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CONSUMER BANKRUPTCY CASES

Recent Developments in Consumer Bankruptcy Law
July 2017 – June 2018

United States Supreme Court
5th Circuit Court of Appeal
Texas Federal District Courts
Texas Bankruptcy Courts

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Table of Contents

Appeals 1
Attorney's Fees 6
Automatic Stay 9
Avoided Transfers/Fraudulent Transfers 11
Class Actions 12
Discharge 13
Dismissal 20
Disposable Income 21
Exemptions 22
Jurisdiction & Venue 25
Lien Validity 26
Miscellaneous 28
Plan Confirmation 30
Procedure 33
Proofs of Claim 34
Property of the Estate 36
Representation 38
Res Judicata & Estoppel 38
Sanctions 40
State Law Cases 40
Taxes 43

Appeals

United Healthcare Insurance Co. v. Holley, 2018 WL 775291 (5th Cir. 2018)
Appeals

The claim at issue arose from $2,065,115.87 in overpayments for medical services by Plaintiffs, which Plaintiffs alleged were induced by a misrepresentation of the scope of services performed by Defendants. Plaintiffs, in a letter to Defendants, detailed over 22 attempts to contact Defendants. Plaintiffs sent a pre-suit demand letter to Defendants, which Defendants ignored. Plaintiffs filed suit alleging various claims for fraud, negligent misrepresentation, money had and received, and unjust enrichment. Defendants were then served. Defendants answered neither the summons nor the complaint. The district court entered default judgement against Defendants and entered a final judgement for the full amount of the alleged overpayments. Plaintiffs posted Defendants' property for sale to satisfy the default judgment. Defendants consequently filed emergency motions to vacate the clerk's entry of default and to set aside the default judgment. At this point, Defendants filed for chapter 13 bankruptcy. After application of the automatic stay to the pre-existing suits, Defendants voluntarily dismissed the bankruptcy case. The district court lifted the stay and denied Defendants' motions to vacate the clerk's entry of default and to set aside the default judgment. Defendants then appealed these denials pursuant to Federal Rule of Civil Procedure 55(c) and 60(b).

On appeal, Defendants argued that (i) the district court erred in failing to consider whether they had a meritorious defense, and (ii) that the court erred in failing to conduct a hearing on damages. The Fifth Circuit affirmed the lower court's rulings because (i) the damages were a certain sum supported by affidavits; (ii) the damages were a sum that could be made available by computation; and (iii) Defendants' failure to appeal the default judgement and hold a hearing on damages until a year after the judgment was not an independent basis for reversal.

Matter of Beach v. Beach, 2018 WL 2251672 (5th Cir. May 16, 2018)
Appeals

Debtor formed a partnership with Creditor to drill for oil. After the partnership turned sour, Debtor sued Creditor to seize control of the partnership's assets. The jury found in favor of Creditor and Creditor was awarded $800,000.00 in damages. Debtor later filed for bankruptcy. Creditor filed a claim in Debtor's bankruptcy case and an adversary proceeding in which it alleged that Debtor was not entitled to a discharge of the state court damages under 11 U.S.C. § 727(a)(2) because he fraudulently transferred assets. Creditor's adversary proceeding was later joined with the bankruptcy Trustee's adversary proceeding that sought to avoid and recover the value of the same allegedly fraudulently transferred assets. Specifically, Creditor and the Trustee alleged that Debtor fraudulently transferred assets from a family trust to shield them from his creditors. The bankruptcy court ordered the parties into mediation, which led to a settlement between the Trustee and Debtor; Creditor received a recovery of 93% of its initial claims against Debtor's bankruptcy estate under the settlement, and Creditor could still pursue collection efforts on any unpaid amounts remaining on its claims. Creditor objected to the settlement, arguing that the settlement did not maximize value for Debtor's creditors.

The bankruptcy court approved the settlement, which Creditor appealed. The district court affirmed. The Fifth Circuit also affirmed under an abuse of discretion standard, finding the settlement to be fair and equitable and in the best interest of the estate because: Creditor cited no authorities to support its view that the bankruptcy court need not weigh the Trustee's probability of success in litigating its claims, nor that the probability of success was certain; the case's contentious history allowed the bankruptcy court to reasonably expect a protracted and expensive litigation; and because it was within the bankruptcy court's discretion to determine that the value of the transferred assets was speculative, making the settlement—which valued the assets at 30 cents on the dollar—a fair and equitable alternative to continued litigation.

In re Monge, 700 F. App'x 354 (5th Cir. 2017)
Appeals

Debtors engaged Counsel to pursue various qui tam actions. When Debtors ran out of money, they declared bankruptcy. Counsel sued Debtors for unpaid legal fees, but also continued to pursue the qui tam actions. When Debtors learned that Counsel was still pursuing the actions, they countersued in bankruptcy court, arguing that such action was a violation of the automatic stay. Counsel argued that the retainer agreement required arbitration of all of Debtors' claims. The bankruptcy court issued three orders, one of which held that Debtors' claim against Counsel for violation of the automatic stay could not go to arbitration. The bankruptcy court accordingly denied Counsel's motion to stay pending arbitration.

Counsel appealed the three orders to the district court, but before the district court ruled on the appeal the bankruptcy court issued a final judgment. In a separate action, Counsel also appealed that final judgment. The district court consolidated the two appeals, dismissed the appeal containing the three interlocutory orders, and rendered final judgment in that action. The district court stated that it intended to consider those interlocutory orders in the separate action with the final judgment, which remained pending. Counsel appealed the dismissed action to the Fifth Circuit. The Fifth Circuit held that, although a bankruptcy court's decision to deny a motion to stay is appealable and the district court had rendered final judgment, the district court had not had an opportunity to consider the issues because it had consolidated the cases. As such, dismissal was consistent with the statutory scheme of district court appellate review of bankruptcy decisions.

In re Dorsey, 870 F.3d 359 (5th Cir. 2017)
Appeals/Proofs of Claim

The bankruptcy court entered orders reopening Debtor's chapter 7 case in order to allow student loan Creditors to move for leave to file proofs of claim. Debtor appealed. While the appeal was pending, the bankruptcy court entered judgment against Debtor in a pending undue hardship proceeding, prompting Debtor to amend his statement of issues and designation of record on appeal to include that decision. The district court affirmed the bankruptcy court's order and judgment, and Debtor appealed to the Fifth Circuit. The Fifth Circuit affirmed the bankruptcy court and district court, finding that the notice of appeal and amended statement of issues from the order reopening the case for the filing of student loan proofs of claim did not qualify as a notice of appeal from the order later entered in the separate undue hardship proceeding. The

Fifth Circuit also found that the bankruptcy court did not abuse its discretion in reopening Debtor's case because such an action served to establish Creditors' standing in the adversary proceeding and enabled Debtor, if he prevailed, to obtain a discharge against those Creditors' claims. The Fifth Circuit finally found that granting Creditors leave to file proofs of claim was not an abuse of discretion because Creditors were not required to file proofs of claim in Debtor's main bankruptcy case because it was a no-asset chapter 7 case.

Feuerbacher v. Wells Fargo Bank Nat'l Ass'n, 701 F. App'x 297 (5th Cir. 2017)
Appeals/Res Judicata & Estoppel

Appellants initially sued Appellees in state court seeking to vacate a bankruptcy court order permitting Appellees to foreclose on Appellants' home. After the case was removed to federal court on the basis of federal question and diversity jurisdiction, Appellants amended their complaint to eliminate their federal claims and add three additional defendants, including two non-diverse parties. Thereafter, the district court dismissed the non-diverse defendants and denied Appellants' motion to remand the case to state court. Appellants filed a final complaint alleging breach of contract, unjust enrichment, a claim to quiet title, and other claims. Appellees filed a joint motion for summary judgment and the district court granted the motion on judicial estoppel grounds.

Appellants appealed to the Fifth Circuit, arguing that: the district court erred in granting Appellees summary judgment on the basis of judicial estoppel because their quiet title and breach of contract claims did not accrue until after the bankruptcy proceeding and thus their failure to disclose these claims to the bankruptcy court could not serve as a basis for judicial estoppel; judicial estoppel is inapplicable because the proceeds of any claim trace to exempt property; applying judicial estoppel is inappropriate because a lien cannot be estopped into existence; and that the district court erred by dismissing the non-diverse defendants. The Fifth Circuit affirmed the district court's ruling, finding that Appellants' quiet title and breach of contract claims had accrued at the time of the bankruptcy proceeding, and, because Appellants failed to disclose these potential claims to the bankruptcy court, the district court did not abuse its discretion in applying judicial estoppel and granting Appellee's summary judgment. The Fifth Circuit also found that the district court did not abuse its discretion in dismissing the non-diverse defendants and retaining jurisdiction over the case because the district court applied the correct legal standard and none of the underlying fact findings were clearly erroneous.

