The Cramdown

Newsletter for the Tampa Bay Bankruptcy Association

Editor-in-Chief, Ryan Yant
Carlton Fields
ryant@carltonfields.com

Spring 2024

PRESIDENT'S MESSAGE

by Megan Murray
Underwood Murray PA

It's Pro Bono Season! What season is that? It's every day.

Every day, individuals need pro bono assistance in the bankruptcy courts in Florida. Whether it is filing a pro bono chapter 7, assisting with a reaffirmation agreement, or simply helping update exemptions so a debtor can preserve her wild card exemption, the Pro Se Clinic can use less than one hour of your time to help members of the community. Are you interested? The TBBBA needs your help. Click here: https://www.tbbba.com/pro-bono-news/

Greater opportunities exist to help individuals in need, including prosecuting discharge of student loans under the new federal guidelines. Did you know that the Department of Justice has instituted new guidelines making it easier to discharge student loans? Adversary proceedings to discharge student loans can be lengthy and draining experiences for borrowers, and more importantly, expensive. Are you interested in helping? The TBBBA needs your help. Contact the Court: https://www.flmb.uscourts.gov/legal_assistance/volunteer_form.pdf

Individuals also need help defending or prosecuting adversary proceedings in their bankruptcy cases, including defense of nondischarbeabiity proceedings and prosecution of valuation claims. Are you interested in helping? Are you looking for trial or mediation experience? The TBBBA needs your help. Contact the Court: https://www.flmb.uscourts.gov/legal_assistance/volunteer_form.pdf

Don't have time to take up a full case or adversary proceeding, but want to provide an hour of time virtually? Click here: https://www.bankruptcyproseclinic.com/

Have you heard or CARE (Credit Abuse Assistance Education) and want to educate students and others on personal financial management, and throw fun swag into a crowd? Contact our Care Chair: sunderwood@underwoodmurray.com

We celebrate pro bono at the TBBBA, and I want to personally thank each and every one of you that volunteered. We include a list of volunteers in each Cramdown to give these champions the recognition they deserve. Not on the list? There are SO MANY opportunities to provide financial management and pro bono resources to our bankruptcy community. Each one of you, members of this bar, benefit from the pro bono assistance programs that are supported by our bar. Make it your mission to provide one hour of pro bono assistance to the bar this year before our annual year ends on June 30, 2024.

The Tampa Bay Bankruptcy Bar Association 2023-2024 Officers and Directors

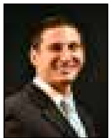
President
Megan Murray
Underwood Murray, P.A.
100 N. Tampa St., Ste. 2325
Tampa, FL 33602

Vice President
Nicole Noel
Kass Shuler, P.A.
1505 N. Florida Avenue
Tampa, FL 33602

Secretary
Ryan Reinert
Shutts & Bowen LLP
4301 W. Boy Scout Blvd. Ste. 300
Tampa, FL 33607

Treasurer
Angelina Lim
Johnson, Pope, Bokor, Ruppel & Burns, LLP
401 E. Jackson Street, Ste. 3100
Tampa, FL 33602

Chair/Past-President
Barbara Hart
Stichter Riedel Blain & Postler, P.A.
110 E. Madison Street, Ste. 200
Tampa, FL 33602



CLE Chair
Daniel Etlinger
Underwood Murray, P.A.
100 N. Tampa St., Ste. 2325
Tampa, FL 33602

CLE Chair
John Landkammer
Anthony & Partners, LLC
208 N. Franklin St, Ste. 2800
Tampa, FL 33602

Consumer
Dana Robbins
Burr & Forman, LLP
201 N. Franklin Street, Ste. 3200
Tampa, FL 33602

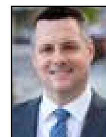
Technology
Matthew Hale
Stichter Riedel Blain & Postler, P.A.
110 E. Madison Street, Ste. 200
Tampa, FL 33602

Judicial Liaison
Nicole W. Peair
Office of the U.S. Trustee
501 E. Polk St., Ste. 1200
Tampa, FL 33602

Cramdown
Ryan Yant
Carlton Fields
4221 W. Boy Scout Blvd., Ste. 1000
Tampa, FL 33607

Community Service & Pro Bono
Dan Fogarty
Stichter Riedel Blain & Postler, P.A.
124 E. Madison St, Ste. 200
Tampa, FL 33602

Membership
Kristina Feher
Feher Law, P.L.L.C.
1275 66th Street N., #40042
St. Petersburg, FL 33743



CARE Committee
Scott Underwood
Underwood Murray, P.A.
100 N. Tampa St., Ste. 2325
Tampa, FL 3360

Social
Erik Johanson
Erik Johanson PLLC
3414 W Bay to Bay Blvd., Ste. 300
Tampa, FL 33629

In This Issue

Can a Judgment Creditor Obtain a Money Judgment for Fraudulent Transfer Under Section 56.29 of the Florida Statutes? 10

Unlocking Fairness: Exploring the 4 Key Changes to Florida's New Alimony Law 21

Pro Bono Volunteers Corner 26

Student Loan Sidebar 28

The Challenge and Opportunity of Financial Projections in Chapter 11 Plans 31

TBBBA CLE Recaps 35

Case Law Updates 38

Past Presidents

1988-1989 .... Leonard Gilbert (chairperson)

1988-1989 .... Don M. Stichter

1989-1990 .... Douglas McClurg

1990-1991 .... Richard C. Prosser

1991-1992 .... Robert B. Glenn

1992-1993 .... Thomas B. Mimms, Jr.

1993-1994 .... Edward M. Waller, Jr.

1994-1995 .... Harley E. Riedel

1995-1996 .... Roberta A. Colton

1996-1997 .... Jeffrey W. Warren

1997-1998 .... Michael P. Horan

1998-1999 .... Dennis J. LeVine

1999-2000 .... Russell M. Blain

2000-2001 .... John D. Emmanuel

2001-2002 .... Zala L. Forizs

2002-2003 .... Catherine Peek McEwen

2003-2004 .... John Lamoureux

2004-2005 .... Edwin Rice

2005-2006 .... David Tong

2006-2007 .... Herbert Donica

2007-2008 .... Shirley Arcuri

2008-2009 .... Donald R. Kirk

2009-2010 .... Luis Martinez-Monfort

2010-2011 .... Elena Paras Ketchum

2011-2012 .... Lara Roeske Fernandez

2012-2013 .... Keith T. Appleby

2013-2014 .... Stephenie Biernacki Anthony

2014-2015 .... Edward Peterson

2015-2016 .... Adam Lawton Alpert

2016-2017 .... Kelley Petry

2017-2018 .... Scott Stichter

2018-2019 .... Lori Vaughan

2019-2020 .... Jake Blanchard

2020-2021 .... Kathleen DiSanto

2021-2022 .... Noel R. Boeke

2022-2023 .... Barbara Hart

The TBBBA is Now Offering Annual Sponsorships

They are packed with value, including advertising in the Cramdown.
Please visit www.tbbba.com/be-a-sponsor/#join or email Matt Hale at mhale@srbp.com
to learn more about these great opportunities to support the TBBBA

Thank you to our current annual sponsors!

Champion Sponsors

Leadership Sponsors

Partnership Sponsors

CARLTON FIELDS

Available for Mediation and Arbitration

- Florida Supreme Court Certified Circuit Civil Mediator and Florida Qualified Arbitrator since 2004
- Approved mediator for the U.S. District Court, Middle District of Florida, and U.S. Bankruptcy Court, Middle District of Florida
- Immediate Past Chair of the Alternative Dispute Resolution Section of The Florida Bar
- Former bank loan officer

Kathleen S. McLeroy

Shareholder
813.229.4228
kmcleroy@carltonfields.com

Kathy's banking experience and MBA education enhance her nuanced understanding of the business and practical issues at play in legal disputes.

Kathy is an adept litigator, mediator, and arbitrator with expertise in resolving:

- Confirmation disputes
- Valuation disputes
- Discovery disputes including ESI disputes
- Commercial disputes in bankruptcy court, district court and state court

Recent recognitions:

- Member, Academy of Court-Appointed Neutrals
- BTI Client Service All-Stars (2023)
- Florida Super Lawyers, *Super Lawyers Magazine* (2012–2024)
- *The Best Lawyers in America*, Arbitration, Banking and Finance Law, Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, Commercial Litigation (2019–2024)

In-person and remote options available | www.carltonfields.com

The Cramdown is published two to four times a year. Advertising rates are as follows:

Full Page 7.875w x 9.75h	$400/single issue • $1,200/per year
Half Page 7.875w x 4.75h	$200/single issue • $600/per year
Quarter Page 3.75w x 4.75h	$100/single issue • $300/per year
Business Card 3.75w x 2.375h	$50/single issue • $150/per year

The Tampa Bay Bankruptcy Bar Association reserves the sole and exclusive right to exclude any advertisement from being published in the Cramdown Newsletter.

Pricing is based on camera-ready computer generated art being supplied by advertiser.

Art Specifications: ALL ART MUST BE 300 dpi or higher. Preferred file format is PDF. High resolution jpg is acceptable.

For information regarding advertising in *The Cramdown*, contact:

Ryan Yant
ryant@carltonfields.com
813.229.4925

or visit our website
tbba.com/cramdown-advertising

Graphic Design Services by:

"I make you look good"

813-389-3051
info@EricWestGraphics.com
www.EricWestGraphics.com

The TBBBA is proud to offer multiple CLE programs through out the year to its members!

Upcoming CLE Programs
(topics and speakers subject to change)

May 14, 2024
Mark Wolfson and Scott Underwood discuss post-confirmation jurisdiction issues

June 11, 2024
Professor Charles Nyce discusses Florida real estate insurance

Upcoming Consumer Lunch CLEs
(free to members, presented via Zoom)
May 7

Scott Underwood

Thomas Messana

Megan Murray

Celebrating 4 Years!

Melissa Sydow

Dan Etlinger

Adam Gilbert

www.underwoodmurray.com

2024

Anthony & Partners, LLC

Attorneys at Law

Providing high quality, results-driven legal representation to financial institutions and other sophisticated businesses in an efficient, cost-effective, and timely manner.

