Consumer Bankruptcy Panel, June 2023
Judge Henry Callaway
Career law clerk Jennifer Morgan
United States Bankruptcy Court
Southern District of Alabama

Recent Consumer and Bankruptcy Opinions from the Alabama Bankruptcy and District Courts (current through April 23, 2023)

Property of the estate

In re Harbison, Case No. 22-12499 (Bankr. S.D. Ala. Jan. 23, 2022) (Callaway, J.)

The court denied the debtor's motion to value a vehicle that the creditor had repossessed prepetition. Although Bankruptcy Code § 506 governs the treatment of secured claims, the existence of a secured claim must be determined by looking to state law. Under binding Eleventh Circuit precedent and applicable Alabama state law, the only "property" in which the estate had an interest was the debtor's right to redeem the vehicle; the estate did not have an interest in the vehicle itself for the court to value.

Executory contracts

In re Goleman, 2022 WL 17170172 (Bankr. S.D. Ala. Nov. 22, 2022) (Oldshue, J.)

The court found that a rental purchase agreement was an executory contract based on the contract language, Alabama's rental purchase agreement statutes (Ala. Code §§ 8-25-1 *et seq.*), and In re Trusty, 189 B.R. 977 (Bankr. N.D. Ala. 1995). The court thus denied confirmation of the debtor's chapter 13 plan, which treated the debt as a purchase agreement, with 30 days leave to amend and provide for the assumption or rejection of the executory contract.

Proofs of claim

In re Garrett, Case No. 22-12105 (Bankr. S.D. Ala. Apr. 19, 2023) (Callaway, J.)

A claim for overpayment of unemployment compensation benefits is not entitled to tax priority status under Bankruptcy Code § 507(a)(8).

In re Qureshi, 2023 WL 2904935 (Bankr. S.D. Ala. Apr. 11, 2023) (Oldshue, J.)

The debtor objected to a claim as time-barred under the three-year statute of limitations for an open account. The court held that the credit card debt was not an open account because nothing was left for negotiation: the account had pre-determined credit limits, defined interest rates, and specified minimum periodic payments. Even if the debt originated as an open account, it became an account stated – subject to a six-year statute of limitations – when: (1) statements of

the account were balanced and rendered to the debtor in 2018; (2) the debtor did not dispute the correctness of the statements; and (3) the debtor admitted liability to the creditor both impliedly (by not disputing the debt) and expressly (by making payments and listing the amount owed as undisputed in his bankruptcy schedules). Because the last payment on the account was in 2018, the court overruled the objection.

In re Tarver, 2023 WL 1971607 (Bankr. S.D. Ala. Feb. 13, 2023) (Oldshue, J.)

A chapter 13 debtor objected to his ex-wife's proof of claim based upon a divorce court judgment. The court overruled the objection, finding that the *Rooker-Feldman* doctrine precluded the debtor's attempt to collaterally attack a state court judgment. The court allowed the claim as unsecured and granted leave for the ex-wife to seek a determination from the state court as to whether the award was a domestic support obligation. The court also denied confirmation because the debtor's actions were not indicative of an honest but unfortunate debtor. Despite having the financial ability to abide by the state court orders, he continually flouted those orders, reneged on his agreement, proliferated unsuccessful litigation, purchased a luxury vehicle shortly before filing bankruptcy, and did not propose to pay all his disposable income into the plan.

* The court denied the debtor's motion to reconsider allowance of the ex-wife's claim because (1) the debtor failed to establish sufficient cause to amend the prior ruling since the court already gave due consideration to all the evidence; and (2) the equities of the case did not warrant the relief requested because the debtor had not acted in good faith.

In re Gates, Case No. 19-10472 (Bankr. S.D. Ala. Dec. 7, 2022) (Callaway, J.)

The court overruled the debtor's objection to a claim based on postpetition debt but ordered that no payment was to be made on the claim in the bankruptcy case because the debtor's plan did not provide for payment of postpetition claims under Bankruptcy Code § 1322(b)(6). The court did not reach the merits of the validity or amount of the claim.

In re Calhoun, Case No. 19-13931 (Bankr. S.D. Ala. Aug. 1, 2022) (Callaway, J.)

The court overruled the debtors' objections to the revenue commissioner's proofs of claim for property taxes. A confirmed plan surrendering property does not in itself transfer title to a creditor. There was no evidence that the creditor had foreclosed on the property and the proofs of claim, which are entitled to prima facie validity, showed that the debtors were still the title owners of the property.