O'Grady v. Birenbaum (In re Birenbaum), 691 F. App'x 155 (5th Cir. 2017)
Appeals

Appellant, a neurosurgeon, lent Debtor, an oncologist, $1,000,000.00 in exchange for the option to purchase art owned by Debtor for an additional $150,000.00 or to receive his original loan amount plus an additional $150,000.00. The loan agreement contained a representations and warranties clause claiming that Debtor and his office owned the art free and clear of all debts and encumbrances. Appellant executed a security agreement purporting to create a lien on all of Debtor's art covered by the loan agreement; Appellant failed to record or perfect this lien. After Debtor and his office failed to pay Appellant pursuant to the loan agreement, Appellant sued Debtor and his office in Texas state court and obtained injunctions against them. While the state

court action was pending, Debtor filed for chapter 7 bankruptcy. Appellant then intervened in Debtor's bankruptcy case and filed a proof of claim. Appellant filed an adversary complaint seeking a determination that the money owed to him was excepted from discharge due to fraud. Appellant argued that the art covered by the loan agreement was actually subject to a lien in favor of another party and that Debtor sold some of that art, facts that were not disclosed to Appellant. The bankruptcy court overruled Appellant's objection and the district court affirmed. Upon review, the Fifth Circuit found no clear error in the bankruptcy court's rejection of Appellant's claims based upon the findings of the bankruptcy court, the applicable law, and the arguments of the parties. Consequently, the Fifth Circuit affirmed the judgment of the district court and the bankruptcy court.

Hoa Dao v. Sommers, 2018 WL 1139157 (S.D. Tex. Mar. 1, 2018)
Appeals

Debtor filed for chapter 13 bankruptcy in January 2015. The main asset listed in Debtor's Schedules was a building encumbered at the time by a mortgage owned by Lender. Debtor also listed two pending lawsuits as assets in his petition. Lawsuit 1 involved the Debtor filing suit against Defendant 1 seeking monetary damages for insurance claims. In Lawsuit 2, Debtor filed suit against Defendants 2 seeking the release of escrowed funds held in connection with a prior contract. Debtor also filed a *lis pendens* encumbering the building in the Harris County property records.

Debtor failed to sell the property within the court-ordered 6 month period and the automatic stay was lifted. Upon Lender's attempt to foreclose, Debtor filed lawsuit against Lender to enjoin the foreclosure. In August 2015, Debtor converted her chapter 13 bankruptcy case to a chapter 7 bankruptcy case. The appointed Trustee filed an emergency motion to approve a compromise with Lender and Defendant 1 because Lender received a time-sensitive offer to sell the property, but required the pending litigation and *lis pendens* encumbrances to be lifted. The bankruptcy court granted the motion and approved the global compromise between the Trustee, Defendant 1, and Lender to lift the encumbrances. Thereafter, Debtor moved for the bankruptcy court to reconsider its approval of the compromise since she and her children had property interests in the property and Lawsuit 1. The bankruptcy court denied Debtor's motion and approved the compromise, resolving Lawsuit 2 in the process. Debtor appealed and the bankruptcy Trustees filed a motion to dismiss the appeal on the basis that the appeal was equitably moot. The court granted the motion to dismiss the appeal because neither Debtor nor her children ever sought a stay of the bankruptcy court's orders approving the two compromises, the *lis pendens* on the property had been removed, the property had been sold, and the interests of the new owner would be affected if the court were to overturn the compromises as requested.

Phillips v. Tow, 2017 WL 3480680 (S.D. Tex. Aug. 14, 2017)
Appeals/Procedure

Debtors appealed a series of orders issued by the bankruptcy court denying their motion to remove the Chapter 7 Trustee and granting in part and denying in part the Trustee's Counsel's application for compensation and reimbursement. Debtors objected that the bankruptcy court erred by issuing the orders, that the Trustee's Counsel was overpaid for unnecessary work, that

the Trustee failed to comply with Federal Rules of Bankruptcy Procedure, and that the Trustee illegally sold Debtors' property. The bankruptcy court interpreted the objection as a notice of appeal and struck it as an untimely appeal. Debtors subsequently appealed the bankruptcy court's decision to strike the objection. The district court affirmed the bankruptcy court's striking of the objection as an untimely notice of appeal because the bankruptcy court's orders were final, leaving Debtors with only an appeal as recourse. The district court also affirmed the bankruptcy court's determination that the notice of appeal was untimely under Federal Rule of Bankruptcy Procedure 8002.

Mainoo v. Comerica Bank (In re Mainoo), 2017 WL 2709737 (N.D. Tex. June 22, 2017)
Appeals/Automatic Stay

Debtor purchased real property through the use of a Note made payable to Creditor Bank and secured by a Deed of Trust. Later, Debtor filed for chapter 13 bankruptcy and disclosed his interest in the property but failed to disclose that the property was subject to Creditor Bank's lien. Creditor Bank failed to file a proof of claim in Debtor's bankruptcy case and to object to Debtor's chapter 13 plan, which treated it as an unsecured creditor. Three years after the plan's confirmation, Creditor Bank filed a motion in bankruptcy court to terminate the automatic stay, asserting that it was a secured creditor. Debtor countered that the stay should not be lifted because the lien was void and unenforceable, that his signature on the Deed of Trust was forged, that Creditor Bank waived its right to enforce the lien by failing to object to the plan, and that the statute of limitations had expired. The bankruptcy court granted Creditor Bank's motion, and Debtor appealed.

On appeal, the district court found that: the bankruptcy court's determination that Debtor had signed the Deed of Trust was not clearly erroneous because Debtor's forgery testimony was inconsistent and lacked credibility, and because the Deed of Trust was notarized; the bankruptcy court did not award Creditor Bank a double recovery because a suit may be maintained on a Note secured by a lien without enforcement of the lien, and, after judgment, another suit may be brought to foreclose the lien at any time before the debt is barred by a limitation; and that the bankruptcy court correctly applied the statute of limitations because Creditor Bank unilaterally abandoned the acceleration of the Note, which caused the statute of limitations to cease to run.

In re Brown, 2018 WL 2425968 (Bankr. W.D. Tex. May 23, 2018)
Appeals/Plan Confirmation

Debtor filed a chapter 13 plan proposing to pay creditors 100% over 60 months, despite having the disposable income to pay creditors in full before 60 months. Appellee argued that the circumstances of the case required the bankruptcy court to impose conditions on confirmation of Debtor's plan if Debtor wanted the plan confirmed with a 60-month payout to unsecured creditors instead of sooner. The bankruptcy court determined that Debtor could choose between two options as a condition of confirming his plan: keep the plan term at 60 months on the condition that he could not reduce the plan payment to unsecured creditors to less than 100%, or pay the full amount of his disposable income into the plan and be allowed to modify the plan after payment of unsecured creditors in full. After Debtor chose condition one, Debtor requested for certification to the Fifth Circuit on the issue of whether the bankruptcy court exceeded its

authority when it conditioned confirmation of his plan on his willingness to waive or limit express rights conferred on debtors by 11 U.S.C. § 1325(b)(1)(A).

The bankruptcy court found that Debtor's request should be denied because: the issue did not implicate the Fifth Circuit's jurisdiction nor did any circumstances show why the bankruptcy court's conditions required an appeal to not begin at the district court; no Fifth Circuit case law controlled as to the issue of the imposition of conditions in connection with confirmation of a chapter 13 plan, and so no conflict existed for the Fifth Circuit to resolve; and no evidence existed that the conditions lowered the success rate of Debtor's bankruptcy case because the second condition resolved any such risk.

In re Odam, 2018 WL 1070864 (Bankr. N.D. Tex. Feb. 22, 2018)
Appeals

Debtor sought to proceed *in forma pauperis* on his appeal of two bankruptcy court orders holding that he submitted two insufficiently funded checks in the amount of $222,191.00 to the Chapter 7 Trustee as a way to pay off Creditor's lien on 17 properties that Debtor owned. The bankruptcy court certified in writing that Debtor's request to proceed *in forma pauperis* was proposed in bad faith because Debtor wanted the district court to waive all fees associated with his appeals while claiming that he submitted valid checks to the Trustee for payments of Creditor's claims. Accordingly, the bankruptcy court certified that Appellant's appeal should be dismissed under 28 U.S.C § 1915(e)(2).

Attorney's Fees

Lejeune v. JFK Capital Holdings, L.L.C. (In re JFK Capital Holding, LLC), 880 F.3d 747 (5th Cir. 2018)
Attorney's Fees/Appeals

The bankruptcy court reduced the fees for the Chapter 7 Trustee's attorney on the basis that some of the fees were unreasonable. The court then reduced the Trustee's uncontested fee application from 7% to 3% of the money distributed. The Trustee appealed. After engaging in an extensive analysis of 11 U.S.C. §§ 326 and 330, the district court vacated and remanded the bankruptcy court's order because it failed to provide a sufficient explanation for its reduction. The Fifth Circuit rejected the district court's statutory interpretation of 11 U.S.C. §§ 326 and 330 because it determined that §§ 326 and 330 treat the Trustee's commission as a fixed percentage. Specifically, the Fifth Circuit found that (i) the commission-based framework established by Congress facilitates a more efficient chapter 7 trustee compensation structure in courts by placing the burden on the Trustee to avoid wasting resources; (ii) § 326 is both a maximum and a baseline presumption for reasonableness in each case; and (iii) § 330 only allows a reduction or denial of compensation in "exceptional" circumstances.

Rozelle v. Branscomb, P.C., 2017 WL 3301511 (W.D. Tex. July 31, 2017)
Attorney's Fees/Representation

Two Debtors and a third heir inherited real property. Debtors borrowed $8.2 million from

Lender to buy out the third heir and to pay property taxes on the inherited property. Debtors failed to repay the loan by the date of maturity, prompting a posting of the property for a non-judicial foreclosure sale by Lender. To prevent the sale, Debtors filed for chapter 11 bankruptcy. Under their chapter 11 plan, Debtors were required to satisfy the debt to Lender within 18 months or else subject the property to another foreclosure sale; Debtors failed to sell the property or pay the debt, prompting another foreclosure sale. Debtors filed a second chapter 11 bankruptcy to avoid the second foreclosure sale, which prompted the bankruptcy court to appoint a Chapter 11 Trustee, legal representation for the Trustee, and a real estate broker to sell the property. The bankruptcy court ultimately approved the sale of the property free and clear of all interests. Debtors alleged that the sale was procured through fraud and should be set aside pursuant to Federal Rule of Civil Procedure 60, which the bankruptcy court dismissed. Debtors' bankruptcy case was subsequently converted to chapter 7.

