Bankruptcy Circuit Update
Featuring cases from February 2018

Special Announcement
Group Section Conference Call to Discuss Significant Cases

This month our writers Circuit Writers and Section Leaders will be convening our second section-wide conference call on **Friday, March 23, at 3:30 E.S.T./12:30 P.S.T.** to present and discuss notable cases from the past few months of the summaries. Volunteers will be summarizing significant or interesting cases. The presenters will be open for questions and lead discussion of key points. We hope you will join us for this call. The call-in information is: **dial in 866-690-2070 – code 787-594-2077.** If any section-members, whether or not you are a Circuit Writer, would like to volunteer to discuss a significant case or recent bankruptcy development, please e-mail us at csullivan@diamondmccarthy.com.

Supreme Court

FTI Consulting, Inc. v. Merit Management Group, LP,
138 S.Ct. 883, 2018 WL 1054879 (February 27, 2018).

Sotomayor, J (Unanimous): Valley View Downs, LP ("Valley View") acquired shares of a competing entity, Bedford Downs ("Bedford"), for the purpose of avoiding a fight over the last available harness-racing license in Pennsylvania. Valley View paid Bedford $55 million to acquire all of Bedford's shares. Valley View obtained the harness-racing license, but was unsuccessful in securing the gambling license and subsequently filed for Chapter 11 bankruptcy.

FTI Consulting, Inc. ("FTI"), served as trustee for the litigation trust, which brought suit against Merit Management Group ("Merit") which held a 30% interest in Bedford Downs. FTI filed the action to recover payments made by Valley View as fraudulent transfers under § 548(a)(1)(b). Merit, however, argued that the transfer was protected under § 546(e) safe harbors provision as a "settlement payment" due to the use of Citizens Bank as an escrow agent.

The Court held that the transfer the trustee seeks to avoid under a substantive avoiding power is the only relevant "securities safe harbor" for purposes of the Bankruptcy Code. Further, the Court held that the transfer between debtor and transferee was not "made by or to (or for the benefit of)" a financial institution.

"The parties and the lower courts dedicate much of their attention to the definition of the words 'by or to (or for the benefit of)' as used in Section 546(e), and to the question whether there is a requirement that the 'financial institution' or other covered entity have a beneficial interest in or dominion and control over the transferred property in order to qualify for safe harbor protection. In our view, those inquiries put the proverbial cart before the horse. Before a court can determine whether a transfer was made by or to or for the benefit of a covered entity,

the court must first identify the relevant transfer to test in that inquiry. At bottom, that is the issue the parties dispute in this case." ***Merit***, 2018 WL 1054879 at *7.

The Court focused on the specific language and context of § 546(e) and concluded that § 546(e) supports the idea that the relevant transfer, in terms of a safe-harbor inquiry, is the transfer that a trustee seeks to avoid. "The first clause of the provision 'notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title'—indicates that § 546(e) operates as an exception to trustees' avoiding powers granted elsewhere in the Code." ***Id.*** at *1. "The last clause—'except under section 548(a)(1)(A) of this title'—also focuses on the transfer that the trustee seeks to avoid." ***Id.*** Thus, an exception to the exception exists for §548(a)(1)(B) transfers as the text of this section refers to the type of transfer that falls squarely within the avoiding powers. "This reading is reinforced by the § 546 section heading, 'Limitations on avoiding powers,' and is confirmed by the rest of the statutory text: The provision provides that 'the trustee may not avoid' certain transfers, which naturally invites scrutiny of the transfers that 'the trustee. . . may avoid,' the parallel language used in the avoiding powers provisions." ***Id.***

The Court next focused on the statutory structure of § 546. The Bankruptcy Code creates both a structure for avoiding transfers and a safe harbor from avoidance. "It is thus only logical to view the pertinent transfer under § 546(e) as the same transfer that the trustee seeks to avoid pursuant to one of its avoiding powers." Pursuant to an avoidance action, a trustee must establish that the transfer meets the criteria under the avoidance provisions of the Bankruptcy Code. The Defendant, in an avoidance action, can then argue that the trustee failed to identify an avoidable transfer pursuant to the Bankruptcy Code. If, however, the Trustee identifies an avoidable transfer, a court will have no reason to review the relevance of component parts pursuant to the avoiding power.

Merit did not argue that FTI improperly identified the Valley View to Merit transfer as the transfer to be avoided. Merit, instead, focused on whether FTI was allowed to disregard the component parts at the safe-harbor examination. This, however, was irrelevant to the § 546(e) analysis as the focus must be on the transfer that the trustee seeks to avoid.

