Bankruptcy Circuit Update
Featuring cases from March 2018

First Circuit

Asociación de Titulares de Condominio Castillo v. Joanna DiMarco et. al.,
581 B.R. 346 (1st Cir. February 8, 2018).

This appeal arises out of a bankruptcy court's order denying reconsideration of its decision dismissing the chapter 7 bankruptcy of a condominium association organized under the laws of Puerto Rico *Asociación de Titulares de Condominio Castillo* d/b/a Castillo Condominium Association's (the "Association"). In dismissing the petition, the bankruptcy court ruled that the Association was ineligible to file bankruptcy under 11 U.S.C. § 109 and lacked a legitimate bankruptcy purpose for the filing.

Prior to the bankruptcy, the U.S. Department of Housing and Urban Development ("HUD") filed a "charge of discrimination" against the Association under the Fair Housing Act for forcing a condominium owner to vacate and sell his unit. HUD awarded damages to the vacated owner and assessed a civil penalty against the Association. Shortly thereafter, the Association filed a voluntary chapter 7. Some, but not all of the condominium owners, authorized the filing of the bankruptcy petition. The homeowners then created a new homeowners' association to assume day to day management responsibilities, including collection of dues. At the 341 meeting of creditors, the president of the Association testified that the new homeowners association had paid or expected to pay all of the Association's debts, except for the amounts owed to judgment creditors. The Association's original schedules listed assets of only $14,000 and 17 unsecured creditors in total, out of which three judgment creditors (HUD, the vacated owner, and a third judgment creditor) accounted for the majority of its liabilities.

Two unsecured creditors and HUD filed a motion to dismiss the bankruptcy. The court dismissed the bankruptcy because (1) the Association could not be a debtor under § 109 of the Bankruptcy Code and (2) the Association had filed bankruptcy to avoid paying its judgment creditors. The Association filed a motion for reconsideration. The bankruptcy court denied the motion for reconsideration. In its motion for reconsideration, the Association argued that the bankruptcy court made several errors of law and/or fact in dismissing the bankruptcy under § 707(a). That section provides that a court may dismiss a chapter 7 case "only for cause." Cause is not defined, but the section provides three examples – the debtor's unreasonable delay that is prejudicial to creditors, failure to pay required fees, or untimely filing of schedules and financial statements. These examples are illustrative and not exhaustive.

First, the BAP considered whether the bankruptcy court erred in ruling that a condominium association is not eligible to file a bankruptcy petition. The BAP held that the bankruptcy court did indeed commit legal error when it applied a narrow, exclusive interpretation of the term "person" set forth in § 101(41). Section 109(a) states that a debtor is a "person that resides or has a domicile, a place of business, or property in the United States, or a

municipality[.]" Section 109(b) enumerates certain entities that are excluded from being debtors. The BAP explained that since the Association is not an entity of the type excluded from being a debtor under § 109(b), whether it is eligible to file bankruptcy depends on whether it is a "person" within the meaning of the Bankruptcy Code. Section 101(41) provides that the term "person includes individual, partnership, and corporation[.]" The bankruptcy court interpreted this to mean that only individuals, partnerships, and corporations are "persons" under the Bankruptcy Code that are eligible for bankruptcy relief. The BAP held that the term "includes" is not limiting and therefore, a potential debtor may be a "person" even if does not fall into the *per se* definition of § 101(41). The BAP explained that the "court should have considered whether the legal characteristics of the Association were sufficiently analogous to those of a partnership or corporation so as to constitute a 'person' under the Bankruptcy Code."

Since the bankruptcy ground denied the motion to dismiss on additional grounds – the lack of legitimate bankruptcy purpose for the filing - the BAP next turned to this analysis. The BAP held that the bankruptcy court did not commit legal error. Because non-individual debtors are ineligible for discharge, the only purpose served in a chapter 7 case is the fair and orderly liquidation of assets for creditors. The BAP found that the Association had no prospect of a fair and orderly liquidation of assets for creditors. There were no significant assets to marshal or liquidate, and the Association admitted that it did not file the chapter 7 to maximize value for creditors; rather it filed the petition to avoid payment to certain judgment creditors while paying all of its other creditors through a new homeowners' association. Moreover, under Puerto Rico law, liquidation of the Association would change the purpose and use of the regime requiring the unanimous consent of all unit holders. All unit holders did not consent to the filing of the bankruptcy petition. Thus, the bankruptcy court did not commit legal or factual error in concluding that there was no legitimate bankruptcy purpose to be served and in dismissing the chapter 7 petition for cause under § 707(a).