Standing (L to R) - *C. Paige Andringa, Andrew Ghekas, Townsend Belt, Nicholas Lafalce*
Seated (L to R) - *Barbara Luikart, John Landkammer, John Anthony, Stephenie Anthony, Frank Lafalce, Scott Stephens*
Not pictured - *Our newest Associate Attorney, Cameryn R. Lackey.*

100 S. Ashley Dr., Ste. 1600, Tampa, FL 33602
813-273-5616 • www.AnthonyAndPartners.com

ROY KOBERT

CERTIFIED MEDIATOR

CELL: 321-945-2888 | DIRECT: 813-273-5262

ROY.KOBERT@GRAY-ROBINSON.COM

Board certified in Business Bankruptcy Law for nearly 20 years

Practical approach to mediation that draws on 30+ years of legal experience

Certified Federal Court Mediator, Middle District of Florida

Florida Supreme Court Certified Mediator

Diplomate, National Academy of Distinguished Neutrals

Complimentary use of my Tampa mediation conference center

For more details please visit:

gray-robinson.com/docs/roy-kobert-mediator-bio.pdf

GRAYROBINSON

Can a Judgment Creditor Obtain a Money Judgment for a Fraudulent Transfer under Section 56.29 of the Florida Statutes?

By J. R. Boyd
Associate at Erik Johanson PLLC

Introduction

This article comments on the current circuit split between the Third and Fourth District Courts of Appeal relating to their competing interpretations of Section 56.29, *Florida Statutes* (Florida's proceedings supplementary statute). The disaccord is reflected in the Fourth DCA's 2021 opinion, *McGregor v. Fowler White Burnett, P.A.*[1] and the Third DCA's 2023 opinion, *Rosenberg v. United States Bank, N.A.*[2]

The McGregor court, held that a judgment creditor asserting a fraudulent transfer claim under Subsection 56.29(3) against a third party cannot obtain a money judgment under this provision.[3] Instead, based on the plain language of Section 56.29, the judgment creditor is limited to obtaining an order setting aside the transfer of identifiable personal property and directing the sheriff to levy on the transferred property.[4] The *McGregor* court further reasoned that while a money judgment may be available relief under Subsection 56.29(9), that provision requires a judgment creditor to assert fraudulent transfer claims by "supplemental complaint," which is necessarily subject to Chapter 726's statute of limitations.[5] Given that the judgment creditors in the *McGregor* case sought an award of money damages, the court determined that they were required to assert their claims under Subsection 56.29(9) and subject to Chapter 726.[6] Chapter 726's application was significant. Because the judgment creditors' fraudulent transfer claims accrued well after the four-year limitations period of Chapter 726, the Fourth DCA affirmed the trial court's grant of summary judgment to the third-party transferees.[7]

By contrast, the *Rosenberg* court (on virtually identical facts) expressly declined to follow the *McGregor* court's construction of Section 56.29.[8] Under the Rosenberg court's interpretation, judgment creditors can obtain money judgments against third party transferees under Subsection 56.29(3), and Chapter 726's statute of limitations does not apply to such claims. Instead, "the fraudulent transfer remedy in proceedings supplementary [(Subsection 56.29(3))] . . . extends for the life of the judgment . . . ."[9] Thus, based on virtually identical facts, the Rosenburg court affirmed the trial court's award of money damages to the judgment creditor based on a fraudulent transfer claim that would have otherwise been time barred under Chapter 726.[10]

A. Proceedings Supplementary

Section 56.29, Florida Statutes governs proceedings supplementary.[11] Proceedings supplementary "are special statutory proceedings" available only to judgment creditors. The post-judgment proceedings are conducted in the same proceeding in which the judgment was entered.[12] They allow judgment creditors "to avoid the necessity of . . . initiating an entirely separate [collection] action"[13] and serve the purpose of identifying and locating the judgment debtor's nonexempt property, including nonexempt property held by others.[14]

Claims against third parties are brought by a "Notice to Appear."[15] "The Notice to Appear must describe with reasonable particularity the property, debt, or other

continued on p. 11

1 332 So. 3d 481 (Fla. 4th DCA 2021).
2 360 So. 3d 795 (Fla. 3d DCA 2023).
3 McGregor, 332 So. 3d at 490-91.
4 Id. at 491.
5 Id. at 492 ("[T]he Plaintiffs argue that the inclusion of chapter 726 in subsection (9) impliedly excludes chapter 726 from the other subsections of section 56.29. This argument may be correct, but it is beside the point. The point here is that the Plaintiffs' claims for a money judgment for the alleged fraudulent transfers of personal property could not be brought under subsections (3)(b) and (6) but instead had to be brought under subsection (9).").
6 Id.
7 Id.
8 Rosenberg, 360 So. 3d at 799-800.
9 Id. at 801-802.
10 Id.
11 Fla. Stat. § 56.29.
12 Sanchez v. Renda Broadcasting Corp.,127 So. 3d 627, 628 (Fla. 5th DCA 2013).
13 Regent Bank v. Woodcox, 636 So. 2d 885, 886 (Fla. 4th DCA 1994).
14 Young v. McKenzie, 46 So. 2d 184, 185 (Fla. 1950).
15 Fla. Stat. § 56.29(2). The "Notice to Appear" is comparable to a summons and complaint in that in must put the third party on notice of what property the judgment creditor believes is subject to execution and give third parties an opportunity to defend the claim.

Section 56.29
continued from p. 10

obligation that may be available to satisfy the judgment, must provide such person with the opportunity to present defenses, and must indicate that discovery as provided under the rules of civil procedure is available and that there is a right to a jury trial as provided in [Section] 56.18."[16] In its responsive affidavit, the third party "must raise any fact or defense opposing application of the property described in the Notice to Appear to satisfy the judgment, including legal defenses, such as lack of personal jurisdiction."[17]

The particular subsections of Section 56.29 at issue in *McGregor* and *Rosenberg* are set forth, in relevant part, below:

> (3)(b) When any gift, transfer, assignment or other conveyance of personal property has been made or contrived by the judgment debtor to delay, hinder, or defraud creditors, **the court shall order the gift, transfer, assignment or other conveyance to be void and direct the sheriff to take the property to satisfy the execution. . . .**
>
> (6) The court **may order any property of the judgment debtor not exempt from execution or any property, debt, or other obligation due to the judgment debtor, in the hands of or under the control of any person subject to the Notice to Appear, to be levied upon and applied toward the satisfaction of the judgment debt. The court may enter any orders, judgments, or writs required to carry out the purpose of this section, including those orders necessary or proper to subject property or property rights of any judgment debtor to execution, and including entry of money judgments as provided in ss. 56.16-56.19 against any person to whom a Notice to Appear has been directed and over whom the court obtained personal jurisdiction irrespective of whether such person has retained the property**, subject to applicable principles of equity, and in accordance with chapters 76 and 77 and all applicable rules of civil procedure. Sections 56.16-56.20 apply to any order issued under this subsection.
>
> (9) The court may entertain claims concerning the judgment debtor's assets brought under chapter 726 and enter any order or judgment, **including a money judgment against any initial or subsequent transferee,** in connection therewith**, irrespective of whether the transferee** has retained the property. Claims under chapter 726 brought under this section **shall be initiated by a supplemental complaint and served as provided by the rules of civil procedure,** and **the claims under the supplemental complaint are subject to chapter 726 and the rules of civil procedure.**
>
> . . .

B. McGregor

1. Facts

In *McGregor*, the appellants obtained a judgment against Merco Group of the Palm Beaches, Inc. ("Merco") in excess of $1.9 million arising out of a failed condominium project and Merco's subsequent failure to refund the appellants' their deposits for condominium units.[18] Post judgment, in June 2008, Palm Beach County provided Merco with a $781,205.76 check, representing a refund for impact fees Merco paid for the failed project.[19] Merco did not deposit the check into its bank account.[20] Instead, Merco directed its law firm (the "Law Firm") to hold the funds in escrow pending further instruction.[21] Thereafter, the Law Firm disbursed the funds to itself to pay Merco's invoices and made one $511,267.85 disbursement to Ritter, Zaretsky, Lieber & Jaime, LLC ("Ritter").[22] By the end of 2009, the entire impact fee refund had been disbursed to the Law Firm and Ritter (collectively, the "Transferees").[23] In February 2019, the appellants moved

continued on p. 12

16 Id.
17 Id. Like the notice to appear can be thought of as a complaint, the responsive affidavit can be thought as an "answer" or other responsive pleading (e.g., a motion to dismiss).
18 McGregor, 332 So. 3d at 484.
19 Id.
20 Id.
21 Id.
22 Id.
23 Id.

Section 56.29
continued from p. 11

to commence proceedings supplementary against the Transferees.[24] The appellants alleged Merco fraudulently transferred the impact fee refund to the Transferees under Section 56.29(3) and sought money judgments against the Law Firm and Ritter for $781,205.76 and $511,267.85, respectively.[25] On the Transferees' motion, the trial court entered summary judgment in favor of the Transferees because (1) the appellants could not obtain a money judgment under Subsection 56.29(3) even assuming that they prevailed on the merits as that provision does not provide for an award of money judgments; (2) the appellants needed to proceed under Subsection 56.29(9) to obtain a money judgment; and (3) the appellants claims under Subsection 56.29(9) are subject to Chapter 726's four-year statute of limitations, which necessarily barred the appellants' fraudulent transfer claims.[26]

On appeal, the *McGregor* court, relying heavily on a prior opinion from the Bankruptcy Court for Southern District of Florida, affirmed the trial court. The *McGregor* court offered four persuasive justifications for its conclusion.

First, Subsection 56.29(2) requires the "Notice to Appear" "to describe either: **(1) any property of the judgment debtor not exempt from execution in the hands of any person**, or (2) any property, debt, or other obligation due to the judgment debtor which may be applied toward the satisfaction of the judgment."[28] Thus, a judgment creditor's claims brought by a notice to appear (like Subsection 56.29(3) fraudulent transfer claims) are necessarily to recover "identifiable" property in the hands of a third party. Because the impact fee refund was no longer in the possession of the Transferees, the appellants were required to proceed under Subsection 56.29(9).[29]

Second, dovetailing off its first point, the court reasoned that Subsection 56.29(3), standing alone, limits judgment

continued on p. 13

24 Id. at 485.
25 Id. It is worth noting that the amount allegedly transferred to the Law Firm would not have been the full impact fee refund because the Law Firm was merely in possession of the funds pursuant to its client's instructions. The proper amount to seek would have been the total of the invoices that it paid with the refund.
26 Id.
27 See In re British Am. Ins. Co. (BAICO), 607 B.R. 753, 757 (Bankr. S.D. Fla. 2019).
28 McGregor, 332 So. 3d at 491 (citing Fla. Stat. § 56.29(2)).