Next, the Court addressed Merit's argument regarding the phrase "or for the benefit of" under § 546(e). "Merit contends that Congress meant to abrogate the Eleventh Circuit decision in ***In re Munford, Inc.***, 98 F.3d 604, which held that § 546(e) was inapplicable to transfers in which a financial institution acted only as an intermediary." ***Id.*** at *2. The Court, however, determined that Congress added "or for the benefit of," which is common in other avoidance provisions, to § 546(e) to ensure that the scope of both the safe harbor and the avoiding powers matched.

Lastly, the Court addressed Merit's argument that reading the safe harbor provision "so that its application depends on the identity of the investor and the manner in which its investment is held rather than on the general nature of the transaction is incongruous with Congress'

purportedly 'prophylactic' approach to § 546(e)." The Court disagreed and concluded that the test of § 546(e) protects only certain transaction "made by or to (or for the benefit of)" certain entities.

Taking these arguments together, the Court held that the transfer in this case fell outside the purview of the § 546(e) safe harbor.

U.S. Bank N.A. v. The Village at Lakeridge,
No. 15-509, 2018 WL 1143822 (March 5, 2018)

The Unanimous Opinion

Kagan, J.: The United States Supreme Court granted certiorari to decide whether the appropriate standard of review for determining non-statutory insider status is the *de novo* standard of review as applied by the U.S. Courts of Appeals for the Third, Seventh, and Tenth Circuits, or the clearly-erroneous standard of review adopted for the first time by the U.S. Court of Appeals for the Ninth Circuit. In a unanimous opinion authored by Justice Kagan, the Court held the Ninth Circuit correctly reviewed the bankruptcy court's determination of non-statutory insider status for clear error.

Lakeridge filed chapter 11 bankruptcy and it consisted of two claims: (1) a $10 million secured claim with U.S. Bank N.A. ("U.S. Bank"), and (2) a $2.76 million unsecured claim with MBP Equity Partners ("MBP"), Lakeridge's general partner. Lakeridge's proposed plan of reorganization placed its two creditors in separate classes and proposed to impair both of their claims. U.S. Bank rejected the plan. To create an accepting class, one of MBP's board members, Kathleen Bartlett ("Bartlett"), transferred MBP's claim against Lakeridge to a non-insider, Robert Rabkin ("Rabkin"). U.S. Bank objected arguing that Rabkin was a non-statutory insider because the transfer was not an arm's-length transaction as Rabkin and Bartlett were engaged in a romantic relationship. The bankruptcy court rejected this argument and held that Rabkin was not a non-statutory insider and that he did not purchase the claim in bad faith. The bankruptcy court, however, designated his claim and disallowed it for plan voting because it determined Rabkin became a statutory insider by acquiring a claim from the Board. The Bankruptcy Appellate Panel for the Ninth Circuit reversed the finding that Rabkin became a statutory insider holding that insider status cannot be assigned and must be determined for each individual on a case-by-case basis after consideration of various factors. The Ninth Circuit affirmed the appellate panel's decision because the bankruptcy judge's findings of fact on Rabkin's insider status were not clearly erroneous.

Justice Kagan reviewed the different types of questions before reviewing courts and the appropriate standards of review that should be employed depending on the type of question. For example, appellate courts should review questions of law under a *de novo* standard applying the

slightest deference. Questions of fact, on the other hand, are reviewed only for clear error yielding more deference to the trial court. The standard applied to mixed questions of law and fact, the Court noted, depends on the nature of the mixed question—whether the question is primarily legal or factual:

> Mixed questions are not all alike. As U.S. Bank suggests, some require courts to expound on the law, particularly by amplifying or elaborating on a broad legal standard. When that is so . . . appellate courts should typically review a decision *de novo*. . . . But as Lakeridge replies, other mixed questions immerse courts in case-specific factual issues—compelling them to marshal and weigh evidence, make credibility judgments, and otherwise address what we have (emphatically if a tad redundantly) called "multifarious, fleeting, special, narrow facts that utterly resist generalization." . . . And when that is so, appellate courts should usually review a decision with deference. . . . In short, the standard of review for a mixed question all depends—on whether answer it entails primarily legal or factual work.