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Second Circuit

***Anderson v. Credit One Bank* (*In re Anderson*),**
16-2496, 884 F.3d 382 (2d Cir., March 7, 2018)

The Second Circuit affirmed the judgment of the district court affirming the bankruptcy court's order denying the motion filed by Credit One Bank, N.A. ("Credit One") to compel arbitration with Orrin Anderson ("Anderson") based on a clause in the cardholder agreement between Credit One and Anderson.

Anderson was a credit card holder with a predecessor in interest of Credit One. Anderson's cardholder agreement contained an arbitration clause providing that "either [Anderson] or [Credit One] may, without the other's consent, require that any controversy or dispute . . . be submitted to mandatory, binding arbitration." In 2012, Credit One "charged off" Anderson's delinquent debt, meaning the bank changed the outstanding debt from a receivable to a loss in its own accounting books. It then sold Anderson's debt to a third-party buyer.

In 2014, Anderson voluntarily filed for bankruptcy under Chapter 7. Following the closing of Anderson's case several months later, Credit One refused to remove the charge-off notation on Anderson's credit reports. The bankruptcy court permitted Anderson to reopen his bankruptcy proceeding to file a putative class action complaint against Credit One alleging that Credit One's refusal to change his credit report was an attempt to coerce Anderson into paying a debt that had already been discharged through bankruptcy, which would be a violation of the bankruptcy court's discharge injunction. Anderson further alleged that debt marked as "charged off" rather than "discharged" is more valuable to third-party debt buyers, who believe debtors will be compelled to pay the discharged debt in order to clear this negative item from their credit reports. Credit One moved to stay the proceedings and initiate arbitration in accordance with the arbitration clause in the cardholder agreement.

The bankruptcy court denied that motion, holding that Anderson's claims implicated core bankruptcy proceedings and that arbitration would present an inherent conflict with the congressional intent underlying the Bankruptcy Code. Credit One was entitled to an immediate appeal of the bankruptcy court's decision pursuant to the Federal Arbitration Act, 9 U.S.C. § 16(a)(1)(A). The district court affirmed the decision of the bankruptcy court, for substantially the same reasons.

On appeal in the Second Circuit, the parties agreed that the issues raised concerned "core" bankruptcy proceedings, so the Second Circuit's sole inquiry was whether arbitration of Anderson's claim presented the sort of inherent conflict with the Bankruptcy Code that would overcome the strong congressional preference for arbitration.

Reviewing the bankruptcy court's findings of fact for clear error and its legal determinations de novo, the Second Circuit agreed with both lower courts that Anderson's complaint was non-arbitrable, noting that the successful discharge of debt is not merely important to the Bankruptcy Code, it is its principal goal. The Second Circuit had previously described the "fresh start" procured by a bankruptcy discharge as the "central purpose of the bankruptcy code" as shaped by Congress. This "fresh start" is only possible if the discharge injunction crafted by Congress and issued by the bankruptcy court is fully heeded by creditors and prevents their further collection efforts. Violations of the injunction damage the foundation on which the debtor's fresh start is built.

Accordingly, the Second Circuit found that arbitration of a claim based on an alleged violation of Section 524(a)(2) of the Bankruptcy Code would seriously jeopardize a core bankruptcy proceeding because: 1) the discharge injunction is integral to the bankruptcy court's ability to provide debtors with the fresh start that is the very purpose of the Bankruptcy Code; 2) the claim regards an ongoing bankruptcy matter that requires continuing court supervision (i.e.,

the estate has not been fully administered); and 3) the equitable powers of the bankruptcy court to enforce its own injunctions are central to the structure of the Bankruptcy Code. The Second Circuit noted that the fact that Anderson's claim was in the form of a putative class action did not undermine this conclusion.

The Second Circuit emphasized that the bankruptcy court alone has the power to enforce the discharge injunction in Section 524 of the Bankruptcy Code. Arbitration of the claim would thus present an inherent conflict with the Bankruptcy Code. Accordingly, the Second Circuit affirmed the judgment of the district court, holding that the bankruptcy court did not abuse its discretion by denying Credit One's motion to compel arbitration in this case, because such attempt to coerce debtors to pay a discharged debt was essentially an attempt to undo the effect of the discharge order and the bankruptcy proceeding itself.