On appeal, Debtors argued that the bankruptcy court erred in allowing the sale of the property, for approving the fees of the Trustee's attorneys, litigation counsel for the estate, and the real estate broker connected to the sale, and for sanctioning Debtors' attorneys for misconduct because the sale was completed pursuant to a fraudulent scheme that sold the property for millions less than its actual worth. The district court affirmed the bankruptcy court's orders, finding that Debtors failed to provide any evidence supporting their allegations of fraud.

Pirani v. Baharia (In re Pirani), 2018 WL 1614162 (Bankr. E.D. Tex. March 30, 2018)
Attorney's Fees

After a lengthy litigation, the Fifth Circuit remanded this case to the bankruptcy court to determine the attorney's fees for Creditors 1 and 2 and the percentage of requested fees attributable to a claim for breach of a settlement agreement. Debtor objected to an award of expenses and sought a reduction in the amount of the requested attorney's fees. Debtor also objected that (i) the fees were not segregated between claims, (ii) counsel for Creditors 1 and 2 failed to exercise reasonable billing judgment, and (iii) the fees were not adequately documented. In regards to Creditor 1's attorney's fees, the bankruptcy court held that (i) the duty to segregate fees between two counterclaims related to breach of a settlement agreement brought by Creditors 1 and 2 had been met because no fees were related to the breach of fiduciary counterclaim, (ii) segregation of the fees charged to each Defendant was not required or even possible because of their level of intertwinement, and (iii) counsel for Creditors 1 and 2 exercised reasonable billing judgment because they did not bill for all of the time spent and the work was necessary to the client. Concerning the appellate fees for Creditor 1, the bankruptcy court held that the expenses were reasonable and necessary and could be awarded to Creditor 1 under the terms of the settlement agreement. The bankruptcy court also held that Creditor 2 established that it incurred reasonable appellate attorney's fees arising out of Debtor's breach of the settlement agreement. The bankruptcy court found the fees reasonable because counsel for Creditor 1 and 2 exercised reasonable billing judgment by not billing for all time spent and the work was necessary to the client.

In re Standley, 2018 WL 1457242 (Bankr. S.D. Tex. Mar. 20, 2018)
Attorney's Fees

Debtor filed for chapter 13 bankruptcy in 2014 and claimed his home as his exempt homestead. Creditor sought to increase Debtor's monthly mortgage payment due to increased arrearages. The parties settled and agreed on an amount owed by Debtor for Creditor's proof of claim, but Creditor's liability for Debtor's attorney's fees stemming from the proof of claim remained in dispute. The bankruptcy court determined that no statutory mandate specifically authorized shifting fees for fee defense to Lender in this proof of claim dispute. Additionally, the bankruptcy court held that under the Supreme Court's ruling in *ASARCO*, attorney's fees incurred for defending fees are unrecoverable. Without specific and explicit statutory provisions for the allowance of attorney's fees in a specific scenario, the American Rule controls whether attorney's fees may be shifted. The bankruptcy court reduced the fees in the fee application accordingly.

Lopez v. Portfolio Recovery Ass'n, LLC (In re Lopez), 576 B.R. 84 (Bankr. S.D. Tex. 2017)
Attorney's Fees/Representation

Chapter 13 Debtor brought an adversary proceeding against Creditor, alleging that Creditor made debt collection calls to Debtor in violation of the automatic stay and Debtor's chapter 13 plan. After the bankruptcy court granted in part and denied in part Debtor's motion for sanctions based on various discovery violations, and subsequent to the district court's denial of Creditor's motion for leave to appeal the sanctions order, Debtor filed an application for compensation and reimbursement of expenses relating to his motion for sanctions. The bankruptcy court determined that Debtor was entitled to recover attorney's fees incurred while defending Creditor's motion for leave to appeal to the district court because such fees were necessary in order to defend against a reversal of the bankruptcy court's favorable decision and to receive a complete remedy. However, the bankruptcy court found Debtor was not entitled to recover fees incurred while prosecuting its application because the defense of his application was not a necessary service. The bankruptcy court then reduced the amount of fees requested based upon their reasonableness.

In re Merkle, 575 B.R. 704 (Bankr. W.D. Tex. 2017)
Attorney's Fees/Representation

Debtor, owner and operator of an apartment complex, entered into a Multi-Family Note to purchase the complex and a Deed of Trust securing payment of all sums due under the Note. Respondents, the holder and the servicer of the Note, sent Debtor a notice of default and an intent to accelerate the Note, which Debtor failed to cure. Consequently, Debtor filed for chapter 11 bankruptcy and Respondents filed a proof of claim asserting an oversecured claim, which included post-petition interest, attorney's fees, and costs. Debtor objected to the claim. Respondents argue that the Note and 11 U.S.C. § 506(b) entitled them to collect post-petition interest, attorney's fees, and costs. The bankruptcy court granted Respondents' attorney's fees in part, finding pre-petition and post-petition attorney's fees to be reasonable and necessary. However, the bankruptcy court did not allow certain other attorney's fees because the evidence submitted by the Respondents in support of those fees was disallowed.

In re Harris-Nutall, 572 B.R. 184 (Bankr. N.D. Tex. 2017)
Attorney's Fees

Chapter 13 Debtor fell behind on her post-petition mortgage payments, leading the Servicer of her mortgage to file a motion for relief from stay. The bankruptcy court granted the Servicer's motion. After Debtor filed notices of final cure payment regarding her mortgage arrearages, the Servicer failed to respond to the notices and Debtor received a chapter 13 discharge. Subsequently, the Servicer disbursed money to pay past-due property taxes owed on Debtor's homestead, leading to Debtor filing a second bankruptcy case due to increased monthly mortgage payments. As part of her second bankruptcy case, Debtor sought to employ special litigation counsel to pursue causes of action related to her mortgage. The bankruptcy court granted the employment application and co-counsel agreement with Debtor's bankruptcy counsel.

In an unrelated bankruptcy case, a second debtor sought to employ Debtor's special litigation counsel in the same capacity as Debtor. However, the bankruptcy court denied the application based upon terms in the second debtor's co-counsel agreement contemplating a situation where the second debtor's bankruptcy counsel could be paid more than its standard hourly rate and the special litigation counsel would share a portion of its allowed fees with the bankruptcy counsel, violating 11 U.S.C. § 504. Because Debtor's employment agreement with the special litigation counsel contained identical terms from the second debtor's co-counsel agreement, the bankruptcy court issued an order to show cause directing Debtor's counsel and special litigation counsel to show why the court should not set aside Debtor's co-counsel agreement. The bankruptcy court ultimately held that Debtor's co-counsel agreement, like that in the second debtor's bankruptcy case, was an improper fee-sharing agreement prohibited by § 504, and that counsel failed to adequately disclose the agreement's terms. The bankruptcy court consequently canceled the co-counsel agreement.

Automatic Stay

Novoa v. Minjarez (In re Novoa), 690 F. App'x 223 (5th Cir. 2017)
Automatic Stay/Dismissal

Debtor, a physician, filed for chapter 7 bankruptcy after some of his former patients filed malpractice suits against him. The patients moved for relief from the automatic stay in order to recover from Debtor's liability insurance carrier. After Debtor failed to timely respond to the motion, the bankruptcy court lifted the stay and authorized the insurance carrier to settle the patients' claims with Debtor's consent. Debtor moved to vacate the order, claiming his failure to respond was due to a clerical omission by his counsel and that the order could affect his medical license. The bankruptcy court denied the motion to vacate based upon a lack of evidence; Debtor appealed. The district court dismissed the appeal for lack of standing, which Debtor did not appeal. Debtor's bankruptcy case was subsequently closed.

Nearly a year later, Debtor moved to reopen his bankruptcy case in order to file a motion to vacate the bankruptcy court's lifting of the automatic stay as void under Federal Rule of Civil Procedure 60(b)(4). After the bankruptcy court denied the motion and a subsequent motion to reconsider, Debtor appealed to the district court and then the Fifth Circuit. The Fifth Circuit

affirmed the bankruptcy court's ruling, finding that Debtor failed to adequately allege that the bankruptcy court violated the Bankruptcy Code's limitations on contract reformation, and that the bankruptcy court abused its discretion by not reopening his case.

In re Thomas, 2018 WL 1210723 (S.D. Tex. Mar. 8, 2018)
Automatic Stay

In 2007, Chapter 7 Debtor executed a Note secured by a Deed of Trust to Lender in order to purchase a residence. Creditor 1 was named as the Deed of Trust beneficiary and Creditor 2 became the mortgage servicer. After Debtor defaulted on the loan, Creditor 2 initiated foreclosure proceedings. In 2010, Creditor 1 assigned the Deed of Trust to Creditor 2, who then became the Deed of Trust beneficiary. This assignment was recorded in the real property records. At this time, Debtor filed a no-asset chapter 7 bankruptcy case to prevent a foreclosure on the property. Debtor filed a statement of intent declaring her intent to retain the property and received a chapter 7 discharge. In 2011, Debtor filed an adversary case against Creditor 2, and Debtor also filed five separate motions to reopen her chapter 7 case from 2011 to 2014. Each motion was either denied by the bankruptcy court or withdrawn by Debtor. In August 2017, Debtor filed a sixth motion to reopen the case to pursue a motion to show cause against Appellees, arguing that the recording of the assignment of the Deed violated the automatic stay. The bankruptcy court denied Debtor's request in order to pursue the contempt proceeding. The bankruptcy court also denied Debtor's motion to alter or amend the judgment.