The question before the bankruptcy court was a mixed question that required the court to decide whether the basic facts it had discovered regarding Rabkin's relationships and motivations were sufficient to make Rabkin a non-statutory insider. Moreover, the Ninth Circuit's legal test for identifying a non-statutory insider required the court to determine whether the facts demonstrated an arm's length transaction between Rabkin and MBP, or more specifically, was Rabkin's purchase of MBP's claim conducted as if the two were strangers to each other. Thus, the question before the bankruptcy court was one that was primarily factual in nature thereby requiring a reviewing court to review its decision under a clear-error standard of review.

Concurring Opinions

Kennedy, J. Justice Kennedy wrote a concurring opinion reminding the profession that the majority opinion should not be construed as an endorsement for the Ninth Circuit's two-part test used to determine non-statutory insider status as certiorari was not granted on that issue. Justice Kennedy questioned, however, the bankruptcy court's conclusion that Rabkin was not an insider noting that further inquiry into whether Bartlett's offer to Rabkin could, and should have, been made to other parties who might have paid a higher price.

Sotomayor, J. Justice Sotomayor wrote a seven-page concurring opinion joined by Justices Kennedy, Thomas, and Gorsuch. Identifying shortcomings in the Ninth Circuit's test for determining non-statutory insider status, Justice Sotomayor offered two alternative tests.

First, courts could evaluate "commonalities" between enumerated statutory-insiders and the alleged non-statutory insiders. Second, courts could also consider the circumstances surrounding

the relevant transaction, including "other aspects of the parties' relationship."

Indicating her discontent with the Ninth Circuit's two-prong test, Justice Sotomayor encouraged courts to "continue to grapple with the role that an arm's length inquiry should play in a determination of insider status."

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Second Circuit

SPV Osus Ltd. v. UBS AG,
882 F.3d 333; 65 Bankr. Ct. Dec. 60 (2d Cir., February 9, 2018)

In an appeal deriving from the Ponzi scheme orchestrated by Bernard Madoff ("Madoff"), the Second Circuit affirmed the judgment of the district court (i) refusing a motion to remand the case back to state court, and (ii) dismissing the complaint filed by plaintiff SPV Osus Ltd. ("SPV"), an assignee of an entity that had invested money directly with Bernard L. Madoff Investment Securities LLC ("BLMIS").

When BLMIS was revealed to be massive Ponzi scheme, SPV suffered losses it alleged totaled roughly $2.9 billion, i.e. the total amount its assignor had in its accounts in the fall of 2008. Madoff was involuntarily forced into Chapter 7 in April 2009. In June 2009, the Madoff estate was consolidated with a separate bankruptcy proceeding against BLMIS that was filed under the Securities Investor Protection Act ("SIPA").

In December 2014, SPV sued UBS AG and its affiliated entities (collectively, "UBS") and AIA LLC and its affiliated entities and individuals (collectively, "Access") in New York state court, alleging that UBS and Access aided and abetted BLMIS and Madoff by sponsoring, and providing support for, two European-based feeder funds (Luxalpha SICAV and Groupement Financier Ltd.). Specifically, SPV alleged that (i) the feeder funds channeled billions of dollars to Madoff and BLMIS, allowing them to further their fraud, (ii) UBS and Access chose to work with the feeder funds despite being aware of fraudulent activity on the part of Madoff and BLMIS, and (iii) absent assistance from UBS and Access, Madoff and BLMIS could not have continued to operate their Ponzi scheme.

UBS removed the New York state action to the district court, and SPV moved to remand. The district court denied the motion, finding federal jurisdiction proper pursuant to 28 U.S.C. § 1334, which provides federal courts with "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." The district court then granted UBS's motion to dismiss the complaint for lack of personal jurisdiction.

Finally, the district court granted a separate motion by Access to dismiss the complaint on the grounds that SPV's complaint failed to adequately allege proximate causation with regard to Access.

On appeal, SPV argued that (1) this litigation was not "related to" the Madoff/BLMIS bankruptcies, such that the federal courts lacked jurisdiction; (2) the district court erred in finding it lacked personal jurisdiction over UBS; and (3) it adequately pled proximate cause.

On the issue of "related to" jurisdiction, the Second Circuit began its analysis by noting that UBS removed the case to federal court pursuant to both the general removal statute, 28 U.S.C. § 1452(a), and the bankruptcy removal statute, 28 U.S.C. § 1334(b), which grants federal courts "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." The Second Circuit noted that pursuant to Second Circuit precedent, a civil proceeding is related to a title 11 case if the action's outcome might have any conceivable effect on the bankrupt estate. The Second Circuit noted that while "related to" jurisdiction is not limitless, it is broad and encompasses suits between third parties which have an effect on the debtor's estate, e.g., if one of the third parties has an indemnification or contribution right against the debtor. Additionally, a claim does not need to be certain to provide a federal court with "related to" jurisdiction, as contingent outcomes may satisfy the "conceivable effects" test.