Erik Johanson PLLC is Proud to Support the TBBBA

DAL LAGO LAW
Mike Dal Lago, Esq.
Christian Haman, Esq.
Jennifer Duffy, Esq.
KNOWLEDGE. INTEGRITY. RESULTS.
BUSINESS LAW • BUSINESS RESTRUCTURING
BUSINESS BANKRUPTCY • CONSUMER BANKRUPTCY
(239) 571-6877
www.DalLagoLaw.com
Serving Naples, Fort Myers and Tampa

Section 56.29
continued from p. 12

creditors' relief to an order setting aside the transfer and "directing the sheriff to take *identifiable* personal property to satisfy the execution."[30] Simply put, no provision in that subsection authorizes an award of money damages if the fraudulent transferred property is no longer in the possession of the initial transferee.[31]

Third, Section 56.29(6)'s language that "[t]he court may enter any . . . judgments . . . required to carry out the purpose of this section, including . . . **entry of money judgments as provided in ss. 56.16-56.19 against any person to whom a Notice to Appear has been directed** . . . ." does not authorize the entry of a money judgment as a remedy for fraudulent transfer claims under Section 56.29(3).[32] The *McGregor* court rejected the argument that the legislature's use of the word "section" expanded the relief that may be granted under Subsection 56.29(3), reasoning that "section" would also include Subsection 56.29(9), which "specifically requires UFTA claims brought under section 56.29 to be initiated by a supplemental complaint and to be subject to Chapter 726's limitations periods."[33] Thus, under the canon of construction ejusdem generis, the more specific provisions of Subsection 56.29(3) should control.[34]

Fourth, the plain language of Subsection 56.29(6) only authorizes the award of money judgments "as provided" in Sections 56.16-56.19.[35] Section 56.16 through 56.19 authorize a court to enter an award of money damages to judgment creditors that successfully defend against third party claims to ownership of property "that the creditor believes is subject to execution as property of the judgment debtor."[36] That process was simply "inapplicable" in the *McGregor* case.[37]

Fifth and finally, the court noted that whether or not the "inclusion of chapter 726 in subsection (9) impliedly excludes chapter 726 from the other subsections of section 56.29," judgment creditors cannot seek an award of money damages under Subsection 56.29(3).[38] Reading Subsections 56.29(3) and 56.29(6) to authorize judgment creditors to obtain an award of money damages under Subsection 56.29(3) would "lead to an absurd result whereby section 56.29 would simultaneously provide for one cause of action for money judgments for fraudulent transfers subject to FUFTA's statute of repose (under 56.29(9)) and an identical cause of action for money judgments for fraudulent transfers that is not subject to FUFTA's statute of repose (under a combination of 56.29(2), 56.29(3), and 56.29(6))."[39]

C. Rosenberg

In *Rosenberg*, U.S. Bank, N.A. (the "Bank") obtained judgments against Maury Rosenberg for defaulting on personal guarantees of loans to his companies in 2015 and 2016.[40] Likewise, Rosenberg obtained a judgment against the Bank in 2013 for damages caused by its unsuccessful attempt to force Rosenberg's involuntary bankruptcy (the "2013 Judgment").[41] The day after obtaining the 2013 Judgment, Rosenberg transferred the 2013 Judgment to the Douglas Rosenberg 2004 Trust (the "Trust").[42] In April 2018, the Bank moved to commence proceedings supplementary against the Trust alleging that Rosenburg's transfer of the 2013 Judgment constituted a fraudulent transfer under Section 56.29(3).[43] The trial court entered summary judgment in favor of the Bank and awarded the Bank money damages in the amount of the 2013 Judgment.[44]

On appeal to the Third DCA, the trustee, relying on McGregor, argued that the fraudulent transfer provision in subsection 56.29(3) of the Florida Statutes (1) is subject to the four statute of repose set forth in the UFTA[45] and (2) does not allow for a money judgment as a remedy

continued on p. 14

29 Id.
30 Id. at 491 (citing Fla. Stat. § 56.29(3)).
31 Id.
32 Id. 491-92
33 Id.
34 Id.
35 Id. at 492.
36 Id.
37 Id.
38 Id.
39 Id.
40 360 So. 3d at 797.
41 Id.
42 Id.
43 Id. at 797, 798.
44 Id. at 797.

Section 56.29
continued from p. 13

for a fraudulent transfer.[46] The *Rosenberg* court rejected *McGregor*'s holding "that the fraudulent transfer remedy under subsection 56.29(3) did not extend for the life of the judgment" because the fraudulent transfer provision in Section 56.29(3) is separate and distinct from Chapter 726 fraudulent transfer claims.[47] The legislature's reference to Chapter 726 in Section 56.29(9) merely confirms that courts may entertain fraudulent transfer claims brought under Chapter 726 within proceedings supplementary, but it does "not merge the fraudulent transfer remedy in subsection 56.29(3) with the remedy in Chapter 726."[48] The court further reasoned that "subsection 56.29(3) maintains the characteristics unique to proceedings supplementary" – unlike claims under Chapter 726, a claim under 56.29(3) can only be brought by judgment creditors, is brought by motion, third party transferees are brought in to the proceedings by a notice to appear, and the burden of proof rests with the transferee.[49] As a result, the Court concluded, "it is not absurd to have different statutes of limitations for different remedies," and "[c]ertainly, there is nothing absurd in allowing judgment creditors in proceedings supplementary to have the benefit of a statute of limitations that extends for the life of the judgment."[50]

The *Rosenberg* court further rejected *McGregor*'s conclusion that a money judgment is not an available remedy for a fraudulent transfers under subsection 56.29(3) because "Subsection 56.29(6) expressly authorizes money judgments as remedies in proceedings supplementary in general, including claims for fraudulent transfers."[51] The court stated that that "Subsection 56.29(6) authorizes the court in proceedings supplementary to enter money judgments against 'any person to whom a Notice to Appear has been directed . . . whether [or not] such person has retained the property . . ." And "[a]t the same time, subsection 56.29(3) also expressly references 'Notices to Appear' as the means to bring into the proceeding the person to whom the debtor fraudulently transferred the asset."[52] Thus, the court concluded, "subsection 56.29(6)'s authority to issue money judgments against 'any person to whom a Notice to Appear has been directed' includes persons to whom a 'Notice to Appear' was directed under subsection 56.29(3)."[53] The Rosenberg court supported this interpretation based on the legislature's use of the word "this section," as opposed to subsection – meaning that its power to enter money judgments extended to fraudulent transfer claims under Subsection 56.29(3).

C. Analysis

Should the Florida Supreme Court weigh in on the issue, it is likely that the Court will concur with the *McGregor* court's analysis. As a threshold matter, the *Rosenberg* court misstated the *McGregor* court's holding:

> In *McGregor*, a judgment creditor attempted to use proceedings supplementary to void a debtor's transfer of funds to a trust account where the moneys were ultimately spent to benefit the debtor. Id. The Fourth District held that the fraudulent transfer remedy under subsection 56.29(3) did not extend for the life of the judgment but only for four years as applied to actions under the Uniform Fraudulent Transfer Act, Chapter 726, Florida Statutes. Id. at 488-90.[55]

continued on p. 15

45 The McGregor court did not hold that claims brought under Subsection 56.29(3) were subject to the FUFTA's statute of limitations. Supra, § C.
46 Rosenberg, 360 So. 3d at 799.
47 Id. at 801.
48 Id.
49 Id.
50 Id.
51 Id. at 802.
52 Id.
53 Id.

Advertise in the Cramdown!
Contact Ryan TODAY!
Ryan Yant
813.229.4925
ryant@carltonfields.com

Section 56.29

continued from p. 14

The *McGregor* court did not impose Chapter 726's statute of limitations to the judgment creditors' claims under Subsection 56.29(3). The court declined to give any opinion on whether Chapter 726's limitations period applied to claims under Subsection 56.29(3), expressly stating that this issue "is besides the point. The point here is that the Plaintiffs' claims for a money judgment for the alleged fraudulent transfers of personal property could not be brought under subsections (3)(b) and (6) but instead had to be brought under subsection (9)."[56] Because the claims had to be brought under Subsection 56.29(9) and that subsection incorporates Chapter 726's statute of limitations, the judgment creditors' claims were time barred.

Second, Subsection 56.29(3) provides a specific remedy – "the court shall order the gift, transfer, assignment or other conveyance to be void and direct the sheriff to take the property to satisfy the execution Under the cannon of construction *expressio unius exclusio alterius* (the expression of one thing, implies the exclusion of the other), the legislature's grant of one remedy to judgment creditors and exclusion of an award of money damages would support the *McGregor* court's holding. Moreover, in Subsection 56.29(9), the legislature specifically authorizes courts to "enter any order or judgment, including a money judgment against any initial or subsequent transferee . . . ."[57] The inclusion of the money damages remedy in Subsection 56.29(9) further indicates that had the legislature intended money judgments to be a remedy under Subsection 56.29(3), it would have expressly said so.

Third, Subsection 56.29(3) only applies to transfers of "personal property."[58] Under *Rosenberg*'s construction, judgment creditors with valid fraudulent transfer claims involving real property would receive less favorable

continued on p. 16

54 Id.
55 Id. at 799.
56 McGregor, 332 So. 3d at 492.
57 Fla. Stat. § 56.29(9).
58 Fla. Stat. § 56.29(3).

RENAISSANCE

CONSULTING & DEVELOPMENT LLC

Bankruptcy Financial Advisor and Accounting Services

Financial Expert Witness Testimony and Analysis

Tax Planning and Strategy

Turnaround Consulting

23110 SR 54, Ste 324, Lutz, FL 33549

(813) 435-5585

www.rencd.com

TURNING ADVERSITY INTO OPPORTUNITY

Section 56.29

continued from p. 15

treatment. For instance, if the transfers in either *Rosenberg* or *McGregor* had involved real property, there would have been no debate that the judgment creditors would have needed to assert their claims for a money judgment under Subsection 56.29(9). It is hard to see how the legislature would have intended to create a money judgment remedy under Subsection 56.29(3) exclusively for judgment creditors asserting a fraudulent transfer claim involving personal property – that would be an absurd result. As the *McGregor* court put it, "Section 56.29, taken as a whole, should not be read as allowing the Plaintiffs to pursue a money judgment under subsections (2), (3)(b), and (6)—independent of subsection (9)—simply because the alleged fraudulent transfers involve personal property."[59]

Fourth, the *Rosenberg* court's holding that Subsection 56.29(6) authorizes an award of money judgments in fraudulent transfer claims under Subsection 56.29(3) contradicts the plain language of statute. Notably, in its citation Subsection (6), the court omitted a qualifying a phrase to the court's power to enter money judgments in proceedings supplementary:

> Subsection 56.29(6) authorizes the court in proceedings supplementary to enter money judgments against "**any person to whom a Notice to Appear has been directed . . . whether [or not] such person has retained the property . . ." § 56.29(6), Fla. Stat. (emphasis added)**. At the same time, subsection 56.29(3) also expressly references "Notices to Appear" as the means to bring into the proceeding the person to whom the debtor fraudulently transferred the asset. § 56.29(3)(b), Fla. Stat. It follows that subsection 56.29(6)'s authority to issue money judgments against "any person to whom a Notice to Appear has been directed" includes persons to whom a "Notice to Appear" was directed under subsection 56.29(3). In fact, the Legislature added the term "Notice to Appear" in subsection 56.29(6)'s grant of authority to issue money judgments at the same time it added the reference to a "Notice to Appear" in subsection 56.29(3)'s fraudulent transfer provision. Ch. 2016-33 § 18, Laws of Florida. This text cannot be reconciled with Appellant's argument.[60]

The relevant portion of Subsection 56.29(6) states, "The court may enter any orders, judgments, or writs required to carry out the purpose of this section, including . . . entry of money judgments as *provided in ss. 56.16-56.19* against any person to whom a Notice to Appear has been directed . . . ."[61] Accordingly, based on the plain language of the statute money judgments can only be entered under Section 56.29 "as provided in Section 56.16 through 56.19." Those sections set forth the procedures for third parties, including those to whom a notice to appear has been served, to claim an ownership interest in the property that the judgment creditor contends is subject to execution and do not authorize an award of money damages for a fraudulent transfer claim asserted under Subsection 56.29(3).[62]

59 McGregor, 332 So. 3d at 491.
60 Rosenburg, 360 So. 3d at 802 (emphasis added).
61 Fla. Stat. § 56.29(6) (emphasis added).
62 See Fla. Stat. § 56.16 (authorizing "any person, including a person to whim a Notice to Appear has been issued pursuant to 56.29(2), . . . to obtain possession of the property" by posting a bond "in double the value of the goods claimed"); Fla. Stat. § 56.17 (providing that further attempts to execute on the property are stayed pending a determination on ownership of the property); Fla. Stat. § 56.18 ("If the verdict is in favor of the judgment creditor and it appears that the claim brought pursuant to s. 56.16 was interposed for delay, the judgment creditor may be awarded reasonable damages, not exceeding 20 percent of the value of the property claimed."); Fla. Stat. § 56.19 (stating that the judgment creditor is entitled to an award of damages from the bond posted under section 56.16 if the claimant does not prove an ownership interest in the property).

BURR & FORMAN

Results that matter.

Our Creditors' Rights and Bankruptcy attorneys develop strategic solutions that preserve and create value in the face of financial distress and uncertainty. We focus on the nuances of each relationship, building the right team from Burr's various practices to serve each client's unique needs. We integrate our diverse corporate and litigation experience to resolve complex restructurings, financings, and distressed and special situations transactions. Our creative approach to client service and passion for the work allows us to deliver results that matter.

Dana L. Robbins
T: (813) 367-5760
drobbins@burr.com

201 North Franklin Street, Suite 3200 | Tampa, FL 33602

No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.

burr.com

Full Service Financial Advisory Services

- Debt Advisory & Placement
- Expert Witness
- Restructuring
- Valuation
- Distresssed Note Purchase
- M & A Advisory

Joseph Caballero
Managing Partner
joecab@erocadv.com

Former C.E.O. Gulfshore Bank
Certified Public Accountant
Independent Board Member, Carter MultiFamily Funds

Edmund O'Carroll
Managing Partner
edo@erocadv.com

Former C.O.O. Gulfshore Bank
Former E.V.P., Senior Lender
Climate First Bank

Steve Stagg
Managing Partner
sstagg@erocadv.com

Former President, Florida Bank
Former C.F.O., Harrod Properties
Wharton M.B.A. (top 5% of class)
Certified Valuation Analyst

Ethical Return On Capital **EROCADV.COM**

McHALE, P.A.

www.McHalePA.com

FORENSIC ACCOUNTING | RECEIVERSHIPS
BANKRUPTCIES | LITIGATION SUPPORT
BUSINESS RESTRUCTURING & CONSULTING

239.337.0808 | www.McHalePA.com | 1601 JACKSON ST. STE. 200, FORT MYERS, FL 33901

B. RILEY ADVISORY SERVICES IS A PROUD SPONSOR OF THE TAMPA BAY BANKRUPTCY BAR ASSOCIATION

- APPRAISAL & VALUATION SERVICES
- COMPLIANCE, RISK & RESILIENCE SERVICES
- FORENSIC ACCOUNTING & LITIGATION SUPPORT
- HUMAN CAPITAL ADVISORY SERVICES
- OPERATIONS MANAGEMENT SERVICES
- RESTRUCTURING & TURNAROUND MANAGEMENT
- TRANSACTION SUPPORT

B. Riley Advisory Services provides specialty financial advisory services and solutions to complex business problems and board-level agenda items. Our advisory platform is comprised of an unprecedented assemblage of capabilities, and an experienced team with the deep industry knowledge and specialization to serve as a trusted partner at any stage of a company's business life cycle. We are a leading provider of valuation and appraisal services for asset-based lending applications. In addition, our team applies a unique mix of skill sets to address top-level, non-typical business challenges, such as planning and executing a major acquisition or divestiture, pursuing a fraud investigation or corporate litigation, or managing through a business crisis or bankruptcy.

Susan M. Smith
smsmith@brileyfin.com
(813) 675-3221

Jim Howard
jhoward@brileyfin.com
(239) 404-3339

Carol Fox
cfox@brileyfin.com
(954) 859-5075

B | RILEY *Advisory Services*

To learn more, visit us at www.brileyadvisoryservices.com

Boutique Firm Attention, Large Firm Execution

Tailored M&A Solutions for Special Situations

HEALTHY AND DISTRESSED M&A
BUSINESS VALUATION | ESOP

SCHCAPITAL.COM

Ken Mann, Managing Director | kmann@schgroup.com, 443-951-4834

Stephanie C. Lieb
Certified Mediator

101 E. Kennedy Blvd., Suite 2700
Tampa, FL 33602
(813) 227-7469
SLieb@trenam.com

- Board Certified in Business Bankruptcy Law by the American Board of Certification
- Florida Supreme Court Certified Circuit Mediator
  - Business Bankruptcy Cases
  - Consumer Bankruptcy Cases
  - Adversary Proceedings
    - Preferential and Fraudulent Transfer Actions
    - Discharge/ability Actions
  - Real Estate and Landlord/Tenant Litigation
  - Business Litigation

www.trenam.com

Real Estate Auction Specialists

Bankruptcy & Foreclosure

Solving your problems one case at a time with personal, professional service

Call for references or a confidential consultation

tranzon.com • 877-374-4437

Tranzon Driggers, Lic. FL Real Estate Broker, 101 E. Silver Springs Blvd, Suite 206, Ocala, FL

Drowning in Student Loan Debt?

We help obtain reasonable and affordable student loan payments with an end in sight

- Based in Tampa and serve all of central and western Florida
- We offer bankruptcy and non-bankruptcy solutions for private and federal student loans
- Prior trial counsel for Sallie Mae
- 28 years experience

Student Loan Solutions
Christie D. Arkovich, P.A.

Barbara C. Leon, Esq. • Christie D. Arkovich, Esq.

(813) 258-2808 • christie@christiearkovich.com
www.ChristieArkovich.com

Unlocking Fairness: Exploring the 4 Key Changes to Florida's New Alimony Law

By Kristina Feher
Managing Member of Feher Law, P.L.L.C.

Introduction

Florida's alimony law, Florida Statute §61.08, underwent a significant transformation on July 1, 2023, with the implementation of a revised alimony law. This law introduced changes that impact the way spousal support or alimony is determined, calculated, and awarded in divorce cases throughout the state. Most importantly, the new alimony law removed permanent periodic alimony. This article provides an in-depth look at the key aspects of Florida's new alimony law, offering insights into its implications and how it may affect individuals involved in divorce proceedings. To see the new law in its entirety, click HERE.

Four Key Changes

1. Elimination of Periodic Permanent Alimony: The new law removed a long-term spouse's ability to receive permanent periodic alimony. For long term marriages, previously, spouses were entitled to alimony on a permanent and indefinite basis. Under the new law, alimony for long term marriages is now restricted to 75% of the duration of the marriage. This means for spouses married for 40 years, the longest term of durational alimony would be (75% of 40) 30 years.

2. Presumptive Alimony Guidelines: Perhaps the most significant change introduced by the new law is the implementation of presumptive guidelines. These guidelines provide a formula for calculating alimony based on the duration of the marriage and the income of both spouses. This formula helps to standardize awards, making the process more predictable and consistent.

3. Alimony Duration: The intent behind the imposition of duration limits for different types of marriages was to ensure that alimony payments are proportionate to the length of the marriage, reducing the potential for prolonged financial support. The law outlines specific durational limits for different types of marriages. For short-term marriages (less than 10 years), alimony is generally limited to 50% of the length of the marriage. For moderate-term marriages (10 to 20 years), alimony is limited to 60% of the marriage's duration. For long-term marriages (over 20 years), alimony is limited to 75% of the marriage's duration.

4. Consideration of Marital Misconduct: The new law moves away from considering marital misconduct when determining alimony awards. Factors such as adultery and wasteful spending in the breakdown of the marriage are no longer taken into account. This shift towards a clearer no-fault approach promotes a more objective and fair evaluation of each case.

Three Types of Alimony Now Available (as of 2023)

1. Bridge the Gap Alimony – Bridge-the-gap alimony is to assist a spouse in making the transition from being married to being single. There must be legitimate identifiable short-term needs. The length of the alimony is for up to 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the recipient.

2. Rehabilitative Alimony – Rehabilitative alimony is to assist a party in establishing their own self-support. It can be used to redevelop previous skills or credentials or to acquire education, training, or work experience necessary to develop appropriate employment skills or credentials. In order to award rehabilitative alimony, you must have a specific and defined rehabilitative plan. The length of an award of rehabilitative alimony may not exceed 5 years.

3. Durational Alimony – The purpose of durational alimony is to provide a party with financial support for a specific period. The amount is the lesser of the amount determined to be the recipient's reasonable need or an amount not to exceed 35 percent of the difference between the parties' net incomes. Durational alimony may not be awarded for a marriage lasting less than 3 years.