Debtor then filed a notice of appeal from the bankruptcy court's orders. Since Debtor's chapter 7 bankruptcy case was closed in 2011 and the motion to reopen case was filed in 2017, Debtor was required to demonstrate compelling cause to reopen the case. The court held on appeal that the bankruptcy court noted correctly that a post-petition assignment of a perfected Deed of Trust lien does not violate the automatic stay. Further, Debtor failed to show that the bankruptcy court abused its discretion in denying Debtor's chapter 7 case to allow Debtor to assert claims that could have been presented in a prior lawsuit.

Wright v. Csabi (In re Wright), 578 B.R. 570 (Bankr. S.D. Tex. 2017)
Automatic Stay

The bankruptcy court appointed Special Counsel 1 as the sole special counsel for chapter 13 Debtor. Special Counsel 1 failed to disclose to the court a prior fee sharing agreement that he entered into with Special Counsel 2 and Special Counsel 3. The bankruptcy court awarded attorney's fees to Special Counsel 1 after Debtor received settlement proceeds. The bankruptcy court ordered Special Counsel 1 to turn the rest of the settlement proceeds over to the Chapter 13 Trustee for distribution to Debtor's creditors. Despite that order, Special Counsel 1 made two wire transfers of the remaining settlement proceeds to Special Counsel 2 and Special Counsel 3 in violation of the court's order and the automatic stay in Debtor's bankruptcy case. Debtor brought an adversary proceeding against her three former special counsels for (i) disgorgement of unauthorized fees, (ii) violation of the automatic stay, and (iii) turnover of property of the estate. The court held each defendant liable for their flagrant disregard of the court's previous orders and the automatic stay through the wiring of the remaining settlement proceeds.

In re Lara, 2017 WL 4457436 (Bankr. N.D. Tex. Sept. 6, 2017)
Automatic Stay

Creditor was an unsecured creditor in Debtors' chapter 7 case pursuant to a contract for a home security system at Debtors' prior residence. Debtors rejected the contract with Creditor and sent notice of their bankruptcy case and rejection. However, Creditor continued to attempt to collect on the contract after Debtors were discharged. After an evidentiary hearing, the bankruptcy court found Creditor's actions to be willful violations of the automatic stay and the discharge injunction. As a result, Debtors were awarded damages and attorney's fees, which Creditor failed to pay. The bankruptcy court then reopened the case to consider Debtors' motion for Creditor to show cause why it should not be held in contempt and pay additional damages to Debtors. The bankruptcy court determined that additional damages or remedies were not appropriate because Debtors did not allege that Creditor's conduct constituted a continuing violation. Instead, the bankruptcy court determined the prior judgment against Creditor was a money judgment, which required a writ of execution to be enforced. Because Debtors had not attempted this measure, the Court did not award them additional damages.

Avoided Transfers/Fraudulent Transfers

Whitlock v. Lowe (In re Whitlock), 2018 WL 1528236 (W.D. Tex. Mar. 28, 2018)
Avoided Transfers/Fraudulent Transfers/Reconsideration

Debtor fraudulently transferred $275,000.00 from a jointly-owned bank account owned by Debtor and his Wife to an account owned and controlled by Plaintiff. Upon receiving the fraudulent transfer, Plaintiff made two transfers: (i) $32,000.00 to Debtor's Wife and (ii) $200,000.00 to Company. These transfers were made and funds spent before Debtor filed for chapter 7 bankruptcy. The bankruptcy court assumed that the funds transferred to Company and Debtor's Wife were essentially transferred to Debtor and accordingly would have been part of the bankruptcy estate had they not been spent prior to the filing of the bankruptcy petition. The bankruptcy court considered the funds transferred from Plaintiff to Debtor's wife and Company as essentially "returned" to the bankruptcy estate.

The bankruptcy court found that (i) the initial transfer to Plaintiff was fraudulent and voidable; (ii) that Plaintiff was an "initial transferee" from whom Trustee could recover the funds under 11 U.S.C. § 550(a); and (iii) that recovering the funds transferred to Debtor's wife and Company from Plaintiff did not violate the single-satisfaction rule set forth in 11 U.S.C. § 550(d). On appeal, the district court affirmed all of the bankruptcy court's holdings. Plaintiff then filed a motion to reconsider the bankruptcy court's finding on the single-satisfaction rule. Upon reconsideration, the district court concluded that its decision to affirm pursuant to § 550(a)(1) and (2) was not erroneous to warrant reversal even though its reasoning was faulty. The district court's error arose from its conclusion that the estate, at filing, was not in the same position as it would have been had the transfer to Plaintiff not occurred by assuming Debtor would not have spent the funds without the transfer. Despite the faulty reasoning, the earlier holding that permitted Trustee to recover $232,000.00 from Plaintiff did not violate the single-satisfaction rule of § 550.

Satija v. United States (In re Colliau), 2017 WL 2589337 (Bankr. W.D. Tex. June 14, 2017)
Avoided Transfers/Fraudulent Transfers

Debtors made an early payment of $28,000.00 to the IRS for their estimated 2015 taxes one day before filing for chapter 7 bankruptcy. The Chapter 7 Trustee consequently filed an adversary proceeding to avoid the payment to the IRS as a fraudulent transfer. Debtors intervened in the adversary proceeding. The Trustee moved for summary judgment, asserting that the record demonstrated no genuine dispute of material fact as to Debtors' intent to hinder, delay, or defraud a creditor, and as to the fact that Debtors received less than reasonably equivalent value for paying their taxes before they were due. Debtors filed a cross-motion for summary judgment that included additional evidence showing that they did not hinder or delay creditors because their payment followed their typical tax payment schedule. The bankruptcy court denied both motions for summary judgment, finding that a genuine issue existed as to Debtors' intent in transferring the money to the IRS based upon the Debtors' submitted evidence, and that both parties failed to address the actual amount of taxes due on the date of transfer—which addressed whether the Debtors received reasonably equivalent value for the tax payment.

Class Actions

Crocker v. Navient Solutions, LLC (In re Crocker), 2018 WL 1626245 (Bankr. S.D. Tex. Mar. 26, 2018)
Class Actions/Jurisdiction & Venue/ Discharge

Debtors filed for chapter 7 bankruptcy with a debt arising out of a bar study loan transferred to Creditors. Debtors filed a complaint seeking a determination of discharge, declaratory judgment, contempt, and an application for temporary and preliminary injunctive relief stemming from an alleged wrongful collection activity by Creditors in violation of the Debtors' statutory discharge injunction. The bankruptcy court issued a temporary restraining order, which prohibited any collection activities against Debtors or the issuance of any negative information to any credit bureau. The bankruptcy court also entered a preliminary injunction against Creditors. Debtors, in an amended complaint, alleged that Creditors engaged in a decade-long scheme to subvert the Bankruptcy Code by intentionally disregarding the injunctive provisions of 11 U.S.C. § 524(a) and sought the certification of a nationwide class comprised of alleged victims. Creditors filed a motion for summary judgment as to all of Debtors' claims. Creditors asserted that, since Debtors received a discharge within the Eastern District of Virginia, the bankruptcy court had no jurisdiction to enforce another court's discharge order. The bankruptcy court found that it had jurisdiction to enforce the § 524 discharge injunction because it was enforcing a bankruptcy statute, not another bankruptcy court's order.

Creditors' also asserted that the third-party loan was nondischargeable under 11 U.S.C. § 523(a)(8)(A)(ii) because it conferred educational benefits onto Debtors. However, the bankruptcy court found the language of § 523(a)(8)(A)(ii) to be unambiguous and construed it against Creditors' argument. To be excepted from discharge, the third-party loan must have required Debtors to take on an obligation to repay funds that were given in the form of an educational benefit, a scholarship or a stipend. Here, Debtors' loan for bar study fees, while

connected to their education, did not constitute an obligation to repay funds for an educational benefit. The court accordingly denied Creditors' motion for summary judgment.

Discharge

Haler v. Boyington Capital Grp., LLC (In Re Haler), 708 F. App'x 836 (5th Cir. 2017)
Discharge/Appeals

Prior to filing for bankruptcy, Debtor made the following statements about his business' financial condition: (i) that the business was in "very fine legally [sic] financial shape" and (ii) that the business had "plenty of cash to operate [the] business during the term that [it was] working on" a business jet. These statements were made to Creditor who subsequently entered into four contracts with the business and suffered a loss. Creditor brought a state court action for fraud against Debtor and other parties. A jury determined that Debtor made false representations regarding the business' health and operations and was thus liable for fraud. Creditor then brought an adversary proceeding seeking to hold the state court judgment non-dischargeable under 11 U.S.C. § 523(a)(2)(A). The bankruptcy court held the debt exempt from discharge after finding that Debtor did indeed make the false representations. The district court affirmed the order. The Fifth Circuit reversed, finding that the Debtor's oral statements fell under an exception to § 523(a)(2)(A) because they were general comments presenting a picture of the business' overall financial health.