Here, the claims at issue arose in an action that did not directly involve the bankruptcy estates. The Second Circuit noted that the gravamen of SPV's complaint was that the defendants were joint tortfeasors with Madoff and BLMIS, which would provide defendants with a putative contribution claim to be asserted in the bankruptcy proceedings. SPV argued against this line of reasoning by claiming that UBS's potential claims were too remote from the bankruptcy proceedings to have any effect on the estates, because (1) the bar date to assert claims against the Madoff and BLMIS estates expired, barring UBS from pursuing any claim in the bankruptcy proceeding, and (2) in any event, there was not enough money in either estate to satisfy SPV's claims.

The Second Circuit agreed with the district court that the failure to file claims prior to the bar date was not fatal to the potential claims at issue here, because bankruptcy courts are permitted to accept late proofs of claim. The Second Circuit noted that, unlike indemnification claims, contribution claims do not accrue until after liability is established. Accordingly, a party may not know of a potential contribution claim until sued, which may be years after bankruptcy proceedings have commenced. Here, SPV sued UBS over five years after the SIPA bar date, and the Second Circuit found that such lack of notice created a credible basis for defendants to petition the bankruptcy court for leave to file a late proof of claim based on excusable neglect.

Moreover, the Second Circuit noted that it was unclear whether the applicable bar date had passed because, while a bar date was set and had passed in the SIPA action involving the

BLMIS estate, no bar date was set in the case involving the Madoff estate. The consolidation order only stated that the combined estate "shall be administered in accordance with SIPA and the Bankruptcy Code." The Second Circuit did note that if the SIPA bar date controlled, as asserted by SPV, it cannot be waived.

However, the Second Circuit ultimately did not resolve the issue of which bar date controlled because, even if the bar date set in the SIPA proceeding controlled, simply settling the issue of whether a late claim is allowable would likely have an effect on the estate, because any attempt to file a late claim would result in the estate incurring costs. As the district court noted, pursuant to 11 U.S.C. § 704(a)(5), even unsuccessful claims require evaluation by the trustee, who recovers fees for such work from the estate. Additionally, the Second Circuit noted that if SPV were successful in its claims against UBS, it would reduce the amount it is owed as a creditor of the BLMIS/Madoff estate.

SPV also challenged the district court's conclusion that it was "within the realm of possibility" for defendants to receive a distribution from the estate, arguing that the amount of its losses greatly exceeded the assets recovered by the estates. SPV therefore argued that there would be no funds available to pay UBS, assuming SPV prevailed in the underlying litigation and UBS asserted a contribution claim against the bankruptcy estate. Conversely, the district court found recovery possible because the estate continued to recover substantial assets as time passed, including almost $1 billion in 2014 alone. Thus, the Second Circuit noted that while a payout by the estate to defendants may be improbable, it is not impossible. Additionally, any claim by the defendants would potentially alter the distribution of assets among the estates' creditors, further supporting a finding that this litigation is "related to" the bankruptcy proceedings.

Finally, the Second Circuit noted that there was a high degree of interconnectedness between this action and the Madoff bankruptcies, in that SPV's claim was dependent on establishing that the Madoff fraud occurred. In other words, absent the automatic stay, the Second Circuit found it difficult to imagine a scenario wherein SPV would not also sue Madoff and BLMIS, given that SPV alleged that UBS aided and abetted in their fraud. The Second Circuit noted that the existence of strong interconnections between a third party action and a bankruptcy case has been cited frequently by courts in concluding that the third party litigation is related to the bankruptcy proceeding.

The Second Circuit then addressed the issues relating to personal jurisdiction over USB, finding that the connections between USB, SPV's claims, and its chosen New York forum were too tenuous to support the exercise of specific jurisdiction. Finally, the Second Circuit rejected SPV's arguments in favor of finding proximate causation with regards to Access. Accordingly, the Second Circuit affirmed the judgment of the district court in its entirety.

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Fourth Circuit

***Janvey v. Romero* (*In re Romero*),**
No. 17-1197, 2018 U.S. App. LEXIS 4108, 2018 WL 987801 (4th Cir. Feb. 21, 2018):

On February 21, 2018, the Fourth Circuit affirmed the bankruptcy court's and district court's decisions that denied a motion to dismiss a chapter 7 debtor's case for alleged bad faith. The debtor, a former ambassador, formed a consulting company, and one of his clients was Stanford Financial Group, which carried out a multi-billion dollar ponzi scheme. The debtor ceased doing business with Stanford in 2009, but Stanford's receiver pursued the debtor in federal court and ultimately obtained a $1.275 million judgment against the debtor. That judgment precipitated the debtor's chapter 7 filing in Maryland.

