

**The University of Texas School of Law
17th Annual Consumer Bankruptcy Conference**

July 14–15, 2022
Galveston, Texas

CONSUMER BANKRUPTCY CASES
Recent Developments in Consumer Bankruptcy Law
June 2020 – June 2022

United States Supreme Court
U.S. Court of Appeals for the Fifth Circuit
Texas Federal District Courts
Texas Bankruptcy Courts

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Appeals/Reconsideration

Genter v. Reed (In re Genter), 2020 WL 3129637 (N.D. Tex. June 12, 2020) (Brown)

Appeals

District court denied Debtor's request to file an interlocutory appeal and certification of that appeal to the Fifth Circuit. Debtor filed a voluntary chapter 7 petition. Two years later, Chapter 7 Trustee filed a complaint alleging Debtor fraudulently transferred stocks to Defendants. Defendants moved to dismiss Trustee's complaint on the ground that it was barred by the Texas Uniform Fraudulent Transfer Act's statute of limitation. Bankruptcy court denied the motion to dismiss finding that § 546 preempted TUFTA's statute of limitation and § 546 did not bar Trustee's claims. On appeal, Defendants argued the bankruptcy court erred in finding § 546 of the Bankruptcy Code preempts the TUFTA's statute of limitations. District court held that the bankruptcy court's interpretation of § 546 was not contrary to Fifth Circuit precedent. District court found that bankruptcy's ruling did not warrant an interlocutory, direct appeal to the Fifth Circuit. An interlocutory appeal was unwarranted because: (i) such an appeal would not correct a ruling contrary to Fifth Circuit authority; (ii) the ruling did not create a circuit split; and (iii) the appeal would not raise "novel and difficult questions of first impression." Certification of the appeal was also unwarranted because: (i) Fifth Circuit authority addressed the issue; (ii) such an appeal would not address a matter of public importance; and (iii) the appeal would not "materially advanc[e] the progress of [the] case."

Burch v. America's Servicing Co., 2020 WL 7639585 (N.D. Tex. Dec. 9, 2020) (O'Connor)

Appeals/Procedure

District court affirmed bankruptcy court's order denying Plaintiff-Debtor's, request for reconsideration of bankruptcy court's denial of Plaintiff's motion to remand to state court. Plaintiff borrowed \$86,250 from Defendant and executed a promissory note and deed of trust in connection with the loan. Plaintiff later filed for chapter 11 protection. Following Plaintiff's chapter 11 case, Plaintiff sued Defendant in state court for failing to issue a new note as allegedly required by the Debtor's confirmed plan. Based on this allegation, Plaintiff sought to void the loan and recover damages. Defendants removed the case to bankruptcy court. Plaintiff moved to remand the case based on untimely removal. Bankruptcy court denied Plaintiff's remand motion and later denied Plaintiff's request for reconsideration of the denial. Plaintiff appealed the bankruptcy court's denial, arguing that the bankruptcy court should have remanded the case due to untimely removal. District court held that bankruptcy court properly exercised its discretion to deny reconsideration of its denial of Plaintiff's motion to remand under Rule 54(b), which empowered the bankruptcy court to reconsider, rescind, or modify an interlocutory order for sufficient cause.

Gregg v. U.S. Nat'l Bank Tr. Ass'n (In re Gregg), 2020 WL 7344213 (E.D. Tex. Dec. 12, 2020) (Crone)

Appeals/Procedure

Debtor executed a note and granted a security interest in his real property. Eventually, Debtor stopped paying on the note and filed for chapter 13 protection. Debtor's case was dismissed. Creditor then attempted to foreclose on the real property. Debtor filed for a temporary restraining order and injunction to stop the foreclosure in state court, but the action was removed to federal court and dismissed with prejudice. Debtor filed a second chapter 13 petition. By that time, Appellee-Creditor, U.S. Bank, had assumed the loan. U.S. Bank filed a proof of claim evidencing its security interest in Debtor's real property. During Debtor's second chapter 13 case, bankruptcy court struck Debtor's original plan because Debtor failed to serve creditors properly, failed to make timely payments to chapter 13 trustee, and failed to appear at the § 341 meeting. Debtor then filed an amended plan, but U.S. Bank moved to dismiss the case with prejudice under 11 U.S.C. § 1307(c). U.S. Bank argued Debtor filed the amended plan in bad faith. Bankruptcy court granted U.S. Bank's motion finding Debtor acted in bad faith. Debtor then filed several post-dismissal motions in bankruptcy court and district court, through which Debtor sought to retain his real property. All of Debtor's motions were denied. Nevertheless, Debtor appealed the denials. U.S. Bank then foreclosed on the property, purchased the property via credit bid, and moved to dismiss Debtor's appeal requesting the district court remand with instructions to restore Debtor's bankruptcy case. Additionally, following foreclosure, Debtor brought another action in Texas state court seeking a temporary restraining order to stop U.S. Bank's foreclosure sale. U.S. Bank successfully dissolved the restraining order and removed the action to federal court.

District court granted U.S. Bank's motion to dismiss following removal, finding Debtor could not be granted a temporary restraining order as Debtor failed to obtain a stay before U.S. Bank sold the property. Because Court could not grant Debtor relief, Court determined that Debtor's requests for remand to bankruptcy court and a temporary restraining order were moot. Despite this mootness determination, Debtor argued it was entitled to an exception to the mootness rule. Court found that all Debtor's requests for exceptions failed because: (i) Debtor had not established Debtor's estate contained value without the subject property; (ii) Debtor's request for reversal and remand to bankruptcy court would be fruitless without the subject property; (iii) Debtor had no statutory right to redemption; and (iv) Debtor failed to establish that an exception existed because U.S. Bank was not a bona fide purchaser.

Copeland v. Neary (In re Copeland), 2020 WL 7388607 (N.D. Tex. Dec. 16, 2020) (Starr)

Appeals

Court granted US Trustee's motion to dismiss pro se debtor's appeal for lack of jurisdiction. Debtor, a repeat pro se filer, regularly did not comply with administrative requirements of chapter

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First appeared as part of the conference materials for the
17th Annual Conference on Consumer Bankruptcy Practice session
"Case Summaries: Bankruptcy and District Court Only"