Examples

• If parties to a marriage get divorced a year after marrying, a spouse would only be entitled to bridge the gap or rehabilitative alimony. Under bridge the gap alimony, a spouse may use the bridge the gap to assist with moving costs and/or deposits for first, last, and security for a new lease. Under rehabilitative alimony, a

continued on p. 22

Unlocking Fairness
continued from p. 21

spouse would be able to request support to assist with recertification of specific business/work licenses or to obtain training in a new field.

• If parties to a marriage get divorced after twelve (12) years, a spouse would be entitled to receive durational alimony. Under the new law, for a moderate term marriage, a spouse would be able to receive durational alimony for a term no longer than (60% of 12 years) 7 years, 2 months. For the amount, this amount would be limited to no more than the reasonable need of the recipient spouse or 35% of the difference of the parties' net income. If the paying spouse receives $3,000 net income per month, and the receiving spouse receives $2,000 per month, the alimony would be limited to $350.00 per month if this amount was less than the receiving spouse's reasonable need.

• If parties to a marriage get divorced after twenty-four (24) years, a spouse would be entitled to receive durational alimony. Under the new law, for a moderate term marriage, a spouse would be able to receive durational alimony for a term no longer than (75% of 24 years) 18 years. For the amount, this amount would be limited to no more than the reasonable need of the recipient spouse or 35% of the difference of the parties' net income. If the paying spouse receives $7,200 net income per month, and the receiving spouse receives $2,500 per month, the alimony would be limited to $1,645.00 per month if this amount was less than the receiving spouse's reasonable need.

Bankruptcy Considerations

The application of Florida's alimony law to bankruptcy cases will most likely be seen in Chapter 13 cases. Where a Chapter 13 Debtor is the payor of alimony, practitioners should review the duration and amount of the alimony. If the plan extends beyond the term of the alimony payment, an increase to both the Debtor's payment and distribution to creditors may occur. Additionally, any arrearages to alimony/spousal support would need to be paid in full over the duration of the Chapter 13 Plan.

Where a Chapter 13 Debtor is the recipient of alimony, practitioners should consider how much the alimony payment will affect the Debtor's ability to make payments on their Chapter 13 Plan. If the plan payment is all or nearly all of the Debtor's income and therefore plan payment, any modifications to the alimony will affect the Debtor's feasibility to confirm and complete their Chapter 13 Plan. Additionally, if the duration of the alimony ends prior to the completion of the Chapter 13 Plan, the Debtor should consider filing a Motion to Modify Chapter 13 Plan or draft a plan to take into consideration the change in income at the time of the conclusion of the alimony payments.

Conclusion

Florida's new alimony law, which went into effect on July 1, 2023, brings several important changes to the state's approach to spousal support in divorce cases. The introduction of presumptive guidelines, the removal of considerations of marital misconduct, and the establishment of durational limits all contribute to a more predictable system. While these changes may require adjustments for individuals navigating divorce proceedings, they ultimately aim to create a fair and balanced approach to alimony in the state of Florida. It is essential for those involved in divorce cases to consult with legal professionals who are well-versed in the new law to ensure they understand their rights and obligations under these revised regulations.

Member News & Announcements

Email all of your news to Ryan Yant to be included in the next issue!
RYant@carltonfields.com

Allan Watkins passed away on December 13, 2023, at the age of 80. He will be missed.

The Law Offices of Buddy D. Ford, P.A., has become the **Law Offices of Ford & Semach, P.A.**. The firm will continue to specialize in Chapter 11 reorganizations. Congratulations to Jonathan Semach!

Megan Murray of Underwood Murray spoke at the ABI Winter Leadership conference, presenting "Subchapter V: Cutting Edge Issues", which discussed various subchapter V issues.

The law firm of **Johnson Pope Bokor Ruppel & Burns LLP** has moved its Tampa office to 400 North Ashley Drive, Suite 3100, Tampa, FL 33602

The **Honorable Caryl E. Delano** has been reappointed to a four-year term as Chief Bankruptcy Judge for the Middle District of Florida.

The 48th Annual Alexander L. Paskay Memorial Bankruptcy Seminar was held on February 15-16, 2024, in Tampa. Presentations included "Chapter 11 Updates and Core Issues" regarding topics such as merchant cash advances, subchapter V issues, and Purdue Pharma, with panelists J. Ryan Yant, Matthew Hale, Dana Robbins, and Eyal Berger, moderated by Judge Colton; "Assignment for the Benefit of Creditors vs. Receivership vs. Subchapter V vs. Chapter, with panelists Eric Jacobs, Michael Markham, and Patricia Redmond, moderated by Judge Burgess; "Consmer Issues Potpourri" with Gavin Steward, Kelly Remick, Gregory Champeau, and Guy Van Baalen, moderated by Judge Geyer; "The Coerced, Vulnerable or Incapacitated Debtor: What are your Ethical Obligations?" with Edwin Boyer, Kristina Feher, and Chantel Wonder, moderated by Judge Delano; Appeals with Paul Avron, Ceci Berman, Steve Berman, and Judge James S. Moody, Jr., moderated by Judge McEwen; Creditor Remedies with Jeffrey Fraser, Ysuf Haidermota, and Lynn Sherman, moderated by Judge Robson; Adversary Proceedings and Evidence with Mariane Dorris, Judge Scott M. Grossman, Megan Murray, Jason Rigoli, Mark Wolfson, and Maria Yip; and a judicial roundtable moderated by Vincent Alexander, Kathleen DiSanto, Eric Jacobs, and Luis Rivera.

Share your news and accomplishments!

Email
Ryan Yant • RYant@carltonfields.com

5th Annual Clay Shoot

On March 1, 2024, the TBBBA held its 5th Annual Clay Shoot at Tampa Bay Sporting Clays, benefitting CARE Tampa, the Tampa chapter of Credit Abuse Resistance Education. CARE is a national non-profit comprised of professionals in bankruptcy, financial services, and business, who volunteer their time to educate young adults and others about the benefits of personal financial management and the consequences of credit abuse.
Thank you for everyone who participated for your support for this noble cause.

Thank You to our sponsors

ANTHONY & PARTNERS
ATTORNEYS AT LAW
Beverage Sponsor

SRBP STICHTER RIEDEL BLAIN & POSTLER
Lunch Sponsor

UNDERWOOD — MURRAY —
Breakfast Sponsor

MICHAEL MOECKER & ASSOCIATES, INC
Ammo Sponsor

5th Annual
TBBBA Clay Shoot
benefitting CARE Tampa

Schultz Reporting

Accurate • Prompt • Professional

Schultz Reporting has been providing court reporting and transcription services for over 30 years. We specialize in U.S. Bankruptcy Court audio/video transcription and 341 meetings. This company is supported by certified court reporters and transcribers with many years of experience in all forums.

We enjoy an excellent reputation in the industry for our integrity, dependability, and our outstanding work ethic. Expedite orders welcome.

Please visit our website at

www.TranscriptionInTampa.com

for an order form or call Gretchen Schultz at

(727) 808-1484.

Looking forward to working with you.

SRBP STICHTER RIEDEL BLAIN & POSTLER 50 YEARS

For five decades, Stichter, Riedel, Blain & Postler, P.A., has consistently provided unparalleled legal expertise to a broad spectrum of clients, spanning from individuals and small enterprises to large publicly owned corporations.

- Bankruptcy
- Insolvency Matters
- Out-of-Court Workout Arrangements
- Related Civil Litigation
- Commercial Transactions
- Real Estate

TAMPA
813-229-0144

Fort Myers
239-939-5518

Pensacola & Destin
850-637-1836

Visit SRBP.com or Schedule a Consultation 813-229-0144

Special Thanks! to our Pro Bono Volunteers

It is with immense gratitude and sincerest appreciation to announce that the TBBBA has received a $10,000 grant from the American College of Bankruptcy Foundation to run its Pro Se Pro Bono Clinic! Thank you American College of Bankruptcy Foundation for helping us keep the Pro Se Pro Bono Clinic running and for all the good you will help us achieve.

Please help us make this money count. Volunteer's needed! Contact Dan Fogarty (dfogarty@srbp.com) for details.

The Pro Se Assistance Clinic is looking for volunteers. We can't do it without you: The Clinic relies on volunteers to staff the hours every Wednesday between 2:00 pm and 4:00 pm.

New signup: In an effort to streamline the sign-up process for our Clinic volunteers, we have created a Sign Up Genius space for the remainder of the slots for the Clinic through July 2024. A clickable link, and a copy of the link, are included below. Hopefully this will open up the opportunities for those who have wanted to volunteer but have not been able to sign up. If you have any questions about signing up or volunteering, please contact Dan Fogarty or email tbbbaprobonoclinic@gmail.com. Please consider signing up for a slot.

Sign up for Wednesday **Pro Se Assistance Clinic** HERE

Thank you to our volunteers!

November
Kelly Petry
Peter Zooberg
Katelyn Vinson
Scott Stichter (x2)
Laura Gallo
Michael Barnett
Samantha Dammer (x2)

December
Kristina Feher
Peter Zooberg
Dan Etlinger
Dan Fogarty (x2)
Laura Gallo
Megan Klotz

January
Christopher Tancredo
Peter Zooberg
Katelyn Vinson
Karen Gatto
Dan Fogarty (x2)
Megan Klotz (x2)
Kelly Petry

February
Daniel Fogarty
Peter Zooberg
Katelyn Vinson
Mark Robens (x2)
Christopher Tancredo

Special Thanks! to our Pro Bono Volunteers

continued

Middle District Virtual Pro Se Clinic

The Middle District Virtual Pro Se Clinic also needs volunteers. Volunteers can set the dates and times they are available for a 30 minute consultation with a pro se client. We have both debtors and creditors seeking assistance. Please sign up to help at bankruptcyproseclinic.com. Thank you.

The TBBBA thanks the following volunteers, with a special thank you to Traci Stevenson, who has held an incredible 341 appointments since the beginning of 2023 through March 19, 2024!

Volunteer	Appointments Held
Traci K. Stevenson	341
Alec Solomita	37
Luis E. Rivera	42
Nina LaFleur	48
Michael Barnett	55
Kathleen DiSanto	33
Kristina Feher	15
Jonathan Sykes	19
Kevin Paysinger	12
Allison Moscato	9
Robert Branson	7
Alec Solomita	6
Thomas Adam	6
Lauren Stricker	5
Amy Leitch	3
Allan Wulbern	2
Liz McCausland	2
Nicole Carnero	1
Robert Branson	1
Andrea Anderson	1
Jonathan Tolentino	1
Eugene Johnson	1
Gregory A. Champeau	1

Legal Assistance Program

The Middle District Bankruptcy Court has created a Legal Assistance Program for low income debtors and is requesting that members of the bankruptcy bar volunteer to be assigned cases under the program. The goal is for a sufficient number of attorneys to volunteer so that each attorney is assigned to a case every 3 or 4 years.