The receiver filed with the bankruptcy court a motion to dismiss the debtor's chapter 7 case under 11 U.S.C. § 707(a), arguing that the petition was an abuse of process and filed in bad faith as an attempt to avoid the receiver's judgment. Applying an eleven factor bad faith test, the bankruptcy court denied the motion. While the judgment was the primary factor for the filing, it was not the sole factor. The debtor's wife was severely ill and disability policies were set to be terminated. The debtor did not lead an exorbitant lifestyle. Also, that the majority of the debtor's assets were exempt was not an indication of bad faith. Ultimately, the bankruptcy court granted the debtor's discharge under § 727.

The district court and Fourth Circuit affirmed the bankruptcy court's decision. In doing so, the Fourth Circuit rejected the receiver's objections, which were (i) that the debtor filed chapter 7 solely to avoid collection of the judgment; (ii) that the debtor's attempts to settle the litigation exemplify bad faith; and (iii) that the debtor has significant exempt assets and too much money. In affirming the bankruptcy court, the Fourth Circuit noted that court's good and sound reasons for its ruling that were not an abuse of discretion.

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Ninth Circuit

In *Diamond v. Hogan Lovells US LLP*, creditors of Howrey LLP, a law firm organized under D.C. law, filed an involuntary petition for bankruptcy against the firm in April of 2011. A month prior to the filing of the petition, Howrey's partners voted to dissolve the firm and amended their partnership agreement to include a "Jewel waiver," which absolved any departing partners from an obligation to account for profits related to the winding up of unfinished business. Specifically, the waiver was intended to expressly waive any rights any partner or partnership may have to "unfinished business," a term defined in a California case, *Jewel v Boxer*, 156 Cal. App. 3d 171 (Cal. Dis. Ct. App. 1984), of the partnership.

The trustee brought adversary proceedings against firms that had hired former Howrey partners who had profited from work performed on client matters originating from Howrey in order to recover portions of payments made by former Howrey clients for work done on those ongoing matters. The trustee presented two theories of recovery: (1) if the partner left pre-dissolution, the partner had a duty to account for profits earned on pending client matters and the estate could recover those profits under an unjust enrichment theory and (2) if the partner left post-dissolution, the partner had a duty to account for profits earned on ongoing clients matters based on the notion that the Jewel waiver constituted a fraudulent transfer under 11 U.S.C. § 548 and the estate could recover those profits under 11 U.S.C. § 550. The duty to account is grounded in partnership law. Specifically, section 404(b)(1) of the revised Uniform Partnership Act ("RUPA")(D.C. 29-604.07(b)(1)) imposes a duty on a partner to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business. Section 603(b) of the RUPA (D.C. Code 29-606.09(b)), which governs duties of dissociating partners, states that the dissociating partner's duty of loyalty under section 404(b)(1) continue only with regard to matters arising and events occurring before a partner's dissociation. The bankruptcy court ruled on the defendants' motion to dismiss in favor of the trustee on these two theories. On appeal, the district court reversed and concluded that profits generated from ongoing matters were not subject to the duty to account where the client had entered into a new retainer agreement with the defendants or new firm.

The Ninth Circuit was faced with the trustee's argument that ongoing hourly-billed client matters were "matters arising" before the partner's dissociation, therefore, the partner had a duty to account for profits earned from those matters. In contrast, the defendants argued that "matters arising" should only include work actually performed period to dissolution. The panel concluded that the trustee's claims turned on answers to unresolved questions of District of Columbia's partnership law regarding the scope of the interest, if any, that a partnership has in client matters commencing at the partnership but completed as a subsequent firm and certified the following questions to the District of Columbia Court of Appeals:

1. Under District Columbia law, does a disassociated partner owe a duty to his or her former law firm to account for profits earned post-departure on legal matters that were in progress but not completed at the time of the partner's departure, where the partner's former law firm had been hired to handle those matters on an hourly basis and where those matters were completed at another firm that hired the partner?
2. If the answer to question 1 is "yes," the does District of Columbia law allow a partner's former law firm to recover those profits from the partner's new law firm under an unjust enrichment theory?
3. Under District of Columbia law, what interest, if any does a dissolved law firm have

in profits earned on legal matters that were in progress but not completed at the time the law firm was dissolved, where the dissolved law firm had been retained to handle the matters on an hourly basis, and where those matters were completed at different pre-existing firms that hired partners of the dissolved firm post-dissolution?