***Clark v. Aii Acquisition, LLC*,**
17-1727, 2018 WL 1545660 (2d Cir., March 30, 2018)

The Second Circuit vacated the judgment of the district court dismissing the personal injury claims asserted by Michele Clark (together with her husband John Edward Clark, the "Clarks") against more than fifty corporate defendants based on the equitable doctrine of judicial estoppel.

In 2010, the Clarks filed for Chapter 13 bankruptcy and proposed a plan to repay their creditors in full, with interest at the federal judgment rate, over five years through monthly payroll deductions. Each month for nearly five years, $2,152 was deducted from John Edward Clark's paycheck from his then employer, The Boeing Company ("Boeing"), to fund such payments. However, a few weeks before the Clarks' sixtieth (and final) monthly deduction was taken in July 2015, John Edward Clark was diagnosed with mesothelioma, a cancer caused by the inhalation of asbestos fibers.

One week prior to their discharge from the bankruptcy proceeding in 2016, the Clarks initiated a personal injury action against Boeing and a host of other corporations they believed had exposed John Edward Clark to asbestos. The Clarks were unsure of whether their bankruptcy asset schedules needed to be updated to reflect the diagnosis and intention to litigate. John Edward Clark alerted his bankruptcy counsel to this information and "trusted him to do what was required under the law," but the Clarks' counsel, however, did not pass this information along to the bankruptcy court during the pendency of the Clarks' bankruptcy proceeding.

Boeing moved to dismiss the Clarks' personal injury suit on the grounds of judicial estoppel, arguing that the couple's failure to disclose the diagnosis during the bankruptcy barred them from pursuing personal injury claims related to that diagnosis. The district court agreed, granting Boeing's motion and dismissing the Clarks' claims with prejudice. John Edward Clark died during the pendency of the couple's appeal to the Second Circuit.

After first holding that a district court's invocation of judicial estoppel is reviewed only for abuse of discretion, the Second Circuit began its analysis of whether the district court abused

its discretion in invoking judicial estoppel against the Clarks. The Second Circuit noted that judicial estoppel—an equitable doctrine—is to be construed in light of equitable principles, and that here the balance of equities tipped overwhelmingly in the Clarks' favor.

Turning to the district court's decision (and their abuse of discretion), the Second Circuit noted that the judgment dismissing this suit started off on the right foot by noting that the party asserting judicial estoppel must show (i) that the party against whom the estoppel is asserted took an inconsistent position in a prior proceeding and (ii) that such position was adopted by the first tribunal in some manner, such as by rendering a favorable judgment. As to the first element, the district court held that the Clarks' failure to disclose their personal injury causes of action to the bankruptcy court amounted to an implicit false representation that no such causes of action existed. As to the second element, the district court reasoned that the bankruptcy court "adopted" the Clarks' inconsistent position by "rendering a favorable judgment"—i.e., by discharging them from bankruptcy.

Having satisfied itself that the Clarks met the judicial estoppel doctrine's two prerequisite elements, the district court held ipso facto that the couple's personal injury claims must be estopped. However, the Second Circuit strongly disagreed with applying the doctrine of judicial estoppel as though it were a mechanical rule, noting that though the two-pronged test may describe necessary conditions for judicial estoppel to be imposed, they are not sufficient ones. Instead, before judicially estopping a litigant, a court must inquire into whether the particular factual circumstances of a case tip the balance of the equities in favor of doing so.

Second Circuit precedent makes clear that this inquiry begins by asking whether the prior inconsistent position in question gave the party to be estopped an "unfair advantage" over the party seeking estoppel. Here, Boeing conceded that it was in no way prejudiced by the Clarks' failure to disclose their personal injury causes of action to the bankruptcy court. Though imposing judicial estoppel may generally be appropriate where the party to be estopped failed to make the proper disclosures during a bankruptcy proceeding, the Second Circuit reasoned that this rationale cannot extend to the unusual case in which a debtor's nondisclosure had at most a de minimis effect on such proceeding. This was just such a case, because the Clarks' plan already required the Clarks to repay their creditors in full. Disclosing John Edward Clark's diagnosis to the bankruptcy court would therefore have only affected the couple's bankruptcy proceeding if their creditors were able to convince the bankruptcy court to raise the applicable interest rate under the plan. Given that the Clarks were mere weeks away from completing repayment at the time of the diagnosis, and were already paying interest at a standard rate, this scenario struck the Second Circuit as more than implausible.