Cowin v. Countrywide Home Loans, Inc. (In re Cowin), 864 F.3d 344 (5th Cir. 2017)
Discharge/Appeals

Deed of Trust Holders brought an adversary proceeding against Debtor to except alleged debts from discharge in Debtor's individual Chapter 11 case as debts for larceny, embezzlement, or willful and malicious injury. These debts stemmed from Debtor's participation in an alleged conspiracy to strip deed of trust liens from property by means of tax lien foreclosure sales and to abscond with excess foreclosure sale proceeds. The bankruptcy court entered judgment in favor of the Deed of Trust Holders and determined that the damages flowing from the conspiracy were nondischargeable debts pursuant to 11 U.S.C. §§ 523(a)(4) and (6). The district court affirmed the bankruptcy court's ruling on appeal. The Fifth Circuit affirmed, finding that: (i) Debtor purposefully and intentionally acted to deprive the Deed of Trust Holders of their liens in the property and of foreclosure sale proceeds through the conspiracy, which provided the basis to except the debt from discharge for larceny; (ii) Debtor's own actions provided a basis to except the debts from discharge based upon willful and malicious injury; (iii) Debtor could not discharge a debt that arises from his personal larceny or that of his co-conspirators; and (iv) that, even assuming that the automatic stay applies to nondischargeability proceedings initiated against Debtor in the same bankruptcy court where Debtor's subsequently filed chapter 7 case was still pending, any error committed by the bankruptcy court in entering a judgment in favor of the Deed of Trust Holders without lifting the automatic stay was harmless error.

Osborne v. Kakas (In re Osborne), 2018 WL 1354792 (E.D. Tex. Feb. 15, 2018)
Discharge/Appeals

Creditor filed suit in state court against Debtor asserting violations of the Texas Securities Act.

Partial summary judgment was entered against Debtor for violation of the Act. On December 5, 2016, the state court entered a final judgment against Debtor, who did not appear despite adequate notice. In a later adversary proceeding within Debtor's bankruptcy case, the bankruptcy court granted Plaintiff's motion for summary judgment, determining his claim against Debtor to be nondischargeable under 11 U.S.C. § 523(a)(19). Debtor appealed the order, arguing that the bankruptcy court failed to properly apply the rules of issue preclusion to the state court judgment, which he contends would require evidence that the underlying facts were actually litigated. The Special Master found that no dispute existed that the state court judgment was based on Debtor's violation of state securities laws, that damages and attorney's fees were established, that a final state court judgment was entered, and that Debtor did not appeal the judgment. Accordingly, the requirements for non-dischargeability under § 523(a)(19) were satisfied and the Special Master recommended that the order granting Plaintiff's motion for summary judgment be entered and the bankruptcy court's ruling be affirmed.

Christian v. Pac. W. Bank, 581 B.R. 797 (E.D. Tex. 2017)
Discharge

Debtor was the sole owner and guarantor of a business that filed for chapter 11 bankruptcy. In that chapter 11 case, Debtor violated a cash collateral order by not paying funds to Creditor. Accordingly, the bankruptcy court lifted the automatic stay and ordered Debtor to wire funds to Creditor. Debtor failed to wire the funds. Prior to a show cause hearing on Debtor's civil contempt liability for violation of the cash collateral order, Debtor filed for chapter 7 bankruptcy. Creditor was granted relief from the automatic stay in Debtor's bankruptcy case in order to pursue the civil contempt charges against Debtor in the chapter 11 case. At the show cause hearing, Creditor offered evidence that Debtor knew and understood the court's cash collateral order but used funds from Debtor's business in order to open a new business and continued to expend funds after the termination of the cash collateral order. Prior to a ruling concerning Debtor's civil contempt liability, Debtor was granted a bankruptcy discharge in his chapter 7 case. Subsequent to discharge, Debtor was held jointly and severally liable for civil contempt for violation of the cash collateral orders. Creditor initiated an adversary proceeding against Debtor seeking to hold the civil contempt liability exempt from discharge in Debtor's chapter 7 case. The bankruptcy court held that the civil contempt liability was exempt from discharge, which the district court reversed by holding that the civil contempt amount was contingent and accrued prior to the filing of Debtor's chapter 7 petition. Accordingly, the contempt debt was pre-petition and dischargeable.

Korn v. Warden (In re Warden), 2018 WL 2448085 (Bankr. N.D. Tex. May 30, 2018)
Discharge/State Law Cases

Creditor obtained a state court judgment against Debtor and two co-defendants for knowingly and intentionally breaching a contract and a guaranty. Neither Debtor nor his co-defendants made a voluntary payment on the judgment or cooperated in its collection. The state court consequently appointed Receiver to liquidate Debtor's and the co-defendants' non-exempt property. The state court also obligated Debtor and his co-defendants to turn over documents and receivership assets; Debtor and his co-defendants refused to comply with their state court obligation by failing to turn over requested property and documents and diverting monetary funds so as to be out of Receiver's reach. Debtor later filed a chapter 11 bankruptcy case, which

was converted into a chapter 7 case. In Debtor's bankruptcy case, Receiver requested that the bankruptcy court determine its claim against Debtor in the amount of the state court judgment to be nondischargeable as a willful and malicious injury under 11 U.S.C. § 523(a)(6). The bankruptcy court determined the judgment to be nondischargeable based upon Debtor's actions in preventing the collection of the judgment.

Bruce v. Long (In re Long), 2018 WL 1577894 (Bankr. E.D. Tex. Mar. 28, 2018)
Discharge

As contiguous property owners, Plaintiffs sued Debtors in state court for Debtors' actions designed to intimidate Plaintiffs to sell their property. Finding damages for trespass, the jury awarded $350,000.00 and $250,000.00 to Plaintiffs respectively. The jury found that one of the Debtors committed trespass with knowledge and awarded additional damages from that Debtor. After this judgment, Debtors filed for chapter 7 bankruptcy and, in response, Plaintiffs filed a complaint seeking determination of dischargeability of their state court judgment against Debtors. Plaintiffs' original claim pled that debts owed by Debtors should be declared nondischargeable pursuant to 11 U.S.C. § 523(a)(6) as debts stemming from willful and malicious injury. Based upon the one Debtor's trespass, the bankruptcy court found the award against that Debtor non-dischargeable.

In re Kelly, 582 B.R. 905 (Bankr. S.D. Tex. Mar. 23, 2018)
Discharge

A member of Debtor's church co-signed Debtor's application for a student loan as Guarantor solely as an accommodation to Debtor, thereby providing debtor with an "educational benefit" as used in the student loan exception to discharge in 11 U.S.C. § 523(a)(8). Debtor defaulted on her loan payments and the State sued Guarantor for the balance of the loan. Guarantor paid the unpaid balance in full in July 2016. Debtor later filed for chapter 13 bankruptcy. Guarantor filed a proof of claim in the bankruptcy case, identifying the amount paid on the loan as an outstanding debt owed to her by Debtor.

The bankruptcy court found Debtor's obligation to reimburse Guarantor to be nondischargeable because (i) the debt was for an educational benefit, (ii) the sole purpose of Guarantor co-signing the loan application was to assist Debtor in obtaining the loan, and (iii) Debtor actually used the loan funds to pay for educational expenses. Additionally, the bankruptcy court found no undue hardship on the part of Debtor because there was no assertion of an undue hardship in Debtor's answer or response to the complaint.

In re McCracken, 2018 WL 1440519 (Bankr. S.D. Tex. Mar. 19, 2018)
Discharge

Debtor executed a series of loans pledging the same herd of cattle as security for each loan but did not advise each subsequent lender of the prior loans. As of 2014, Debtor owed Bank 1 $151,323.00 secured by a lien on the cattle. In 2015, Debtor applied for a loan from Lender using his tax returns and a recent financial statement listing Debtor's net worth, which showed $217,000.00 worth of cattle. A portion of the cattle was pledged as collateral for the loan, which

Debtor secured with a promissory Note. Debtor failed to disclose to Lender the prior loan with Bank 1. Debtor used the proceeds from the Note to satisfy an existing loan with Bank 2, another prior lender, after which current Lender held a first lien on Debtor's cattle. Lender increased Debtor's Note in order to purchase additional cattle, leading to the creation of an updated agreement and business loan agreement. In 2016, Lender learned of Bank 1's superior lien on Debtor's cattle. Consequently, Lender loaned Debtor funds to satisfy that debt in order to secure a first lien position on all of Debtor's cattle. But for the purported value of the 129 heads of cattle based on Debtor's financial statements, Lender would not have extended additional credit to Debtor. However, Lender later discovered that Debtor sold most of the cattle securing his debt in 2015 without notice to Lender. Additionally, Debtor's bankruptcy Schedules listed only 18 head of cattle valued at $36,000.00.

Lender declared the 2016 Note to be in default after discovering Debtor's undisclosed sale of his cattle. Lender moved for summary judgment on the issue of whether the claim was dischargeable under § 523(a)(2)(B) as a loan obtained by the use of a statement in writing that is materially false because: Debtor's disclosed, written financial information induced Lender into providing credit; the disclosed financial information on Debtor's financial condition was materially false; and Debtor delivered the false financial information to Lender with the intent to deceive Lender in order to obtain more credit. The court granted summary judgment as to the nondischargeability claim.

In re Ward, 2018 WL 1368794 (Bankr. N.D. Tex. Mar. 15, 2018)
Discharge

In April 2014, a group of individual Judgment Creditors obtained a final judgment against Debtor, a lawyer licensed in Texas. After the judgment, Debtor filed for chapter 7 bankruptcy on May 1, 2014. The next day, a notice was issued informing the parties of the dates and deadlines for objections to Debtor's discharge. On June 6, 2014, Debtor's bankruptcy case was transferred from the Eastern District of Texas to the Northern District of Texas. After proceedings commenced, a second notice was issued with a new set of dates and deadlines. Creditors established cause and the deadline for discharge objections was extended three times. On April 30, 2015, Creditors finally filed their complaint objecting to discharge.