Conversion

In re Clark, 2022 WL 16703171 (Bankr. S.D. Ala. Nov. 3, 2022) (Oldshue, J.)

A chapter 7 debtor moved to convert his case to chapter 13 after inheriting property from his wife within 180 days after the bankruptcy petition. The chapter 7 trustee objected alleging: (1) creditors could be paid 100% in the chapter 7; (2) the debtor had not filed necessary documents; (3) it was unlikely that the debtor could propose a feasible plan; and (4) the debtor may later seek to dismiss. The debtor argued that he acquired the assets as the result of the unexpected death of his wife and could handle matters more efficiently and less expensively in chapter 13. The court granted the motion to convert, noting that: (1) Bankruptcy Code § 706 provides chapter 7 debtors the broad ability to convert; (2) the debtor qualified to be a chapter 13 debtor; (3) under the circumstances the court could not conclude that the debtor acted in bad faith; (4) feasibility and other confirmation issues could be addressed after conversion; and (5) creditors' interests were protected by Code § 1307(b) which prevents the debtor from unilaterally dismissing after conversion.

Chapter 13 plan length

In re Ingram, 2023 WL 2529730 (Bankr. N.D. Ala. Mar. 15, 2023) (Robinson, J.)

A below-median chapter 13 debtor bears the burden of justifying a plan longer than three years. The court denied confirmation of a five-year plan because the debtor did not provide adequate justification for the plan to exceed three years. The court further found that the debtor did not propose the five-year plan – to pay for attorney's fees and a twenty-year-old car – in good faith.

Modification of chapter 13 plans

In re Davis, Case No. 16-3550 (Bankr. S.D. Ala. Sept. 13, 2022) and In re Connor, Case No. 18-1935 (Bankr. S.D. Ala. Sept. 13, 2022) (Callaway, J.)

The appropriate date for applying the liquidation test to any chapter 13 plan modification, including those dealing with postpetition assets, is the time of modification – not the petition. However, if the chapter 13 trustee wants to increase the percentage paid to unsecured creditors because of postpetition events (such as an inheritance or liquidation of a personal injury claim), the trustee should file a motion to modify the plan under Bankruptcy Code § 1329.

In re Williams, Case No. 16-2564 (Bankr. S.D. Ala. May 17, 2022) (Callaway, J.)

The debtor obtained a CARES Act extension of the term of her chapter 13 plan to 73 months in January 2022. In April 2022, after the CARES Act expired, the debtor sought to reduce the term of her plan to 71 months and the chapter 13 trustee objected. Although it would

have made sense for Congress to allow debtors to modify the term of their plan within the two-year extension provided by the CARES Act (Bankruptcy Code § 1329(d)), that is not the way it wrote the statute. But without any indication that Congress intended otherwise, the court will allow the debtor to modify aspects of her plan other than the term.

Dischargeability

Campbell v. Brown, 2022 WL 5235356 (Bankr. S.D. Ala. Oct. 5, 2022) (Oldshue, J.)

The plaintiff contended that the debtors had wrongfully evicted him prepetition. The plaintiff failed to establish that the debtors' conduct constituted willful and malicious injury under Bankruptcy Code § 523(a)(6) or that the debtors knowingly and fraudulently made a false oath or account in or in connection with the chapter 7 case under § 727(a)(4)(A). The plaintiff's actions and inactions did not rise to the level of a willful stay violation under § 362. The debtors could not prevail on their malicious prosecution counterclaim because it was precluded by the applicable statute of limitations, the debtors did not pursue such claim in the prior state court proceedings, and the existence of probable cause was a viable defense. It was not necessary for the court to adjudicate whether the plaintiff's claim was secured in the underlying no-asset chapter 7 case.

In re Mock, 2022 WL 17418615 (Bankr. M.D. Ala. Dec. 5, 2022) (Hawkins, J.)

Tower Loan's loan to the debtor was dischargeable. Tower Loan did not show fraud by the debtor's deposit of the unsolicited check sent to her as part of a loan program a month before she filed for bankruptcy. The debtor's action of endorsing and depositing the check was not a false representation of her ability to repay the debt. The court also found that Tower Loan did not justifiably rely on any alleged misrepresentation by the debtor.