The scope of representation is limited only to the following cases:

- Adversary proceedings relating to the debtor's entitlement to a discharge and/or the non-dischargeabilty of a debt.
- Contested matters concerning the debtor's claim to a homestead exemption and subsections 522(o)-(q) of the Bankruptcy Code.
- Representation of spouses and former spouses of debtors in connection with the dischargeability of obligations under marital settlement agreements or judgments for the dissolution of marriage.

Here is the link that explains the program, its procedures and volunteer form. A copy of the volunteer form can also be found at the end of this issue.

Please consider participating in this worthwhile program

CARE Corner

Credit Abuse Resistance Education (CARE) provides opportunities for volunteers to address middle school, high school and college age kids about the best practices and pitfalls regarding their credit in an attempt to start them off on the right path. It was created in 2002 by John C. Ninfo, II, retired bankruptcy judge, and now boasts approximately 55 nationwide chapters including 5 in Florida. The Tampa chapter in particular was launched in 2007 by Rodney May, retired bankruptcy judge, who has passed the torch to Judges Catherine Peek McEwen and Michael Hooi. If you have a connection with a school or youth organization who could benefit from a presentation (free and approximately 1 hour long), or, you would like to volunteer as a presenter please contact our Tampa Bay Bankruptcy Bar Association's Scott Underwood. You can also visit the chapter's website here.

By Christie Arkovich
info@christiearkovich.com

Many borrowers are beginning to experience payment difficulties which are expected to ramp up once the borrower's income is recertified for any income driven plans.

Recertification of Income: Anyone anticipating to recertify income this year may want to consider filing a separate tax return to exclude a spouse's income from the calculation of federal student loan payments under an income driven plan. You cannot amend a tax return to fix this and we are expecting potentially very high payments for joint filers.

On-Ramp Credit Protections: The On-Ramp protections against collection efforts and negative credit reporting are available for anyone who cannot make a payment. Interest will continue to accrue (unlike SAVE), but it will prevent any harm to a borrower's credit score. No credit will be given toward IDR during this time as well.

Practice Tip: *anyone anticipating to recertify income this year may want to consider filing a separate tax return to exclude a spouse's income under an income*

Upcoming Deadlines:
April 30, 2024: Revised deadline to consolidate loans to a Direct Consolidation Loan for the IDR Audit to take advantage of the earliest loan repayment date as a starting date for IDR. Will also allow PSLF credit for former FFEL loans.

June 30, 2024: Last day to enroll in PAYE. This is helpful for those borrowers with Grad loans for a 20-year forgiveness period rather than the 25 years under SAVE.
July 1, 2024: The remaining SAVE regulations go into effect. For anyone with undergraduate non-Plus loans, under SAVE, the payment will be reduced to 5% from 10% of discretionary income. For those with both undergrad and grad, it will become a weighted average depending upon how much debt is from undergrad vs grad.

July 1, 2024: The Department of Education is expected to have completed the IDR audit for all Direct Loans and given notice to borrowers.

September 1, 2024: Fresh Start ends – anyone in default now may immediately cure the default and any negative credit reporting and may obtain IDR credit during the COVID pause.

September 30, 2024: On-Ramp expires. Borrowers will not have to make up any missed payments, but anyone who is not in a payment plan of some kind, or approved forbearance/deferment program will begin to suffer from negative credit reporting and collection efforts including wage garnishment, withholding of tax refunds and offsetting of Social Security benefits.

The new attestation DOJ process for discharge of federal loans does not apply for:

- FFEL and Perkins loans (you can consolidate pre-filing to a Direct Loan to fix this)
- Judgments
- Health Education Assistance Loan ("HEAL") Loans which are covered by a different statute which requires an unconscionability standard.

There has been an increase interest in filing bankruptcy to discharge federal student loans using the new DOJ process; however, it is important to note that not all federal loans are subject to this attestation process allowing for discharge.

HEAL loans: 42 U.S.C. §292f(g) governs the discharge in bankruptcy of HEAL loans. The HEAL statute provides as follows:

(g) *Conditions for discharge of debt in bankruptcy*. Notwithstanding any other provision of federal or state law, a debt that is a loan insured under the authority of this subpart may be released by a discharge in bankruptcy under any chapter of Title 11, *only* if such discharge is granted—
(1) after the expiration of the seven-year period beginning on the first date when repayment of such loan is required, exclusive of any period after such date in which the obligation to pay installments on the loan is suspended;
(2) upon a finding by the bankruptcy court that the nondischarge of such debt would be unconscionable; and
(3) upon the condition that the secretary shall not have waived the secretary's rights to apply subsection (f) of this section to the borrower and the discharged debt.
Federal courts have consistently held that with respect to HEAL loans, the bankruptcy provision of the HEAL statute, 42 U.S.C. §292f(g), supersedes the general provision for student loans found at 11 U.S.C. §523(a)(8).

continued on p. 29

Student Loan Sidebar

continued from p. 28

Section 292f(g) requires three conditions to be satisfied before a HEAL loan may be discharged. First, seven years must have passed since the repayment of the loan became due, excluding any period during which the repayment obligation was suspended. Second, the bankruptcy court must make a finding that failure to discharge the debt would be unconscionable. Third, the secretary of the Department of Health and Human Services must not have waived certain setoff rights due from future federal payments for health services. These requirements are written in the conjunctive; all three requirements must be satisfied in each case. The case law establishes that "any debtor...seeking to discharge a HEAL loan...must meet the three requirements specified in §292f(g). Thus, a debtor's HEAL loans may be discharged only if all three of the specific conditions set forth by Congress for such discharge are met.

PSLF Reconsideration or Appeal: Once the IDR audit is completed by July 1, 2024, anyone who disputes the PSLF qualifying payment count can request a reconsideration here: https://studentaid.gov/manage-loans/pslf-reconsideration.

You should only submit a reconsideration request if you:

1. used the PSLF Employer Search and your employer's status is "ineligible," but you have additional information showing your employer should be eligible;
2. received a notification from the PSLF servicer that your employer is "ineligible," but you have additional information showing your employer should be eligible; or
3. disagree with the qualifying payment count you received in a letter from the PSLF servicer.

The information provided in this Sidebar does not, and is not intended to, constitute legal advice. For a 1-on-1 consultation, please email info@christiearkovich.com or call (813) 258-2808.

Lynn W. Sherman
Experienced Bankruptcy Mediator

(727) 820-3980
LSherman@trenam.com

More than 35 years of experience as a Bankruptcy Attorney

More than 10 years of experience as a Bankruptcy Mediator

Fellow, American College of Bankruptcy

www.trenam.com

BUSH | ROSS

ATTORNEYS AT LAW

Our Bankruptcy team is dedicated to the representation of corporate debtors, financial institutions and other lenders, creditors' committees, individual creditors, trustees and asset purchasers in all types of restructuring and insolvency matters, appeals, and mediations.

ADAM L. ALPERT
Shareholder
Title Agent
Former President of the Bankruptcy Bar Association

KATHLEEN L. DISANTO
Shareholder
Board Certified in Business Bankruptcy Law
Certified Circuit Mediator

LAURA B. LABBEE
Shareholder
Appellate Practice Group Member
Admitted to Practice in the US Court of Appeals for the 11th Circuit

G. WILLIAM NORRIS
Associate

H. BRADLEY STAGGS
Shareholder
Board Certified in Business Bankruptcy Law

JEFFREY W. WARREN
Shareholder
Board Certified in Business and Consumer Bankruptcy Law
Certified Circuit Mediator

1801 N. Highland Avenue, Tampa, FL 33602 | [813] 224-9255 | BUSHROSS.com

The Challenge and Opportunity of Financial Projections in Chapter 11 Plans

By Dr. Ruediger Mueller
Certified Turnaround Professional and Subchapter V Trustee, President, TCMI

While this article is written from the perspective of a Chapter 11 Sub V trustee, the principles discussed here apply to any size company in Chapter 11. The focus is financial projections and the fact that they are likely the most underused tool in a Chapter 11 bankruptcy case.

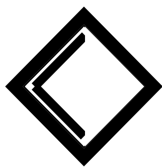
Within the confines of a Chapter 11 bankruptcy, financial projections are supposed to document the ability of the debtor to meet its obligations under the plan. While this is certainly important, it underestimates the power of projections for both the debtor and creditors.

In the Tampa Bankruptcy Court, financial projections typically cover a five-year period. Not coincidentally, five years is the typical historical time horizon for corporate strategies in the US. Indeed, financial projections in the context of a Chapter 11 plan are nothing but the numerical representation of the debtor's strategy going forward. For a company in Chapter 11, a strategy that shows how the organization will recover from its current problems is critically important. Not surprisingly, the five-year history of survival of debtors after a Chapter 11 bankruptcy is dismally low. Depending on the source, the percentage of successful survival beyond five years ranges anywhere from 10% to 40%. The success rate of Sub V bankruptcy is estimated to be higher, but given that the subchapter became effective only in February 2020, accurate statistics do not yet exist.

A major reason for the dismal intermediate and long-term success rate of reorganizations under Chapter 11 is the lack of a well-developed strategy which is reflected in financial projections in the plan. Indeed, anyone that studies plans under Chapter 11 and especially Sub V will agree that little attention is paid to the quality of the debtor's survival strategy and their financial projections.

While it may be understandable from the point of view of a debtor and its attorney, the development of a plan focuses primarily on the legal aspects of the bankruptcy including classes of creditors, payouts to different classes, and so on. This focus, unfortunately, is

continued on p. 32



Oscher Consulting, PLLC

Litigation Consulting Services
In the area of Accounting, Finance and Information Systems

- Forensic Accounting
- Expert Testimony
- Securities Fraud
- Bankruptcy Issues
- Family Law
- Business Valuation
- Financial Investigative Services
- Contract disputes

Steven Oscher, CPA, ABV/CFF, CFE
Lisl Unterholzner, CPA, ABV, CFE
Marie Edmonson, CPA, CFF, CFE
Carrie Macsuga, CPA, CFE
Janica Cashwell, CFE

One Tampa City Center, 201 N. Franklin St., Suite 3150, Tampa, FL 33602
Phone: (813) 229-8250 Fax: (813) 229-8674

Chapter 11 Plans

continued from p. 31

short sighted from both the debtor's and the creditors' perspective. Creditors need to ask the question as to how realistic their chances of collecting funds allocated under the plan are over a longer period of time; likewise, the debtor should pay attention to its ability to live up to the requirements of that plan.