In January 2017, the bankruptcy court found that Defendant made numerous false statements under oath and misrepresentations throughout the course of the proceedings; accordingly, Debtor's discharge was denied. The bankruptcy court also denied Debtor his discharge because he failed to satisfactorily explain at least $900,000.00 in compensation paid to him for legal services in 2010. Debtor appealed, arguing that the bankruptcy court erred by extending the claim objection deadline and in denying his discharge. The district court affirmed the bankruptcy court's decision to grant a motion of any party to extend the discharge objection deadline because cause existed to do so, as seen by Creditors' reasonable reliance on the notice provided by the court.

Lee v. Ali (In re Ali), 2018 WL 889362 (Bankr. S.D. Tex. Jan. 30, 2018)
Discharge

Debtor was the owner of a business that contracted with Plaintiff to provide a multi-faceted advertising platform. After Debtor failed to pay invoices, Plaintiff filed a state court action to recover money owed for her services. Subsequent to a default judgment, the state court issued a conditional order requiring both the business and Debtor to satisfy Plaintiff's discovery requests within 14 days. Failure to comply with the discovery order would result in joint and several liability for both the business and Debtor. Debtor's business appeared in the state court action, but failed to fully comply with the order. Debtor then filed for chapter 7 bankruptcy. Plaintiff brought an adversary proceeding in Debtor's bankruptcy case seeking a determination that the state court sanctions against Debtor were nondischargeable. Debtor filed a motion for summary judgment claiming that she was not liable for the sanctions because the state court lacked personal jurisdiction over her because she was not personally subpoenaed. The bankruptcy court determined that the state court did have personal jurisdiction over Debtor because as an officer of the business, no subpoena was required for the state court to compel Debtor's discovery response or issue its sanctions order. The bankruptcy court also found that the state court satisfied due process concerns after evidence showed that Debtor received notice of the order compelling her personal response to the discovery request. Accordingly, the bankruptcy court held that personal liability for violations of state court orders falls within the willful and malicious discharge exception under 11 U.S.C. § 523(a)(6), exempting the state court sanctions from Debtor's discharge.

MoneyGram Payment Sys. v. Bhai (In re Bhai), 2017 WL 6541131 (Bankr. E.D. Tex. Dec. 21, 2017)
Discharge

Debtor's business had a fiduciary responsibility to transfer collected funds to Plaintiff. Debtor's business executed an agreement with Plaintiff stating that Debtor's business should never comply with any request for a practice transaction of funds on the device used to transfer funds to Plaintiff. Debtor assumed responsibility for assuring that all of the procedures of the agreement were followed. Years later, Debtor's husband received a telephone call from a person that identified himself as an employee of Plaintiff and requested test transactions to confirm that a device problem had been resolved. The husband made several test transactions that he mistakenly believed were artificial transactions initiated by Plaintiff, but were actually transfers of Plaintiff's money to an unknown third party. Plaintiff brought an action in state court against Defendant under her guaranty obligation. The same day that a judgment against Defendant was issued, she filed for chapter 7 bankruptcy. Plaintiff then brought an adversary proceeding seeking to hold the debt exempt from discharge under §§ 523(a)(4) and (a)(6).

The bankruptcy court found that the debt was dischargeable because Plaintiff failed to prove that the debt owed by Debtor (i) arose from fraud or defalcation by a fiduciary, (ii) arose from embezzlement, or (iii) arose from an intentional or deliberate intentional injury. Specifically, the court found no evidence that: (i) Debtor benefited personally from any breach of a fiduciary duty by her business upon which to hold the debt non-dischargeable under § 523(a)(4); (ii) Debtor acted with the heightened culpability standard for defalcation as required under § 523(a)(4); and

(iii) that any portion of the debt owed to it by Debtor arose from the infliction of a willful and malicious injury as required under § 523(a)(6).

In re Jimenez, 2017 WL 5592260 (Bankr. S.D. Tex. Nov. 20, 2017)
Discharge

Debtor filed for chapter 13 bankruptcy in 2010 and listed two student loan debts in the amounts of $244,351.00 and $3,700.00 owed to Sallie Mae on her schedules. Debtor's schedules also listed her ex-husband as a co-debtor for these claims. Debtor completed the payments required under her chapter 13 plan and received a discharge in 2016. Sallie Mae subsequently assigned Debtor's debt to Navient, which then sought to collect on a balance of approximately $291,995.39 it claimed Debtor owed on her student loans. Debtor filed an adversary proceeding against Navient, alleging that the debt at issue was fraudulently obtained by her ex-husband, which placed it outside the student loan exception to discharge in 11 U.S.C. § 523(a)(8). Specifically, Debtor pled that her ex-husband filled out a loan application in her name in order to consolidate his debt fraudulently and without her consent, that she had no knowledge of this application, and that she was not aware of the forgery until Navient's demand. Navient filed a motion to dismiss for failure to state a claim, arguing that Debtor's student loan debts were now exempted from discharge under § 523(a)(8). The bankruptcy court held that Debtor had pled sufficient facts to create a plausible claim for relief and that, assuming Debtor's fraud allegations were true, Navient could not rely on § 523(a)(8) to shelter its collection attempts.

In re Koukhtiev, 576 B.R. 107 (Bankr. S.D. Tex. Nov. 17, 2017)
Discharge

In 2013, Plaintiff obtained a damages judgment in state court against Debtor for violation of a Work Agreement. Debtor had engaged in the sale of computer software to which he had assigned all rights of ownership to Plaintiff but refused to provide Plaintiff with the source code for the software in order to prevent her use or sale of the software. Following the judgment, in which the state court also enjoined Debtor from further sale of the software, Debtor continued to make such sales until sometime between 2014 and 2015. In 2015, Debtor filed for chapter 7 bankruptcy, after which Plaintiff filed an adversary proceeding seeking to have the state court judgment declared a non-dischargeable obligation and requested that the bankruptcy court further declare that Debtor's actions after the state court judgment caused injury to Plaintiff, constituting a non-dischargeable obligation.

The bankruptcy court held that the conduct of Debtor was an intentional wrong and therefore constituted actual fraud. Consequently, the amounts owed by Debtor under that judgment were nondischargeable under 11 U.S.C. § 523(a)(2)(A). Further, the court held that, even if the judgement was not nondischargeable as fraud, it was nondischargeable under § 523(a)(6) because Debtor's refusal to provide Plaintiff the source code, his sale of the software, and his retaining of all proceeds from such sales all constituted willful and malicious injury to Plaintiff's property. However, the court held that Plaintiff failed to prove any damages suffered by virtue of Debtor's post-judgment actions. Therefore, only the face amount of the state court judgment plus interest was found to be nondischargeable.

In re Robert, 2017 WL 5007146 (Bankr. W.D. Tex. Oct. 31, 2017)
Discharge

The Chapter 7 Trustee filed an adversary proceeding against chapter 7 Debtors objecting to their bankruptcy discharge. The bankruptcy court found that Debtors repeatedly made multiple false statements by repeatedly failing to disclose their multiple bank accounts, cash, or their ownership of time shares, stock, and several life insurance policies. Debtors also repeatedly failed to disclose rental income, investment income, consulting and other income, and did not accurately or completely disclose payments to creditors and payments for the benefit of insider family members. Moreover, these failures to disclose assets and income in Debtors' bankruptcy Schedules and Statements of Financial Affairs occurred both before and after Debtors admitted ownership or benefit of such items under oath. The court granted the Trustee's objection to discharge of Debtors under 11 U.S.C. § 727(a)(4)(A) based upon these failures to disclose. The court further held that the multiple and cumulative number of false statements made by Debtors demonstrated a reckless disregard for the truth and established fraudulent intent under the circumstances.

In re Huffman, 2017 WL 4621703 (Bankr. E.D. Tex. Oct. 13, 2017)
Discharge

Plaintiffs and Defendant entered into a verbal agreement whereby Defendant and his company would provide insurance and administrative services while Plaintiffs would furnish equipment and labor necessary to fulfill an oil spill cleanup contract. Defendant was obligated to pay net profits from the contract to Plaintiffs but failed to do so. Plaintiffs then sued Defendant and his company in district court seeking to impose personal liability on Defendant. The district court sanctioned Defendant for failure to follow multiple court orders to appear for conferences and entered a final judgment rendering Defendant liable to each Plaintiff based upon deceptive acts that induced Plaintiff to enter into the contract with Defendant. Defendant filed for chapter 7 bankruptcy seven months later, prompting Plaintiffs to file an adversary complaint to determine the nondischargeability of the district court judgment under 11 U.S.C. § 523(a)(2)(A). Plaintiffs allege that the factual issues underlying its cause of action were actually litigated in the district court and thus the bankruptcy court was precluded from determining those issues again. The bankruptcy court ultimately determined that Defendant was precluded from relitigating the district court's factual determinations because Defendant was already provided a full and fair opportunity to litigate any contested factual issue. Based upon these factual determinations, the bankruptcy court found Plaintiffs' judgment to be nondischargeable because of Defendant's false, material, and intentional representations.

In re Erickson, 2017 WL 4404286 (Bankr. W.D. Tex. Sept. 29, 2017)
Discharge/ Fraudulent Transfers

Plaintiff owned a company that sold its assets to a company formed by Debtors. Consideration of the sale included a Promissory Note guaranteed by Debtors. Plaintiff later sued Debtors and their company under the Note, after which Debtors agreed to sign a new Note and grant a lien on their vacation home. The new Note and mortgage were never signed, leading to a $475,000.00 judgment against Debtors. Debtors consequently filed for chapter 7 bankruptcy. Plaintiff filed

this adversary proceeding seeking to except her claim against Debtors from discharge, contending that her claim is excepted on the basis of fraudulent transfers. The bankruptcy court determined that the debt could not be excepted from discharge because the debt was incurred via the guarantee, not any transfers of assets.

