

7.1.11

First Circuit

***In re Shamus Holdings, LLC v. LBM Financial*, 2011 U.S. App. LEXIS 11674 (1st Cir. 6/9/11)**

First Circuit affirmed the District Court's finding that the automatic stay precluded creditor's mortgage from being treated as lapsed under Massachusetts Obsolete Mortgage Act.

***Warchol v. Barry (In re Barry)*, 2011 Bankr. LEXIS 2203 (BAP 1st Cir. 6/9/11)(Before Bankruptcy Judges Haines, Votolato and Deasy, opinion by Votolato).**

Debtors, husband and wife, appealed a judgment denying their Chapter 7 discharges under Section 727(a)(2)(A), which was affirmed as to the debtor, but reversed as to debtor's wife as debtor's actions cannot be "imputed" to wife.

***Reyes v. Std Parking Corp.*, 2011 U.S. Dist. LEXIS 63384, (D.R.I. 6/15/11)(William E. Smith District Judge).**

Summary judgment granted to third-party defendant. One of the defendants in the negligence action filed for Chapter 11 relief. The plaintiff and third-party plaintiff did not file a proof of claim by the bar date in the chapter 11 case. The chapter 11 case was confirmed and discharged the claims at issue.

***Baldiga v. Bowdring (In Re: CYPHERMINT, INC.)*, 2011 U.S. Dist. LEXIS 62504 (D. Mass. 6/10/11) (F. Dennis Saylor IV, District Judge).**

Default judgment in the amount of \$500,000 was entered against pro se defendant following his failure to appear in court, and motion to vacate judgment under Fed. R. Civ. P. 60(b)(1)(4,6) denied) as rules apply with equal force to pro se litigants.

***Berliner v. Pappalardo (In re Sullivan)*, 2011 U.S. Dist. Lexis 63484 (D. Mass. 6/15/11)(Michael A. Ponsor, District Judge).**

Appellant, debtor's counsel, appealed the bankruptcy court's reduction in his award of attorney's fees which appeal was unsuccessful because the deference afforded a bankruptcy judge's fee decision undercuts any valid basis for appeal or remand.

***In re Heredia and Cordero*, 2011 Bankr. LEXIS 2254 (Bankr. D.P.R. 6/9/11)(Brian K. Tester, Bankruptcy Judge).**

Debtor's Chapter 13 case dismissed for failure to make payments, and due to serial filings, debtor was barred from re-filing for two years.

***Acevedo Barretto v AAA (In re Acevedo Barretto)*, 2011 Bankr. LEXIS 2194 (Bankr. D.P.R. 6/6/11)(Brian K. Tester, Bankruptcy Judge).**

Motion to dismiss complaint denied. Plaintiffs' complaint was sufficient to put defendant on notice of the alleged misconduct and to establish a plausible prima facie case for violation of the automatic stay. Plaintiffs sufficiently allege liability and do not need to allege the specific type of damages or show a calculation of damages at this time. Because sovereign immunity has been constitutionally abrogated under Section 106(a) for Section 362 proceedings, and the State is to be treated as any other creditor, Court found that defendant is not entitled to a defense of sovereign immunity from a violation of the automatic stay.

Gable v. Borges Constructions, Inc., 2011 U.S. Dist. LEXIS 64281 (D. Mass 6/17/11)(Michael A. Ponsor, District Judge).

Defendant's motion to dismiss complaint granted. Defendant moved to dismiss all of the claims against him on the grounds that plaintiffs' action is barred because plaintiffs' previous claims of trespass, negligence, and nuisance related to the environment were discharged in his bankruptcy proceeding, whether monetary or equitable, with no evidence of ongoing contamination shown here. In his bankruptcy petition, defendant properly listed plaintiffs as creditors to be discharged, and plaintiffs indisputably did not object under the confirmed plan.

Submitted by:

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