

First Circuit Bankruptcy Case Summaries

9.10.10

IRS v. Paolo (In re Paolo, Chapter 7 debtor), 2010 U.S. App. Lexis 18777 (1st Cir. 9/8/10)(Boudin, Circuit Judge).

Debtor sought bankruptcy jurisdiction to decide his IRS claim, from which the IRS took an interlocutory appeal to the District Court arguing the Bankruptcy Court should have abstained as the determination would have no effect on this no-asset case, with which the District Court Agreed. Debtor appealed RI District Court's denial to decide his tax liability with the IRS as an adjunct to his bankruptcy case to the First Circuit. District Court viewed the issue as one of abstention. Circuit Court held that per 28 U.S.C. §1334(d), a decision to abstain is not reviewable by the Circuit Court and dismissed the appeal.

Rosciti v. Liberty Mutual Ins. Co., 2010 U.S. Dist. Lexis 91510 (D.R.I. 8/30/10)(William E. Smith, District Judge).

Culpable company was bankrupt, so plaintiff sought damages directly from the bankruptcy tortfeasor's insurance company, under Rhode Island's direct action statute. Here, the carrier was an excess insurer. Court held that even though the bankrupt company could not pay the first \$500,000 self-insured portion of the policy, the excess insurer was not obligated to pay until the first \$500,000 was exhausted against the debtor.

In re The Village at West Gloucester, LLC, Chapter 11 Debtor v. West Gloucester Capital, LLC, 2009 Dist. Lexis 129657 (D. Mass. 8/27/10)(George A. O'Toole, Jr., District Judge).

Bankruptcy Court granted relief from the automatic stay to the appellee lender, to foreclose on the debtor's real estate. Debtor sought a stay, pending appeal, which the court denied because the debtor did not show a likelihood of success on the merits of the appeal. Debtor argued that the Bankruptcy Court failed to hold an evidentiary hearing on the issues. District Court found that although an evidentiary hearing was not held in the sense that witnesses were called and cross-examined, four hearings were held related to the issues with sufficient information presented for the Bankruptcy Court to rule, the critical issue being the debtor's failure to propose or the ability to propose a plan of reorganization that had a reasonable chance of confirmation within a reasonable period of time.

Orluk v. Verizon, 2010 Dist. Lexis 91005, (D. Mass. 8/12/10)(Joseph L. Tauro, District Judge).

Relief from judgment under 60(b) denied. Plaintiff argued that prior counsel failed to timely file a proof of claim before lapse of the bar date in defendant's bankruptcy case. Prior counsel averred that the parties all agreed to file a stipulation of dismissal with prejudice as the claims were meritless. Plaintiff now argues against that advice. The parties decision to execute the stipulation, regardless of whether that decision was founded upon bad advice or misinformation, created a binding agreement for judgment. For purposes of Rule 60(b), parties should be bound by and accountable for the deliberate actions of themselves and their chosen counsel. This includes not only an innocent, albeit careless or negligent, attorney mistake, but also intentional attorney misconduct. Such mistakes are more appropriately addressed through malpractice claims.

Submitted by:
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