In re Evans, 2017 WL 4457431 (Bankr. N.D. Tex. Sept. 27, 2017)
Discharge

Plaintiff and Debtor created multiple companies for which Debtor served as a managing member and head of day-to-day operations. Plaintiff brought suit in state court against Debtor and other parties, alleging that Debtor breached his fiduciary duties to Plaintiff and one of the companies by canceling debts owed to the company. After the state court ruled in favor of Plaintiff and awarded damages, Debtor filed for chapter 7 bankruptcy. Plaintiff then brought this adversary proceeding seeking to obtain an order declaring the state court judgment nondischargeable under 11 U.S.C. § 523(a)(4). The bankruptcy court determined that, based upon the evidence at trial, a culpable state of mind for the Debtor during the cancelation of debts was not shown and thus Debtor's breach of fiduciary duty was not proven to be an act of defalcation.

Dismissal

In re Petty, 2018 WL 1956187 (Bankr. E.D. Tex. Apr. 24, 2018)
Dismissal

Debtors filed for chapter 13 bankruptcy in February 2018. One of the co-debtors was a doctor with several malpractice actions pending against him at the time of the bankruptcy. Debtors owned a clinic and over 20 rental properties with multiple lien holders and tenants. Debtors filed their Schedules E/F listing over $600,000.00 in general unsecured debt, including over $200,000.00 in student loan obligations. The statutory limit on an individual filing a chapter 13 bankruptcy petition must not exceed $394,725.00 in non-contingent, liquidated, unsecured debts, and $1,184,200.00 in non-contingent, liquidated, secured debts. The Chapter 13 Trustee sought to dismiss the case on the grounds that Debtors' unsecured debts exceeded the statutory eligibility limits and, therefore, Debtors did not qualify for relief under chapter 13. The bankruptcy court, in line with precedent, found that student loan debts must be included in the calculation of non-contingent, liquidated, unsecured debts for purposes of determining eligibility for a chapter 13 petition. Accordingly, the court concluded that the Trustee had established cause for the conversion or dismissal of the case.

In re Pustejovsky, 577 B.R. 671 (Bankr. W.D. Tex. 2017)
Dismissal

Debtor and her stepson obtained donations from her community and life insurance proceeds after the death of her husband. Debtor spent all of the money without accounting for property of the husband and funds donated for Debtor's and the son's benefit. The husband's father, the administrator of the husband's probate estate, requested an accounting from Debtor for property owned by the husband. Debtor then filed for chapter 13 bankruptcy, staying the probate case. Within her bankruptcy case, Debtor failed to list multiple prepetition assets, the probate claims

against her, and the husband's father as a creditor. Debtor also failed to produce documents requested by the court. One day before the confirmation hearing for her chapter 13 plan, Debtor filed a motion to dismiss her case after negotiating a settlement for a wrongful death lawsuit based upon her husband's death. The bankruptcy court granted Debtor's motion without knowledge of the settlement. The Chapter 13 Trustee and other parties objected to dismissal of Debtor's case and requested that the case be reinstated based upon the settlement. The bankruptcy court found that Debtor's failure to fully execute her bankruptcy case through the non-production of documents, submittal of unfeasible chapter 13 plans, and failure to disclose the settlement constituted bad faith, excepting her from her right to discharge her case under 11 U.S.C. § 1307.

Disposable Income

Ortiz-Peredo v. Viegelahn (In re Ortiz-Peredo), 2018 WL 1598676 (W.D. Tex. March 29, 2018)
Disposable Income

Spousal Debtors filed for chapter 13 bankruptcy and filed a list of assets, which included an asset described as a pending "Total Safety worker's compensation" claim filed in 2014. The value of this lawsuit was valued as unknown and was listed on Debtors' Schedule C as unknown as well. Debtors entered $0.00 as the amount of the exemption they were claiming under 11 U.S.C. § 522(d)(5). Trustee objected to Debtors' plan and Debtors filed an amended Schedule C, reflecting that the lawsuit had been valued at $22,500.00 with a recovery of $8,632.85 after litigation costs. Debtors filed an amended chapter 13 plan, which did not provide for payment of the settlement funds into the plan, and subsequently filed a motion seeking the bankruptcy court's approval of the settlement and the distribution of the settlement funds to Debtors as exempt property. The bankruptcy court held that the settlement funds were "disposable income" within the meaning of 11 U.S.C. § 1325(b)(2) and therefore required to be paid to Debtors' unsecured creditors pursuant to § 1325(b)(1)(B). The bankruptcy court granted Debtors 14 days to propose a new plan. The bankruptcy court later dismissed the case.

Debtors asserted that the settlement funds were exempt property and that the bankruptcy court erred by conditioning confirmation of Debtors' proposed chapter 13 plan on payment to Debtors' unsecured creditors pursuant to § 1325(b)(1). The district court held that exempt property must be included in the disposable income analysis. Debtors alternatively argued that the settlement funds were not income under BAPCPA and were not required by § 1325(b) to be applied to payments to unsecured creditors. The district court rejected these arguments and held that income includes all sources of funds, including settlement funds.

In re Ortiz-Peredo, 573 B.R. 703 (Bankr. W.D. Tex. July 18, 2017)
Disposable Income/Exemptions

The Chapter 13 Trustee objected to confirmation of Debtors' proposed chapter 13 plan, asserting that Debtors had to devote proceeds from a settlement of an unrelated prepetition workers' compensation claim towards unsecured creditors under their plan. Debtors responded that, because they had claimed their workers' compensation cause of action as exempt in their Schedules, the settlement proceeds were not available to satisfy their creditors' claims. The bankruptcy court held that the proceeds that Debtors received post-petition from the settlement

of their prepetition workers' compensation claim constituted disposable income under 11 U.S.C. § 1325 that had to be paid into the Debtors' chapter 13 plan, even though the Debtors listed that claim as exempt and no party objected to that exemption.

Exemptions

In re DeBerry, 884 F.3d 526 (5th Cir. 2018)
Exemptions/Appeals

Debtor filed for chapter 7 bankruptcy and listed his home as exempt under Texas law. Seven months later, Debtor sold the home after the bankruptcy court granted Debtor's motion for authorization to sell. Debtor did not reinvest the proceeds in another home but instead transferred the money to his wife and to a law firm that represented him previously. The Trustee filed an adversary proceeding against Debtor and the law firm alleging Creditor was entitled to the money because it was not reinvested in a homestead within six months. Debtor owned the homestead at the commencement of bankruptcy. The bankruptcy court ruled that an exempted property interest that is subsequently transformed into a new nonexempt property interest after a sale remains excluded from a chapter 7 bankruptcy estate. The district court reversed. The Fifth Circuit subsequently reversed the district court, and the bankruptcy court's order was reinstated, determining that the proceeds of a homestead sold after the filing of a petition for chapter 7 bankruptcy remain exempt from a debtor's estate even if they are not reinvested within the time frame required to invoke the proceeds rule of Texas homestead law if the sold home was owned at the commencement of Debtor's bankruptcy.

Peake v. Ayobami (In re Ayobami), 879 F.3d 152 (5th Cir. 2018)
Exemptions/Appeals

Chapter 13 Debtor completed her bankruptcy Schedule C by checking the box that allowed her to exempt from her bankruptcy estate 100% of fair market value, up to any applicable statutory limit of certain property for 14 of her 17 exemptions. The Chapter 13 Trustee argued: (i) that an exemption must be limited to a specific amount; and (ii) that Debtor may never exempt a 100% interest in an asset under 11 U.S.C. § 522 because allowing such an exemption effectively removes the entire asset from the bankruptcy estate. The bankruptcy court allowed the exemptions. On appeal, the district court allowed the exemptions that claimed 100% of fair market value, up to any applicable statutory limit, but only after Debtor also listed a claimed amount within the statutory limit. The bankruptcy court subsequently certified the question to the Fifth Circuit. The Fifth Circuit held that § 522(d) limits the value that may be exempted, not the Debtor's interest that may be exempted. Accordingly, Debtor's entire interest in an asset that is less than or equal to any dollar value limitation imposed by § 522(d) may be exempt by Debtor claiming her 100% interest in that asset. The Fifth Circuit declined to answer whether claiming 100% interest in an asset as exempt allows Debtor to clear title in that asset and any post-petition appreciation of that asset.

In re Hawk, 871 F.3d 287 (5th Cir. 2017)
Exemptions/Property of the Estate

The Chapter 7 Trustee moved to compel the turnover of proceeds from the post-petition liquidation of one of Debtors' IRAs after Debtors failed to reinvest those proceeds in another exempt retirement account within the time required by Texas exemption laws. The bankruptcy court granted the motion and denied reconsideration. The district court affirmed. The Fifth Circuit reversed and remanded the lower courts' decisions, finding that, as a matter of first impression, Debtors did not lose their exemption because the proceeds were withdrawn from the estate at the time that the exemptions were allowed and no provision under Texas law made their interests in the proceeds acquired after they filed for bankruptcy part of their bankruptcy estate.