Additionally, the Second Circuit noted that nothing in the record suggested that the Clarks withheld the diagnosis from the bankruptcy court in an effort to game the bankruptcy system, further noting that it would be hard to imagine what benefit they could even have hoped to obtain from nondisclosure. In these circumstances, the Second Circuit held that the principles of equity required the courts to entertain the Clarks' personal injury claims. Accordingly, the Second Circuit vacated the judgment granting Boeing's motion to dismiss and remanded the case for further proceedings.

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Sixth Circuit

***Lowe v. Ransier (In re Nicole Gas Production, Ltd.)*,**
Nos. 15-8053/8055, 2018 Bankr. LEXIS 705 (B.A.P. 6th Cir. Mar. 13, 2018)

The Bankruptcy Appellate Panel (BAP) of the Sixth Circuit affirmed the bankruptcy court's finding that a shareholder of a Chapter 7 debtor violated the automatic stay by pursuing a claim under the Ohio Corrupt Practices Act (OCPA) in state court. Debtor, a gas production company, had been in litigation with numerous Columbia Gas entities before filing for bankruptcy, and the estate obtained these causes of action. After Debtor filed for bankruptcy, Debtor's founder and former indirect equity owner filed a complaint in state court against Columbia Gas under OCPA for harm resulting from injury to Debtor. The Chapter 7 trustee, Ransier, moved for contempt against the shareholder and his counsel in the U.S. Bankruptcy Court for the Southern District of Ohio, arguing the shareholder had merely a derivative claim that duplicated Debtor's damages based entirely on Debtor's injury. As such, the claim brought in state court was owned by Debtor originally and became property of Debtor's estate. The shareholder countered he was pursuing an individual claim, not a cause of action that Debtor's estate owned, since he suffered "indirect" injury that fell within OCPA. In an effort to clarify the meaning of "indirect," he asked the bankruptcy court to certify the question to the Ohio Supreme Court, which the bankruptcy court declined to do. Instead, the bankruptcy court determined that "directly or indirectly injured" in OCPA did not create anything more than a derivative claim stemming from the corporation. Accordingly, the bankruptcy court agreed with the trustee that the shareholder and his counsel violated the automatic stay by continuing to pursuing the claim, held them in contempt for impermissible exercise of control over property of the bankruptcy estate, and sanctioned them over $91,000, which was awarded to the trustee for legal costs.

On appeal, the BAP certified a slightly different question to the Ohio Supreme Court as to whether the shareholder of a corporation had standing to bring a claim individually (as opposed to merely derivatively) under OCPA. If so, that claim would be his personal property rather than property belonging to the estate of the former corporation. When the Ohio Supreme Court declined to respond, the BAP determined that, although OCPA clearly granted standing to an aggrieved party indirectly injured by a defendant, such standing did not overcome the "well-established precedent that the claim of a shareholder based on wrong done to the corporation is derivative in nature." As a result, the BAP concluded the bankruptcy court did not err in holding the shareholder and his counsel in contempt for pursuing the claim – which was exclusive property of the estate – and awarding the trustee attorneys fees. Affirmed.

***In re Thomas*,**
No. 17-2052, 2018 WL 1162523, (Bankr. E.D. Ky. Mar. 1, 2018)

Chapter 13 co-debtors, Mr. and Mrs. Thomas, asked the bankruptcy court to approve one of the debtor's class-action adversary proceeding settlements against AT&T Corp. and DirecTV, LLC, which had been brought when class members alleged the telecommunications creditor had violated the automatic stay by attempting to collect pre-bankruptcy debts. After the co-debtor agreed to a quick settlement of her own individual claims against the corporate defendants, she moved the bankruptcy court to approve her settlement so she could settle post-petition claims that were property of her Chapter 13 estate. When she provided a copy of the executed settlement agreement to the bankruptcy court for *in camera* review, debtor filed two motions to seal the settlement agreements, since the parties wanted to keep the terms of their settlement confidential. Debtor urged that if the documents were not sealed, the corporate party would not agree to the settlement.

In considering whether debtor's settlement was "fair and equitable based on the facts of the case," the bankruptcy court stated "the public has a right to know the basis for the Court's decision on that motion" in order to avoid "any suggestion of impropriety" that could be raised. Responding to debtor's argument that, under § 107(b) and Bankruptcy Rule 9018, a bankruptcy court may enter a seal order where necessary to protect confidential information," such as that alleged in the debtor's settlement agreement, the court agreed that 107(b) authorizes the court to protect an entity "with respect to a trade secret or confidential . . . commercial information." However, the court explained that "commercial information" is information that would give an "unfair advantage to competitors." Furthermore, since documents filed in bankruptcy court are "public records," a party must make a compelling argument explaining why such documents should be protected by non-disclosure.