It makes sense then to take a close look at how to develop sound financial plans that not only assure successful confirmation of the bankruptcy plan but are also realistic enough to assure the recovery and survival of the debtor in the intermediate and long term. The first question must focus not on the numbers but on the restructuring strategy on which the numbers are based before deciding which financial instrument to use for projections. This leads to the important question how to create projections and who is qualified to do it.

The single most important question to ask before financials are projected is how the business will operate going forward. It is this question that is most challenging for the debtor's principals and management. Usually, debtors proceed under the assumption that they will continue business as they have always done, blaming bankruptcy on unusual circumstances such as Covid. In more rare cases, a debtor will consider making some operational changes. In one case, for example, the debtor who maintained its own warehouse and the corresponding personnel switched to a fulfillment service that was far more cost effective and scalable. This was important given the highly seasonal nature of the debtor's business.

The preparation of a plan under Chapter 11 offers a debtor a unique opportunity to review its entire business and to make changes that can convert a plan from a burden required to emerge from bankruptcy to a plan that increases the potential for the long-term survivability and profitability of the organization. Unfortunately, few debtors and their counsel look at the plan in that way. In the context of smaller organizations, this is understandable. Debtors typically lack the experience and training to do what larger organizations refer to as an environmental analysis. Counsel for the debtor correctly focuses on the legal aspect of the bankruptcy process. Skilled restructuring consultants or, better, chief restructuring officers, are typically unaffordable. It is here that the Sub V trustee can play a major role. Although the majority of Sub V trustees are attorneys and not restructuring experts, they can and should ask the debtor critical questions to forces evaluating the following questions:

- What is the target market of the business?
- How large is that target market?
- Who are the direct and indirect competitors?
- What are the strengths and weaknesses of the debtor compared to their competitors?
- What are current days sales outstanding, how do they compare to competitors, how can they be reduced?
- How can the debtor overcome current weaknesses and capitalize on strengths going forward?
- What is the market outlook?
- What are operational issues that can be addressed in the short and intermediate term?
- Who is currently managing the business and are these individuals best qualified to lead the organization into the future?
- Are there other strategies, such as joint ventures, a complete sale, or a partial sale of the business that will be better for the debtor and its principals?

Guided by questions of this nature in close cooperation between debtor's counsel and the Sub V trustee, a far better outcome for the debtor may be possible.

Once these questions have been answered, attention can now turn to the preparation of the financial projections which will become an integral part of the plan. Here, once again, an opportunity to increase the debtor's chances of success is commonly missed. A plan is not something to be created and used simply as guide to pay creditors and then forgotten. It is, as pointed out above, the numeric representation of the organization's strategy going forward. Those familiar with business literature know that strategy experts and some of the most successful CEOs talk about strategy formulation, not about strategic planning. There's a fundamental difference between those two terms.

continued on p. 33

Chapter 11 Plans

continued from p. 32

Strategic planning refers to the process of creating a plan which then ideally is implemented. Strategy formation, on the other hand, sees the organization's strategy as a living document to be reviewed and carried forward on a regular basis. Chapter 11 plans, like any strategy, are based on the situation as it presents itself when they are created/revised. Situations however change. For example, a diesel mechanic that has a successful business and files for Chapter 11 Sub V because of bad financial management of the organization combined with employee theft may successfully emerge from bankruptcy and be on the way to recovery. Unfortunately, the freight market has recently collapsed. This is clearly evidenced by the bankruptcy filing of trucking company Yellow, once one of the nation's leading freight forwarders. For the diesel mechanic who derives the majority of income from maintaining and repairing diesel trucks, this means their business is largely dependent on the freight business, and consequently even the well-designed bankruptcy plan that was realistic at the time of its creation has to be changed because the conditions surrounding it have also dramatically changed.

Unfortunately, Bankruptcy Code only requires a plan at the time of confirmation. This author argues that plans, that is the organization's survival and growth strategies, and with that the financial plan that that is based on it, should be required to be carried forward once a year for the life of the bankruptcy. This plan review assures that at all times the organization looks at least five years into the future and that changes in the internal or external environment of the organization can be taken in to account. While it is unrealistic that the Bankruptcy Code will be changed in the foreseeable future to include such requirements, judges have the power to require status conferences that force such reviews. The pressure of a status conference review, even voluntary, will force the debtor and its management into a routine of not just day-to-day management but long-term planning, and with that more proactive management of the organization.

Let's now focus on the preparation of financial projections for the purpose of the plan. Accounting includes three major financial statements: balance sheet, profit and loss statement, and cash flow statement. The balance sheet shows assets and liabilities as well as owner equity at a specific point in time. For the purpose of projecting finances in the context of a bankruptcy plan the balance sheet is relatively useless although certain elements, specifically assets and liabilities, are included in other sections of the plan. The profit and loss and the cash flow statements can both be used in the plan as they show the anticipated performance of the debtor over a certain period of time. This performance should be shown monthly for the first year and annually thereafter. In general, the cash flow statement is preferable as it shows the actual cash available in any given period, which is required in order to assess the capability to make plan payments. Profit and loss statements can include non-cash items and items that have a cash impact in later periods, making them less than ideal for plan purposes. In many retail environments, for example, the difference may be minimal as a sale and the funds from the sale- actual cash or funds provided by the credit card processor - tend to be very close to each other. In business-to-business environments, on the other hand, there can be a significant amount of time between the actual sale and the availability of the cash to the business. Terms, such as 30 days net, are not uncommon and in some industries, terms can be significantly longer. This author has restructured construction companies where sales outstanding were close to 90 days. This period, commonly referred to as cash conversion cycle (CCC), can be significantly longer in some industries. An example would be sales of epoxy drawer slides commonly found in kitchen cabinets. The majority of these drawer slides are manufactured in Asia and sold to cabinet manufacturers in the USA. A highly successful distributor of over 50,000 hardware SKUs for the construction, furniture, and cabinet industries sources that component of their inventory from Asia. While this distributor had long-standing relationships with their Asian suppliers, the period of time that had passed from the moment when payments were made for the merchandise to the time that payment was actually received from customers exceeded 60 days. Smaller competitors with less well-established relationships with their suppliers in Asia would face cash conversion

continued on p. 34

Chapter 11 Plans
continued from p. 33

cycles that exceeded 120 days. These examples make a strong case for using cash flow statements rather than a profit and loss statement in financial projections, especially in the bankruptcy context when creditor obligations need to be met.

The question then becomes who is qualified to prepare financial plans? The debtor's management and principals are ultimately responsible for the implementation of the plan and as such they own the plan and the commitments that it contains. However, debtors, especially in smaller organizations often lack personnel with the skills needed to prepare five-year projections. One may be tempted to assume that larger organizations have financial personnel far better suited for these tasks. Anecdotal experience by this author, however, shows that often this is not the case as many large organizations have had to dismiss multiple CFOs who were unable to prepare such projections.

Smaller companies entering Chapter 11 may already have accountants or, if debtor and counsel do not consider existing accountants to be qualified, quickly apply for employment of more qualified accountants. Indeed, good accountants have an important role to play in the preparation of a good plan. They provide the raw material for plans based on past and current data. They serve as a starting point for the plan. However, accountants are trained to report and analyze what has happened; it is not necessarily part of their training to prepare projections, although good accountants can assist with the process. Nevertheless, accountants should not be charged with the preparation of the plan, only with assistance of the process. Debtor's management will ultimately be responsible for the implementation of the plan and therefore they need to own the numbers. Likewise, Sub V trustees, depending on their skill sets, can provide assistance in the preparation of the plan by pointing the debtor to plan templates and may even help in the preparation of templates, but they should NEVER get involved in populating any financial template or even making suggestions for projections. They need, however, to review any plan provided by the debtor with respect to its logical consistency and whether it is realistic and advise the court and parties in interest of any concerns they have with a specific plan.

In summary, financial projections in bankruptcy plans and the underlying restructuring and growth strategy designed to return the organization to profitability are a largely underutilized opportunity to support debtors in ensuring successful emergence from, and long-term survival of, bankruptcy. It is safe to argue that these opportunities, if taken advantage of, could be expected to increase the successful long-term emergence from bankruptcy.

TBBBA CLE Recaps

• On March 12, 2024, **Chief Judge Caryl Delano** presented on her State of the District 2024 to the Tampa Bay Bankruptcy Bar Association. The theme for the report was that "The Future Is Now" as the Judge covered a wide range of topics including an update on the Middle District judges and their extracurriculars, court staff, administrative rules, Bankruptcy Rules, local forms, local rules, and finally, some local statistics. Of particular note, the Middle District of Florida remains #1 in overall Subchapter V cases, with approximately 30% more cases than the next closest district.

• On November 14, 2023, **Jonathan Sykes** and **Kennan Smith**, both from Nardella & Nardella, PLLC, presented "The Pitfalls of Service and Notice in Bankruptcy" regarding service of process rules in adversary proceedings and contested matters, and notice rules in main bankruptcy cases, focusing on potential pitfalls. The presentation focused on service of process issues, including the applicability of Rules 7004 and 9014, timing, jurisdiction, and manner requirements.

• On December 5, 2023, **Luis Rivera** of Gray Robinson, P.A., presented "Don't Be a Fish Out of Water: Representing Creditors in consumer Bankruptcy Cases", which provided creditors' counsel with a refresher of the most common issues facing creditors in chapter 7 and chapter 13 cases, including what to look for when reviewing a chapter 7 debtor's claims of exemption, how to evaluate and attack a chapter 13 plan, general considerations in filing proofs of claim, and an overview of common claims and defenses in bankruptcy litigation.

• On December 12, 2023, Members of Cushman & Wakefield's distressed asset services team – **Jeff Sweeney, Andy Slowik, Rick Colon** and **Chris Lentz** – discussed whether the distressed CRE wave will hit Florida or not. The presentation focused on several contributing factors including interest rates, obsolescence in office space, overleverage in multifamily units, credit availability (or lack thereof) and impact of global events. To illustrate the issues the team utilized several Florida, and nationwide, case studies.

• On March 27, 2024, **Jeffrey Hakanson, Grace Anne Monning, Pam Arciola**, and **Acel Masar** spoke at Judge McEwen's Mentoring Program for New Bankruptcy Lawyers in a program titled "Hodge Podge for $400". Topics included FLMB's hotbed of student loan administrative charges, registration and noticing troubleshooting tips, Rule 26(a), throw away binders, and new Florida Bar rules regarding coverage counsel.

