

**PRESENTED AT**

2022 Conference on Bankruptcy Practice

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Galveston, TX

**5th Circuit Case Summaries:  
April 1, 2019-June 1, 2022**

Speakers:

**Hon. Michael M. Parker**

**U.S. Bankruptcy Court, Western District of Texas, San Antonio, TX**

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**U.S. Bankruptcy Court, Western District of Texas, Austin, TX**

Case summaries consolidated by Sarah Wood and drafted by Bobby Biedrzycki, Allie Brak, Erin Coughlin, Claye Epperson, Elizabeth Grube, Jessica Henry, Nick Miller, Michael Wombacher, and Sarah Wood.

## The United States Court of Appeals for the Fifth Circuit

<b>Cite</b>	<i>In re Schwyhart</i> , 2022 WL 1580133 (5th Cir. May 19, 2022)
<b>Business v. Consumer</b>	Consumer
<b>Category</b>	Discharge, Dischargeability
<b>Summary</b>	<p>Creditor brought an adversary proceeding objecting to the Debtor's discharge. The bankruptcy court found that the Creditor had failed to carry its evidentiary burden and denied its objections. The Creditor appealed. While the appeal was pending, the Debtor filed a request for discharge. The bankruptcy court denied the request because of the appeal divested it of jurisdiction. The Debtors appealed. The District Court consolidated the appeals and certified them for direct review by the 5<sup>th</sup> Circuit.</p> <p>The 5<sup>th</sup> Circuit found that the bankruptcy court's determination on whether to uphold the Creditor's objections to discharge was entitled to wide discretion and that its decision was afforded even greater deference because it was predicated on credibility determinations. The Circuit affirmed the dischargeability ruling, which rendered the Debtor's appeal moot.</p>

<b>Cite</b>	<i>Matter of BVS Construction, Inc.</i> , 2022 WL 1262096 (5th Cir. April 28, 2022)
<b>Business v. Consumer</b>	Business
<b>Category</b>	Claims, Collateral Estoppel
<b>Summary</b>	<p>BVS first filed bankruptcy in 2014. During that case, Brazos County intervened as a creditor, claiming over \$300,000 in delinquent property taxes for 2011-2014. BVS objected to the claim arguing that the claim asserted taxes on property that was not owned by BVS. The Court overruled the objection.</p> <p>BVS again filed bankruptcy in 2019. Brazos County again intervened, claiming that the Debtor owed over \$500,000 in property taxes for 2012-2019. BVS did not dispute the amounts for 2015-2019, but disputed the amounts for 2012-2014, again arguing that the County assessed taxes on property it did not own. The Bankruptcy Court concluded that BVS was collaterally estopped from contesting the County's claim because the same issue had been resolved in the prior case. On appeal, the 5th Circuit agreed with the Bankruptcy Court.</p>

<b>Cite</b>	<i>Community Home Financial Services, Corp. v. Johnson (In re Community Home Financial Services, Corp.)</i> , 32 F.4th 472 (5th Cir. 2022)
<b>Business v. Consumer</b>	Business
<b>Category</b>	Statute of Frauds, Valuation, Tracing, Property of the Estate
<b>Summary</b>	<p>In consolidated adversary proceedings, trustee requested that bankruptcy court determine respective rights and obligations of Chapter 11 debtor, mortgage servicing entity that purchased mortgage loan portfolios from third parties and serviced those loans, and creditors in connection with home improvement loans. Creditors asserted counterclaims requesting court to declare that they had secured interest in home improvement loans, they owned notes underlying other mortgage portfolios, and were entitled to money recovered by trustee. Creditors also sought damages against estate for losses they incurred as result of criminal conduct by debtor's CEO when the CEO transferred funds from debtor's DIP account to bank accounts in Panama.</p> <p>The 5th Circuit held, in part, that: (1) the loans to the Debtor to purchase mortgage loan portfolios were unenforceable under the statute of frauds because there was no written agreement; (2) that the bankruptcy court failed to give specific reasons for its valuation method and so remand was required; (3) the lenders failed to meet their burden of tracing stolen funds; and (4) the CDs that held information on the Debtor's operations were not tangible property of the estate and couldn't be considered converted estate property.</p>

<b>Cite</b>	<i>FERC v. Ultra Res., Inc. (In re Ultra Petro. Corp.)</i> , 2022 WL 763836 (5th Cir. Mar. 14, 2022)
<b>Business v. Consumer</b>	Business
<b>Category</b>	Executory Contracts
<b>Summary</b>	<p>Debtor sought relief from an executory contract based on the contract's impediment of a successful Chapter 11 reorganization. The bankruptcy court determined that debtor's release from the contract was appropriate without FERC's approval. All rates are filed with FERC and cannot be modified or abrogated absent FERC's approval, but the court found that there would only be an indirect effect on the filed rate even though debtor would not be paying the full price of the contract after release. The precedent lies in <i>Mirant</i>, which held that a bankruptcy court can authorize rejection of a filed-rate contract, and that, post-rejection, FERC cannot require continued performance on the rejected contract (focusing overall on public interest and policy). The Court of Appeals affirmed the bankruptcy court's release of debtor from the contract.</p>

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