Here, the court determined the debtors submitted no evidence showing that the settlement agreement contained protected commercial information or fell within the protected category of documents. The documents contained no findings of fact or conclusions of law, and the order would have the effect of sealing the entire settlement agreement -- including the settlement agreement and the supplemental memorandum explaining the settlement – "in perpetuity or until a subsequent order is entered unsealing the documents." The debtors' motion to seal the settlement agreement was thus denied.

<u>February:</u>

Manson v. Nathan (In re Reed),
2018 WL 705154, Slip Copy, No. 17-12256 (E.D. Mich. Feb. 5, 2018)

After a Chapter 7 trustee filed an adversary proceeding against The Manson Group on behalf of a debtor's estate demanding turnover of certain manuscripts written by Malcom X, the bankruptcy court granted summary judgment in favor of the trustee, claiming Manson was

collaterally estopped from claiming ownership of the Malcolm X manuscripts, and, Manson's version of events was so lacking in credibility as to entitle the trustee to summary judgment. On appeal, the District Court for the Eastern District of Michigan reversed on both grounds. On the issue of whether Manson was collaterally estopped from claiming he had acquired ownership of the manuscripts during the debtor's divorce proceedings years ago, the district court found the bankruptcy court was not bound by the state court's divorce decree, and thus was not collaterally estopped from pursuing the present claim, since neither Manson nor his company was a party or in privity with the debtor during the divorce proceedings. In so concluding, the district court disagreed with the bankruptcy court's holding that Manson and his company were in privity with the debtor in the divorce by virtue of Manson's position on the board of the Keeper of the Word Foundation – an entity established and controlled by debtor and which debtor asserted owned the Malcolm X manuscripts – because Manson had knowledge of the divorce proceedings.

As to Manson's claim that he acquired ownership of the Malcolm X Documents in the 1990's, the district court "wholeheartedly" agreed with the bankruptcy court's assessment that Manson's credibility, or "more accurately, his lack thereof," did not pass the "laugh test," since Manson's explanations of how and when he acquired ownership were inconsistent. Nevertheless, the district court held the bankruptcy court was required to accept Manson's sworn statements in the form of affidavits and depositions, in which he repeatedly affirmed under oath that he has owned the Malcom X Documents since the 1990's, as true. It clarified that a court may not grant summary judgment based on a credibility assessment "drawn from a cold record" but must accept as true any direct evidence offered by the plaintiff in response to a summary judgment motion, construing any inconsistencies in favor of the party opposing the motion. Since the trustee was not entitled to summary judgment, the case was remanded to the bankruptcy court for an evidentiary hearing to determine whether Manson's claim was colorable.

***In re Kunkel*,**
2018 WL 735929, No. DL 17-05781 (Bankr. W.D. Mich. Feb. 5, 2018)

Michigan State University Federal Credit Union (MSUFCU) sought relief from the automatic stay to setoff funds from CDs held in the name of a Chapter 13 debtor's minor children to recover approximately $11,000 owed to it in credit card debt. Arguing the setoff provision in Michigan's Credit Union Multi–Party Accounts Act authorizes a credit union to setoff the entire amount of the account when a party to a multi-party account owes the credit union debt, MSUFCU also relied on a Michigan law that creates a statutory lien encumbering CDs. The CDs had been established in 2006 when Debtor's children opened accounts at the credit union, but the debtor retained the right to withdraw funds in the CDs a joint owner, which gave her control and an interest in the funds. Nothing suggested that the CDs were fiduciary accounts or accounts under the Uniform Transfers to Minors Act.

Rejecting Debtor's and trustee's assertions that there was no mutuality of obligation as required by § 553(a) because the children were not indebted to MSUFCU, the bankruptcy court determined that non-bankruptcy law controls, since § 553 does not address setoff rights between non-debtors and their non-debtor depository institutions. It also clarified that the co-debtor stay does not apply solely when a co-debtor is on the debt, but also in non-recourse situations where co-debtors have "'secured' a consumer debt by pledging their interests in property as collateral." The court further reasoned that the Bankruptcy Code protects "and even favor[s] setoff rights in

a variety of ways" by treating claims subject to a setoff right as "secured" under § 506(a) and insulating them from most of the provisions of Title 11. The fact that Debtor and her co-debtor husband only stated that the CDs belonged to the children, not that the CDs were necessary to their reorganization, served to strengthen MSUFCU's argument for lifting the stay. Since the debtor's plan did not identify MSUFCU as a secured creditor and the debtors did not propose to pay the claim in full, the court inferred that the debtors intended to treat the claim as unsecured.