• On January 9, 2024, the Honorable **Judge Tiffany P. Geyer** moderated a panel of presenters consisting of attorneys, **John Anthony, Elizabeth Green** and **Steven Berman** as well as **Carol Fox** of B. Riley Advisory Services concerning nursing home insolvencies. The panelists discussed such topics as 1) statistics (objective reporting on the very steep increase in nursing home insolvencies), 2) causes (including changes in reimbursement rates, COVID-19, financial mismanagement and negligence litigation), 3) secured lending in the healthcare sector (including particular considerations), 4) negligence litigation (addressing the big picture along with related collection activity) and 5) nursing home reorganizations (the role of healthcare ombudsman, classification of unsecured claims, insider releases and valuation concerns).

• On January 23, 2024, **Chief Judge Delano** discussed updates impacting Chapter 13 practice including changes to Miscellaneous Fee Schedule; Official Forms 410A and 417A; Federal Rules of Bankruptcy Procedure 3011, 8003, 9006, new Rule 9038, effective December 1, 2023. The program also discussed Middle District of Florida updates on Local Rules, Negative Notice List and Administrative Orders as well as Model Chapter 13 Plan revisions and form orders confirming Chapter 13 Plan revisions.

• On March 5, 2024, **Hon. Roberta A. Colton** provided practice pointers in consumer cases. Topics included Applications to Employ Special Counsel – Contingency Fee Agreements (§ 328), Applications for Compensation, Motions for Reconsideration of Dismissal – Curing Deficiencies / Applicable Standards, Motions for Sanctions for Violation of the Automatic Stay and/or Discharge Injunction, Reaffirmations, Meet and Confer Guidelines for Discovery Disputes, Proofs of Claim, Practice under Fed. R. Bank. P. 3002.1, Tax Refunds, Motions to Extend Time to Files Schedules / Ch 13 Plan – 521(i) / FRBP 3015 – Applicable Standards, Repeat Filer Issues, MMM Issues, and Judge Colton's Regular Calendars.

• On February 13, 2024, **Judge Wendy DePaul, Nery Alonso** (Bay Area Legal Services), **Michael Barnett** (Bankruptcy Pro Se Clinic), and **Scott Toliver** (Crossroads for Florida Kids) presented a primer on legal pro bono and related professionalism topics impacting our Tampa Bay area. The course provided an overview of live and remote pro bono responsibilities in the greater Tampa Bay area and encouraged professional and technological development for attorneys by providing pro bono services to the community. Specifically, the course included: a) a definition of what constitutes pro bono work in Florida, b) a review of the pro bono requirements from the Rules Regulating the Florida Bar, c) a discussion of the benefits of pro bono work for the attorneys providing service, the underrepresented litigants, and the court system as a whole,

d) suggestions for pro bono opportunities in the Tampa Bay area, e) technology related advice regarding providing online and remote pro bono developed during the Covid 19 pandemic, f) a report of the “State of Pro Bono” throughout Florida, and, g) testimonials from attorneys and the community of their experiences providing pro bono services here in Tampa Bay.

Case Law Updates

reprinted with permission; originally published in the FLMB's January 2024 edition of Court Connect

By Bradley M. Saxton, Esq.
Lauren M. Reynolds, Esq.
Winderweedle, Haines, Ward & Woodman, P.A.
Kathleen L. DiSanto, Esq.
Bush Ross, P.A.

Eleventh Circuit Cases

PRN Real Estate & Investments, Ltd. v. Cole

85 F.4th 1324 (11th Cir. 2023)

Creditor filed multi-count complaint seeking to avoid and recover fraudulent transfers and objecting to the discharge of a chapter 7 debtor under section 727 of the Bankruptcy Code and to the dischargeability of its debt under section 523(a)(2)(A) of the Bankruptcy Code. The bankruptcy court entered summary udgment in favor of the debtor on certain counts of the complaint, and other counts proceeded to trial. The bankruptcy court ultimately entered judgment in favor of the debtor on all counts, and the district court affirmed.

The Eleventh Circuit affirmed on all counts except for the 523(a)(2)(A) claim (the "Husky Claim") and reversed and remanded in part with respect to the Husky Claim. The Eleventh Circuit affirmed rulings that the debtor's conduct did not amount to concealment of estate property or constitute false oaths necessary to bar discharge under section 727. The Eleventh Circuit adopted "to knowingly withhold information about property or to knowingly prevent its discovery" as the definition for concealment for purposes of section 727(a). The Court affirmed that the creditor lacked standing to pursue fraudulent transfer claims settled by the trustee.

As for the Husky Claim, the Eleventh Circuit reversed the rulings of the bankruptcy court and the district court, concluding that the creditor properl stated a claim under section 523(a)(2)(A), by alleging that the debtor obtained property by actual fraud and, that under state law, the debtor took on the transferor's debt when he fraudulently obtained such property. The creditor's nondischargeability claim was not preempted by the chapter 7 trustee's avoidance action or the settlement of that claim.

Sweetapple v. Asset Enhancement, Inc. (In re Asset Enhancement, Inc.)

87 F.4th 1271 (11th Cir. 2023)

Appeal of the bankruptcy court's contempt order arising from damages for violation of the automatic stay was timely even though the appeal was taken more than fourteen days after the order was entered. The contempt order awarded reasonable attorneys' fees and costs for the filing and prosecution of the contempt motion but did not

continued on p. 39

Support the Cramdown!
With advertising, submitting articles, or sharing your successes and personal achievements.
It's easy, just contact Ryan now!
ryant@carltonfields.com
813.229.4925

continued from p. 38

include the amount of the attorneys' fees and costs. The parties stipulated to the amount of attorneys' fees and costs, and the bankruptcy court entered a separate order awarding the attorneys' fees and costs (the "Fee Order"). The notice of appeal was filed within fourteen days of the entry of the Fee Order. The debtor moved to dismiss the appeal for lack of jurisdiction as untimely, and the district court dismissed the appeal.

Concluding that the appeal was timely filed, the Eleventh Circuit vacated the dismissal of the appeal and remanded to the district court to consider the merits of the appeal.

Bankruptcy Court Cases

In re Da Lugo Investment LLC d/b/a Oasis Sports Lounge

2023 WL 8369329 (Bankr. M.D. Fla. Dec. 1, 2023) (Colton, J.)

The debtor operated a hookah lounge in leased premises that were destroyed by a fire, which caused the debtor to file for chapter 11 bankruptcy. After the debtor rejected the lease, the landlord filed a claim for lease-rejection damages. In the claim, the landlord asserted a claim for the rent remaining under the lease. The claim stated that it "reserve[d] all claims against the Debtor that may exist as a result of the Tenant's intentional or negligent actions leading to a fire incident on the Leased Premises."

Later, the landlord amended its claim to assert a new claim for the debtor's alleged contractual duty to repair the leased premises even if it did not intentionally or negligently cause the fire. The court acknowledged that creditors are typically free to amend claims to cure a defect, describe the claim with greater particularity, or even plead a new theory on the facts set forth in the original claim. However, the court concluded that the contractual-duty-torepair claim was essentially a new claim that "was not even hinted at in the [original] proof of claim." Therefore, Judge Colton denied landlord's motion to amend the claim to the extent it asserted a new contractual-duty-to-repair claim.

In re Huckleberry Partners LLC

2023 WL 8453520 (Bankr. M.D. Fla. Nov. 22, 2023) (Robson, J.)

The liquidating agent objected to a claim by a creditor, an attorney seeking attorney's fees for the estate in connection with pre-petition services. The liquidating agent and creditor settled the claim objection and filed a motion to approve compromise. A dissociated member of the debtor, who was not a creditor, objected. After trial, Judge Robson approved the compromise, finding the settlement met the Justice Oaks factors as fair, reasonable, and within the range of possible litigation outcomes. Judge Robson explained she did not have to decide the numerous questions of law and fact raised by the objection party; instead, Judge Robson's task was to canvass the issues to see if the settlement fell below the lowest point in the range of reasonableness.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

Request to Attorneys to Volunteer for the Court's Legal Assistance Program

The Court has established a legal assistance program to enable low-income debtors (and in some instances their spouses and former spouses) to receive free legal services in the following types of cases:

● Adversary proceedings relating to the debtor's entitlement to a discharge and/or the non-dischargeabilty of a debt.
● Contested matters concerning the debtor's claim to a homestead exemption and subsections 522(o)-(q) of the Bankruptcy Code.
● Representation of spouses and former spouses of debtors in connection with the dischargeability of obligations under marital settlement agreements or judgments for the dissolution of marriage.

The Court requests that members of the bar volunteer for assignment under this program. The Court's goal is for a sufficient number of attorneys to volunteer so that each attorney is assigned to a case every three or four years.

The following procedures apply:

1. Applicants for legal assistance submit an application, including financial information, on a form available on the Court's website and at the Clerk's Office.

2. The application, and the applicant's bankruptcy schedules and statement of financial affairs, will be reviewed by the judge assigned to the adversary proceeding or contested matter.

3. Generally, the Court will grant an application if: (a) the applicant's current income does not exceed 200% of the current year's U.S. Department of Health and Human Services Poverty Guidelines for the applicant's family size, and (b) the applicant does not have sufficient assets to pay for the needed representation.

4. If the application is granted, the Court will enter an order appointing an attorney from the list of attorneys who have volunteered to provide representation in this program. Assignments will be made based upon Division in which the case is pending and the location of the attorney. If requested, the Court will provide the assigned attorney with pertinent papers and pleadings and the debtor's bankruptcy petition, schedules, statement of financial affairs.

5. If an attorney case wishes to decline the appointment to a case, the attorney, within seven days from the date of the appointment, may file and serve on the proposed client a motion for relief from the appointment order. If a motion is granted, the Court will enter another order of appointment.

6. Separate lists of volunteer attorneys will be maintained for each Division of the Middle District. A volunteer attorney seeking to discontinue participation in the program should send a letter to the Clerk of Court.

The Court urges you to volunteer for this important program. To volunteer, please complete the form below and return it to the Court. Thank you for your help.

Caryl E. Delano
Chief United States Bankruptcy Judge

Revised 10/1/2019

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

I wish to volunteer for the Court's Legal Assistance Program.

Name: ____
[Please print or type]

Address: ____

____

Telephone: ____
[Please include area code]

Division(s) in which I am willing to accept assignments (check all that apply): **__FM, __JAX, __ORL, __TPA.**

Please return this form by email to: flmb_probono@flmb.uscourts.gov

Revised 10/1/2019