepaid*, there was little evidence in the congressional record that copyright infringement by states was significant and thus, the abrogation of states' immunity in copyright infringement suits is no a proportional remedy to the alleged harm of copyright infringement by states.

***Sherwin Pipeline, Inc. v. Sherwin Alumina Co, LLC (In re Sherwin Alumina Co, LLC)*, 952 F.3d 229 (5th Cir. 2020)**. *The Eleventh Amendment is neither violated nor implicated in the disposition of a bankruptcy estate in which the state has an interest where the proceeding is in rem and the court avoids coercive judicial process against the state.* A government entity holding a access easement on Debtor's property filed an adversary action collaterally attacking confirmation of the plan as having been procured through fraud after its easement was extinguished by a sell, free and clear of encumbrances, of debtor's property pursuant to § 363(f). The government entity argued that the confirmation order was barred by the Eleventh Amendment. The Fifth Circuit found that where the court has jurisdiction over the bankruptcy estate, does not award affirmative relief to the debtor against the state, and does not use coercive judicial process against the state, it does not violate the Eleventh Amendment. Under *Tennessee Student Assistance Corp v. Hood*, 541 U.S. 440 (2004), a court exercising *in rem* jurisdiction can extinguish a state's interest in debtor's estate without implicating the Eleventh Amendment. Furthermore, the Court found that the government entity failed to allege fraud because it was aware that its

easement would be extinguished by a sale of the property, as evidenced by its attempt to create an agreement preserving the easement after it made an unsuccessful bid for debtor's property. Last minute changes to the plan had no effect on the ultimate disposition of the easement. Lastly, the district court did not abuse its discretion in denying the government entity leave to amend because no additional facts could salvage the claim.

***Lamartina-Howell et al v. Adlet et al (In re Grodsky)*, 799 Fed. Appx. 271 (5th Cir. Apr. 1, 2020)**. *Debtor will not obtain relief against trustee where debtor failed to disclose asset that trustee later discovered and liquidated.* Chapter 7 debtor failed to disclose ownership of a secured promissory note. When existence was discovered, Chapter 7 trustee reopened case and obtained final order instructing debtor to turn note over to trustee. Debtor then filed multiple lawsuits in district court asserting various claims against the trustee. Those lawsuits were transferred to the bankruptcy court, which dismissed them. On appeal of the dismissals, the circuit court held that relief sought was barred by principles of res judicata because debtor failed to appeal the turnover order and that debtor could not otherwise obtain relief against trustee because claims were related to trustee acting within the scope of his duties and he therefore had immunity.

***In re Brown*, 4:18-CV-04416, 2020 WL 730878 (S.D. Tex. Feb. 13, 2020)**. *Debtor will not be allowed to collaterally attack trustee's Rule 9019 settlement that she had supported at hearing on the Rule 9019 settlement.* Debtor participated in hearings on Rule 9019 application to approve settlement for policy limits relating to a car accident in which she had been involved. On record, debtor stated her approval of the proposed settlement. After order was entered, debtor sought re-hearing and challenged the settlement. The bankruptcy court denied reconsideration and the district court affirmed the settlement over the debtor's objection that car trouble had prevented her from attending the hearing on reconsideration, noting that 1) debtor has approved of the proposed settlement at the evidentiary hearings on it and 2) because the settlement was for policy limits it was evident that obtaining a higher return was improbable.

***In re Aronstein*, 4:19-CV-3614, 2020 WL 4569011 (U.S.D.C. S.D. Tex. Houston Div. Aug. 7, 2020).** *The Bankruptcy Court erred by denying Appellant's motion to dismiss the claim against the trust, because a trust is a fiduciary relationship, not a legal entity, and may not be sued.* This case arose when Chapter 7 Trustee filed a claim against the Debtor and the Debtor's Children's Trust for declaratory judgment under 11 U.S.C. § 543 and fraudulent transfer under 11 U.S.C. §548 seeking declaration that certain personal property listed on a handwritten document should be turned over to the Chapter 7 estate. Debtor filed a motion to dismiss for failure to state a claim which the Bankruptcy Court denied. Debtor appealed the denial of the motion to dismiss claiming error by the Bankruptcy Court because a trust is not a legal entity that can be sued. The District Court determined that the Bankruptcy court had erred. Claims against a trust must be brought against its legal representative, the trustee, which was the Debtor in this case. Because the Trust was not a separate legal entity, the claim against the Trust is not proper. Additionally, Debtor alleged that the Bankruptcy Court erred when it failed to follow the District Court's order granting withdrawal of the reference. Debtor's request was totally inconsistent with the District Court's order for the Bankruptcy Court to handle all pre-trial matters until they were

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