Despite "the unseemliness of shucking the 'Lil' Sweet Pea' accounts to pay the debts of the children's mother," the court concluded that cause existed to grant MSUFCU relief from the automatic stay under §§ 362(d) and 1301(c). However, the court alluded that it was up to parties to "pursue their state court rights, or not, as they see fit," and that nothing precluded the parties from agreeing to amend the plan "to accommodate the needs of all interested parties," including Debtors' children. In granting relief, the court declined to waive the fourteen-day stay that would otherwise apply under Fed. R. Bankr. P. 4001(a)(3).

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Tenth Circuit

Kirtland Federal Credit Union v. Shaw,
Adv. No. 17-1072-j, 2018 WL 1614156 (Bankr. D. N.M. Mar. 30, 2018)

The court denied the Debtor-defendant's answer to the creditor's Section 523 complaint because the motion was untimely or, alternatively, because the Court would decline to exercise its discretion to strike the Debtor-defendant's factual defense to the creditor's non-dischargeability claim. The court held that the Debtor-defendant's failure to schedule a potential claim in his bankruptcy schedules did not preclude him from raising fact-based issued in an effort to rebut the presumption under Section 523(a)(2)(C)(i)(I) of non-dischargeability of debt under Section 523(a)(2) regarding certain consumer debts. The court explained that the presumption against non-dischargeability is rebuttable, and that the Debtor-defendant had offered facts in his Answer that, if true, could rebut the presumption. The court further explained that it would not grant a motion to strike a defense as insufficient "unless the insufficiency of the defense is clearly apparent and no factual issues exist that should be determined in a hearing on the merits." Finally, the court rejected the creditor's reliance upon the doctrines of equitable and judicial estoppel.

***Lester v. Lofstedt*,**
No. 17-1255, 2018 WL 1566521 (10th Cir. Mar. 30, 2018)

A pro se litigant appealed the dismissal of his appeal by the district court from an adverse judgment of the bankruptcy court. The litigant failed to pay the appellate filing fee. The district court denied the litigant's motion to proceed in forma paupers (IFP) on appeal, directing him to pay the filing fee failing which his appeal would be dismissed. The district court dismissed the appeal without prejudice after the litigant failed to pay the filing fee. The litigant failed to pay the filing fee. The litigant's initial brief failed to address dismissal of his appeal, instead focusing on the substance of the underlying judgment of the bankruptcy court. Having failed to demonstrate payment of the filing fee, the Tenth Circuit affirmed dismissal of the appeal. The Tenth Circuit, like the district court, denied the litigant's request to proceed IFP on appeal because he failed to state a basis to challenge dismissal of the appeal by the district court.

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Eleventh Circuit

Cadwell v. Kaufman, Englett & Lynd, PLLC,
2018 WL 1550612 (11th Cir. Mar. 30, 2018)

The Eleventh Circuit held that an attorney violates 11 U.S.C. §526(a)(4) if he instructs a client to pay bankruptcy-related legal fees using a credit card. The district court concluded that Section 526(a)(4) only "prohibits a debt relief agency from advising the debtor to incur additional debt for invalid purpose" based upon the Supreme Court case *Milavetz, Gallop & Milavetz, P.A. v. United States,* 559 U.S. 229, 130 S.Ct. 1324, 176 L.Ed.2d 79 (2010).

Client brought a lawsuit against law firm that provided bankruptcy related advice by instructing him to pay his bankruptcy related legal fees using a credit card. The law firm moved to dismiss the suit for failure to state a claim based upon *Milavetz*. At issue here is subsection (a)(4), which provides as follows:

> A debt relief agency shall not ... advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer a fee or charge for services performed as part of preparing for or representing a

debtor in a case under this title.

11 U.S.C. § 526(a)(4).

In reading 11 U.S.C 523(a)(4) the Court found that there were three different ways to read this section. Because the statute contains no punctuation, the only logical interpretation is that the statute prohibits advice "to incur more debt" either (1) "in contemplation of" bankruptcy filing or (2) "to pay an attorney" for bankruptcy-related legal services.

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