

**PRESENTED AT**

**2024 Consumer Bankruptcy Practice**

**July 11-12, 2024**

**Austin, TX**

## **Fifth Circuit Case Summaries**

**Hon. Eduardo V. Rodriguez**

**Mr. Calvin L. Guyer**

**CONSUMER BANKRUPTCY CLE**  
**FIFTH CIRCUIT CASE SUMMARIES**  
*Texas, Louisiana, Mississippi*

**TEXAS**

*Anderson v. Tatum (In re Tatum)*, No. 19-45113, 2024 WL 1543362 (Bankr. N.D. Tex. Apr. 8, 2024)

**Representation**

State court awarded a final judgment to Creditor against Debtor and others for actual roof damages, exemplary damages, attorney's fees, court costs, and the recovery of pre and post-judgment interest. Debtor filed for Chapter 7 relief. Creditor initiated adversary proceedings seeking a finding of nondischargeability for the judgment. Court found the state court judgment had no collateral estoppel effect as to the nature of the judgment for purposes of 11 U.S.C. § 523(a)(2)(A) because the default judgment did not include express findings of Debtor's false pretenses, representations, or fraud.

Court denied Creditor's § 523(a)(2)(A) objections to Debtor's Chapter 7 discharge where (i) Debtor truthfully represented himself as an insurance specialist with some level of experience to inspect roofs, (ii) Debtor honestly believed the company was fully qualified and capable and was unaware of prior noncompliance with the law or roofing industry standards and practices, (iii) Debtor honestly believed the company and Creditor had come to an understanding on the installation system desired, (iv) Debtor was not responsible for false representations about supply stock made by a subcontractor responsible for communication with the supplier, (v) Debtor was not responsible for false representations made by a contractor while Debtor was not present, (vi) Debtor did not know the contractors would not replace rotten decking, (vii) Debtor honestly believed the company would supply screws and appropriately thick plywood and install a radiant barrier, new skylights, and new gutters, (viii) Debtor only represented he would periodically check in on the project, not that he would supervise it, (ix) Debtor honestly planned to be present for the installation but unexpectedly got sick, and (x) Debtor honestly planned to look over the final project but was removed from the project as a result of Creditor's complaints. Court denied Creditor's objections to the discharge of the judgment debt.

*In re Att’y Suspension of Diogu*, Case No. 24-396, 2024 WL 1460159 (Bankr. S.D. Tex. Apr. 3, 2024)

### **Procedure**

Diogu Kalu Diogu II faced disbarment in state court. Mr. Diogu moved to recuse or disqualify the judge administering the disbarment proceeding. The motion was referred to a state administrative judge who denied the motion. Mr. Diogu moved to recuse or disqualify the state administrative judge and to reconsider the denial to recuse or disqualify the state judge. The state court ordered Mr. Diogu’s disbarment. Chief Bankruptcy Judge ordered the suspension of Mr. Diogu based on the order of disbarment pursuant to the Southern District of Texas’s Rules of Discipline. Mr. Diogu moved to quash the order of suspension on the grounds that the order of disbarment was void due to the pending motions. Court found that the order of disbarment was not void because (i) the motion to recuse or disqualify a judge only stays action from the respondent judge and (ii) the motion to reconsider non-recusal of a judge does not suspend an ongoing trial. Court denied the motion to quash.

*Gray v. Zahn (In re Zahn)*, No. 23-20204, 2024 WL 1424284 (Bankr. S.D. Tex. Apr. 2, 2024)

### **Discharge**

Plaintiff sued Defendant for blocking access to Plaintiff’s easement and was awarded \$65,000 in attorney’s fees in state court. Defendant filed for Chapter 7 bankruptcy and Plaintiff brought an adversary proceeding seeking a finding of nondischargeability of the award pursuant to 11 U.S.C. § 523(a)(6). Defendant moved for summary judgment. Court found a genuine issue of material fact as to whether Defendant acted with willful and malicious intent when causing purported property injury to Plaintiff where there was conflicting evidence about whether (i) Defendant’s actions were substantially certain to harm Plaintiff’s interest in the easement and (ii) Defendant acted with actual intent to harm Plaintiff’s interest in the easement. Court denied motion for summary judgment.

*In re Flanigan*, No. 23-32514, 2024 WL 1381644 (Bankr. N.D. Tex. Apr. 1, 2024)

### **Procedure**

Taylor Algiere demanded a cure for a defective trailer she bought from Debtor’s business. Debtor falsely claimed his business filed bankruptcy. Debtor personally filed for Chapter 7 relief. Court found that it had cause to dismiss the case because, post-petition, Debtor (i) falsified his Statement of Financial Affairs and schedules, (ii) falsely claimed over email and under oath that Ms. Algiere sexually harassed him and was facing civil and criminal charges, and (iii) started a new business under a fake identity. Court dismissed the case with prejudice for five years.

*In re Johns*, 658 B.R. 401 (Bankr. N.D. Tex. 2024)

### **Exemptions**

Debtor engaged in the purchase and financing of several business opportunities using trusts in which his Roth IRA had a beneficial interest. Court found Debtor engaged in prohibited transactions when the trusts (i) received financing in the form of two loans from

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