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Tenth Circuit

Coll v. Franco (In re Franco),
Adv. Pro. No. 17-1001-t, 2018 WL 1135497 (Bankr. D. N.M. Feb. 28, 2018),

In this matter, the court addressed a motion to dismiss certain counterclaims filed against him pursuant to the Barton doctrine and quasi-judicial immunity for actions he had taken, and continued to take, as chapter 7 trustee in his assertion of mineral rights the debtor claimed constituted property of the estate. Under the Barton doctrine, suit against a bankruptcy trustee will not lie for alleged misconduct in the discharge of his or her duties absent leave of the bankruptcy court. Quasi-judicial immunity is afforded to bankruptcy trustees (except for claims of breaches of fiduciary duties), if the challenged actions are within the scope of the trustee's authority. Leave of the bankruptcy court had not been sought by the defendant-counterclaimant prior to asserting the counterclaims against the trustee. The court dismissed a disparagement / slander of title counterclaim, explaining that given its prior ruling that a *bona fide* dispute over the mineral rights the trustee acted well within the scope of his duties in asserting those rights for the estate and was protected by both the Barton doctrine and quasi-judicial immunity. The other counterclaims asserted, quiet title, civil conspiracy to disparage title, and constructive trust were either deemed asserted against the bankruptcy estate, as opposed to the trustee, but to the extent brought against the trustee, the court held that those claims were due to be dismissed under the Barton doctrine and based on quasi-judicial immunity.

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Eleventh Circuit

In re Meus,

No. 16-16036, 2018 WL 846551 (11th Cir. Feb. 14, 2018)

The bankruptcy court granted stay relief in favor of secured creditor after the debtor repeatedly filed bankruptcy petitions on the days foreclosure sales were scheduled. The court granted *nunc pro tunc* stay relief and prospective stay relief. After a foreclosure sale was consummated, the certificate of sale and certificate of title were issued to the creditor. The debtor appealed the stay relief order and an order dismissing the bankruptcy case, but no stay pending appeal was granted. The district court affirmed the bankruptcy court.

The Eleventh Circuit, *sua sponte*, determined that the debtor's appeal was rendered moot by the completed foreclosure sale because the appellate court was powerless to rescind the completed sale on appeal. The court therefore found it lacked jurisdiction to hear the appeal of the stay relief order and dismissed the appeal.

***Beem v. Ferguson*,**
No. 16-11842, 2018 WL 718609 (11th Cir. Feb. 6, 2018)

Pre-petition, the creditor obtained a judgment against the debtor for defamation and abuse of process stemming from the fallout of their business partnership. The judgment debtor filed an individual chapter 11 bankruptcy petition, and the creditor sought to have his claim determined nondischargeable. The creditor's attorney, however, filed a *motion* to determine debt non-dischargeable—not a complaint as required by Bankruptcy Rule 7001—prior to the applicable deadline. Realizing the mistake, the attorney re-cast the motion as an adversary proceeding about two weeks later, past the deadline. The debtor moved to dismiss the complaint for untimeliness, which the bankruptcy court denied. The bankruptcy court also later granted the creditor's motion for summary judgment, finding the debt nondischargeable under Section 523(a)(6) of the Bankruptcy Code. The debtor appealed both the dismissal decision and the grant of summary judgment. The district court affirmed the bankruptcy court's determination that the complaint "related back" to the improperly filed motion, and affirmed summary judgment.

The first issue considered by the Eleventh Circuit was whether the adversary should have been dismissed for untimeliness where the "complaint" was filed past the deadline to file nondischargeability actions. The court ultimately held that the "motion" originally filed by the creditor could be construed as the functional equivalent as a complaint under Rule 8 of the Federal Rules of Civil Procedure. The detailed motion gave the debtor fair notice of the claims asserted by the creditor against the debtor. Therefore, under Rule 15(c) of the Federal Rules of Civil Procedure, the later-filed complaint properly related back to the originally filed "motion." The appellate court affirmed the denial of the debtor's motion to dismiss. The court further upheld summary judgment, analyzing the elements of the creditor's "abuse of process" claim and the elements for "willful and malicious injury" under Section 523(a)(6) of the Bankruptcy Code. The appellate court found the claims sufficiently identical for collateral estoppel purposes.

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