Discharge injunction

In re Santangelo, 643 B.R. 481 (Bankr. M.D. Ala. 2022) (Creswell, J.)

The discharge injunction did not bar counsel who had represented the chapter 7 debtor in a state court defamation action from seeking to enforce a prepetition charging lien against the settlement proceeds from the defamation action that were held in trust. Because enforcement of the lien against settlement proceeds was an *in rem* action and not an action to recover a debt as to the debtor personally, the attorney's actions were not prohibited by the discharge injunction. The court also found that it lacked jurisdiction to adjudicate FDCPA claims based on post-discharge conduct.

Remand

Drew v. ALG Senior, LLC, 2022 WL 3755852 (Bankr. M.D. Ala. Aug. 29, 2022) (Creswell, J.)

Although mandatory abstention was inapplicable, equitable remand of a state court wrongful death case that had been removed to the bankruptcy court was warranted. The proceeding was comprised of purely state law claims and remand to the state court was not only the most efficient outcome, but also the most equitable solution.

Fraudulent transfers

Wilkins v. McCallan, 2022 WL 610308 (Bankr. M.D. Ala. Mar. 1, 2022) (Sawyer, J.)

The chapter 7 trustee could recover $5.6 million in cash transfers that the debtor (or entities controlled by him) made to his wife. The transfers were constructively fraudulent because none of the transfers were for adequate consideration and the debtor was insolvent with the transfers were made. The court also found evidence of actual fraud.

* On appeal, in McCallan v. Wilkins, 2023 WL 2482959 (M.D. Ala. Mar. 13, 2023), the district court affirmed in part and vacated and remanded in part. The court found sufficient evidence under Alabama law that seven of the subject non-party entities were debtor's alter egos, such that the bankruptcy court did not violate the due process rights of those entities when it avoided their conveyances as fraudulent transfers. But the court found that there was insufficient evidence that three of the non-party entities were debtor's alter egos. The court remanded the action and ordered the bankruptcy court to reconsider the fraudulent conveyance analyses related to those three entities.

Good faith

In re Martin, Case No. 21-20196 (Bankr. S.D. Ala. May 17, 2022) and In re Neely, Case No. 22-20005 (Bankr. S.D. Ala. May 17, 2022) (Callaway, J).

The court overruled the chapter 13 trustee's objections to plans that proposed direct payments on vehicle loans by non-debtor relatives. In each case the debtor was the only one on the note and title, the pay history was good, the payments were current, the loan would be paid on contractual terms (not a cramdown), there was no prepetition arrearage, and the vehicle was insured. If the court compelled surrender of the vehicles, the resulting deficiency claims would reduce the amount to other unsecured creditors. The court thus found that it was in the best interest of the debtors, their bankruptcy estates, and their unsecured creditors to allow the non-debtor relatives to continue to make direct payments, thus avoiding or at least minimizing any deficiency claims.

Title pawns

In re Arnett, 634 B.R. 1078 (Bankr. M.D. Ala. Dec. 16, 2021) (Sawyer, J.)

A title pawn contract provision stating that the borrower did not intend to file bankruptcy violated public policy and was unenforceable against a debtor who filed chapter 13 shortly thereafter. Because the contract provision was unenforceable, the pawnbroker could not use that provision to show that the debtor filed in bad faith.

* This decision involved two separate bankruptcy cases; the pawnbroker appealed both and, in TitleMax of Alabama, Inc. v. Arnett, 2022 WL 3587339 (M.D. Ala. Aug. 22, 2022), the district court vacated the confirmation orders and remanded the matters to the bankruptcy court for further proceedings. The district court found that the agreements did nothing more than ask the debtors to affirm their current intent and that the bankruptcy court erred by focusing on the pawnbroker's conduct rather than evaluating whether the debtors incurred the debt in good faith. The district court expressed no view on what impact, if any, such reconsideration might have on the ultimate issue of whether the debtors proposed their plans in good faith.

* On remand, in In re Roby, 2023 WL 2542365 (Bankr. M.D. Ala. Mar. 16, 2023), Judge Creswell[1] considered the issue of good faith in three separate cases in which the debtors had renewed pawn agreements and filed chapter 13 bankruptcy petitions before the maturity dates set forth in the agreements. Each debtor sought to modify the pawnbroker's agreement through the chapter 13 plan. The pawnbroker objected to confirmation based on good faith because the debtors' agreements with the pawnbroker stated that the debtors did not intend to file for bankruptcy. Considering the totality of the circumstances, the bankruptcy court was not persuaded that the debtors' "use of the protections provided by the Bankruptcy Code and precedent in the Eleventh Circuit equates to 'unmistakable manifestations of bad faith.'" (citation omitted).

* The pawnbroker again appealed all three case. The pawnbroker recently moved to dismiss the appeal in one of the cases and it was dismissed, but two of the appeals remaining pending.

In re Graham, 2021 WL 4187953 (Bankr. S.D. Ala. Sept. 14, 2021) (Oldshue, J.), aff'd, TitleMax of Alabama, Inc. v. Graham, et al., 2022 WL 4593091 (S.D. Ala. Sept. 29, 2022)

The court overruled TitleMax's objection to the debtors' chapter 13 plan in accordance with In re Womack, 2021 WL 3856036 (11th Cir. August 30, 2021). Since the pawn transaction did not mature prepetition, the debtors – who retained legal title and possession – could modify TitleMax's rights in their chapter 13 plan.

[1] Judge Creswell took over the cases following Judge Sawyer's retirement. In re Roby involved similar facts and, on the pawnbroker's appeal, the district court remanded that case to the bankruptcy court in a separate opinion.

Employment of professionals/approval of fees

In re McLemore, 2022 WL 362915 (Bankr. M.D. Ala. Feb. 7, 2022) and In re McLemore, 2022 WL 618958 (Bankr. M.D. Ala. Mar. 2, 2022) (Sawyer, J.)

The court ordered the law firm representing the debtor in a personal injury case to turn over the entire amount of the $40,000 settlement because the firm failed to determine whether the debtor was in bankruptcy before settling the case and failed to obtain bankruptcy court approval before disbursing estate property. The firm's lawyers "could have easily avoided the quandary" by checking PACER, and the firm had "a well-established history of converting estate property, to the benefit of its clients and to the detriment of bankruptcy estates." The court denied the motion to alter or amend filed by one of the firm's lawyers.

* Subsequently, in In re McLemore, 2023 WL 401332 (M.D. Ala. Jan. 25, 2023), the district court vacated the decisions above, finding that the record below did not show that the bankruptcy court had analyzed the conduct at issue to determine whether it merited imposing sanctions. The district court remanded the action for the bankruptcy court to determine whether sanctions should be imposed and, if so, the extent of such sanctions.

* On remand, the parties entered an agreed order in which the law firm agreed that it would forfeit its fees and expenses but would not be liable for the full $40,000.

Common fund doctrine

In re Simmons, 2023 WL 2780892 (Bankr. N.D. Ala. Apr. 4, 2023) (Robinson, J.)

The bankruptcy court was asked to determine whether Alabama's common fund doctrine applied to compel a mortgage company to reduce its payoff by a pro rata share of the attorney fees owing from the debtor to her attorney for work that resulted in a settlement between the debtor (on behalf of her bankruptcy estate) and her homeowner's insurance company resulting from fire damage to the mortgaged property. The court found that the common fund doctrine did not apply to the debtor-creditor relationship between the debtor and the mortgage company, and that the mortgage payoff should not be reduced by any portion of the attorney fees owing to the debtor's counsel.

Extinguishment of mortgages

In re Karr, 2022 WL 677456 (Bankr. N.D. Ala. Mar. 7, 2022) (Robinson, J.)

A chapter 7 debtor did not schedule any real estate when he filed for chapter 7 bankruptcy relief. The chapter 7 trustee discovered in the county real estate records that the debtor owned a one-half interest in property, which the trustee then proposed to sell for the benefit of the debtor's unsecured creditors. Through a series of mistakes, only the debtor's wife's one-half interest in the property had been previously sold at a foreclosure sale, but the creditor's credit bid at the sale was for the entire mortgage debt. The bank objected to the sale of the debtor's one-half interest in the property, but the court found that the mortgage was

extinguished when the bank bid the entire secured debt in exchange for the conveyance of the wife's interest at the foreclosure sale. The mortgage terminated once the debt was satisfied, and the debtor's interest in the property entered the estate free and clear of any prior mortgage.

* The district court affirmed the bankruptcy court's decision in Deutsche Bank National Trust Co. v. Leo, 2023 WL 2783681 (N.D. Ala. Mar. 3, 2023). That decision has now been appealed to the Eleventh Circuit.