In re Westen, 2018 WL 1174888 (Bankr. E.D. Tex. Mar. 5, 2018)
Exemptions

Debtors filed for chapter 7 bankruptcy and listed $41,450.00 in "Collectibles," including a specific work of art, as their personal property in their Schedule A/B. In their Schedule C, Debtors claimed these "Collectibles" as exempt "home furnishings" under Texas law. In 2013, Debtors sold their large California home and purchased a new home in Texas. Debtors stated that the artwork listed as a part of the "Collectibles" was not purchased with the intent to resell and had been on display in the Debtor's current and previous homes for 50 years. Consequently, the artwork was a home furnishing. The Chapter 7 Trustee objected that the "Collectibles" were not "home furnishings," and that, even if the artwork could be exempted, the aggregate fair market value of Debtors' exempt personal property exceeded the statutory limit of $100,00.00 for the home furnishings exemption. In this particular case, the artwork was extensively used to furnish Debtors' home and was not being held for investment purposes. Accordingly, the bankruptcy court overruled the Trustee's objection in part and concluded that artwork, under certain circumstances, can qualify as exempt "home furnishings" under Texas law, but was subject to the monetary cap on exemptions.

In re Odam, 2018 WL 1054115, (Bankr. N.D. Tex. Feb. 22, 2018)
Exemptions

Pro se Debtor filed for chapter 7 bankruptcy. Debtor disclosed on his bankruptcy Schedules that he had approximately $37,000.00 of equity in his domicile. Debtor attempted to exempt his domicile and 17 rental houses. Debtor's Schedule C failed to identify whether he claimed the state and federal non-bankruptcy exemptions under 11 U.S.C. § 522(b)(3) or the federal bankruptcy exemptions under § 522(b)(2). The Chapter 7 Trustee objected to Debtor's claimed exemptions. The bankruptcy court held Debtor's exemptions must be based on the federal exemptions, as Texas law does not allow a person to exempt rental properties. The bankruptcy court then determined Debtor's rental property exemption to be limited to $1,250.00 because he had no unused exemption amount remaining under § 522(d)(5).

In re Clark, 2017 WL 5505135 (Bankr. W.D. Tex. Nov. 13, 2017)
Exemptions

The Chapter 13 Trustee objected to exemptions claimed by Debtors for baseball cards and NASCAR collectibles as home furnishings or family heirlooms. Debtors argued that such items were household furnishings under TEX. PROP. CODE § 42.002(a)(1). Debtors also argued that the Trustee's objection to these claimed exemptions was precluded because these items were owned by Debtors when they filed prior bankruptcy cases and no objection to the exemptions were ever filed by the Trustees in those cases. The bankruptcy court held that claimed exemptions in previous chapter 13 cases dismissed without discharge were not binding upon a subsequent Chapter 13 Trustee. The court also held that claimed exemptions in a previous chapter 7 case in which Debtors did receive a discharge were likewise not binding upon a subsequent Chapter 13 Trustee. Finally, the court found that baseball cards and NASCAR collectibles were not home furnishings under § 42.002(a)(1).

In re Farmer, 2017 WL 3207679 (Bankr. E.D. Tex. July 27, 2017)
Exemptions

Debtors filed chapter 13 bankruptcy and claimed federal exemptions covering home equity and personal property. In Schedule C, debtors elected the "*Schwab* option" announced in *Schwab v. Reilly*, 560 U.S. 770 (2010), and claimed 100% of their home's Fair Market Value ("FMV") exempt from creditors and declared $16,200.00 of equity in their homestead in Schedule A/B along with $12,442.00 in personal property. The Chapter 13 Trustee objected to these claimed objections, arguing that when Debtors claimed the full FMV of their home, there was no remaining exemption to carry over, so Debtors exceeded the $2,500.00 wildcard exemption in 11 U.S.C. § 522(d)(5).

The bankruptcy court held that by electing 100% of FMV in Schedule C Debtors had not made a valuation, but rather notified their intent to withdraw the asset from the estate. After Debtors elected the "*Schwab* option," the Trustee bore the burden of examining Schedule A/B to determine whether a debtor's exempt interest exceeded the statutory limits. Because Debtors sought only to retain the equity in their home and were within the $47,350.00 allowed under § 522(d)(1), Debtors could carry over the unused balance as an additional wildcard exemption allowed under § 522(d)(5).

In re Kara, 573 B.R. 696 (Bankr. W.D. Tex. 2017)
Exemptions

Debtor claimed a state law exemption under TEX. PROP. CODE § 42.0021 for an IRA inherited from her aunt pursuant to 11 U.S.C. § 522(b)(3). The Chapter 7 Trustee objected to the claimed exemption, asserting that the Supreme Court held in *Clark v. Rameker*, 134 S. Ct. 2242 (2014), that an individual retirement account inherited from a non-spouse did not meet the definition of "retirement funds" under § 522(b)(3)(C), and that § 42.0021 of the Texas Property Code did not protect the IRA account as exempt property. The bankruptcy court determined that Texas law allowed Debtor to exempt a broader category of retirement funds than that allowed under the Bankruptcy Code, and that the Trustee's first argument for denial of the exemption failed

because the Supreme Court's ruling in *Clark* did not address preemption of state law exemptions. The bankruptcy court additionally found that no dispute existed over whether the inherited IRA was a valid "inherited individual retirement account" as defined in 21 U.S.C. § 408(d)(3)(C). Consequently, the inherited IRA was exempt from taxation pursuant to 26 U.S.C. § 408(e) at the time of transfer and therefore fell within the language of § 42.0021 of the Texas Property Code.

In re Stanford, 573 B.R. 205 (Bankr. W.D. Tex. 2017)
Exemptions/ State Law Cases

Debtors owned part of an interest in a property and intended to claim the property as their homestead until it was sold pursuant to an agreement with the other interest holders. Judgment Creditor attempted to collect against Debtors after learning of the potential sale of the property. Judgment Creditor's efforts were stayed when Debtors filed for chapter 7 bankruptcy and listed the property as their homestead in their bankruptcy Schedules. Judgment Creditor objected to the homestead claim and sought relief from the automatic stay in order to continue state court litigation contesting Debtors' ownership of the property and the homestead claim. The bankruptcy court held that: Debtors established overt acts of homestead use and an intent to occupy the property as a homestead; the property qualified as a homestead immediately when Debtors obtained an interest in the property after establishing the prerequisites of a homestead; a delay between one of the Debtors acquiring her interest in the property and taking physical possession of the property did not affect the property's character as a homestead; Judgment Creditor could not utilize the merger doctrine to assert a lien interest in the property; and that Debtors were not equitably or judicially estopped from claiming the Texas homestead exemption.

Jurisdiction & Venue

Benjamin v. United States (In re Benjamin), 2018 WL 572998 (5th Cir. Mar. 27, 2018)
Jurisdiction & Venue/Appeals

Debtor was approved to be his sister's designated payee by the Social Security Administration ("SSA"). Debtor was notified that he would be liable for repayment of any overpayment of his sister's benefits. Subsequently, Debtor received notice from the SSA of an overpayment. Debtor failed to appeal the decision by utilizing the required administrative process, but instead agreed to a monthly garnishment of his SSA benefits. Accordingly, no final decision on this issue was rendered by the Commissioner of Social Security. Subsequent to the SSA garnishment, Debtor filed for chapter 7 bankruptcy. Debtor also filed an adversary proceeding to challenge the SSA's recoupment of the overpayment. After the SSA filed a motion to dismiss, the bankruptcy court determined that it lacked subject matter jurisdiction to hear the case because Debtor failed to obtain a final decision from the Commissioner of Social Security on the SSA's decision to recover the overpayment of his sister's benefits as required under 42 U.S.C. § 405(g). The Fifth Circuit affirmed the decision because Debtor failed to receive a final decision by the Commissioner about the SSA's decision to recover the overpayment of his sister's benefits. Accordingly, the bankruptcy court lacked subject matter jurisdiction without a prior adjudication consistent with 42 U.S.C. § 405(g).

In re Odam, 2017 WL 4457429 (Bankr. N.D. Tex. Aug. 8, 2017)
Jurisdiction & Venue

The Clerk of Court issued its notice that Debtor owed money for his motion seeking conversion of his chapter 7 case to a case under chapter 11. The notice provided that, if the deficiency was not cured within 48 hours, the motion would be dismissed without further notice. After receiving notice, Debtor failed to make the required payment but filed a pleading that questioned the bankruptcy court's subject matter jurisdiction. The bankruptcy court determined that whether Debtor paid his filing fee is a matter concerning the administration of the estate and thus constitutes a core matter over which the court has full authority and jurisdiction.

Lien Validity

Mawatu v. OneMain Fin. of Tex., Inc., 2018 WL 1886712 (W.D. Tex. Apr. 19, 2018)
Lien Validity/Discharge

Debtor filed for chapter 13 bankruptcy in December 2016 and converted the case to chapter 7 in June 2017. Debtor filed an amended motion to avoid a lien on September 28, 2017. The next day, the bankruptcy court entered a discharge order and denied Debtor's motion to avoid the lien. Debtor appealed the order to the district court with a motion for enforcement of the discharge order. Debtor argued Lender should have been held in contempt for disobeying the discharge order by repossessing and refusing to return Debtor's automobile. The district court denied Debtor's motion for enforcement of the discharge order because Lender was a secured creditor with a lien and was expressly permitted to enforce a claim against Debtor's property subject to its lien. The district court affirmed the bankruptcy order because Debtor failed to order a copy of the transcript on her motion and supplement the record as required, without which the court could not review the findings of facts and conclusions of law. Debtor also failed to demonstrate that the bankruptcy court erred because the Debtor put forward no reason why the lien should have been avoided.

In re Dahlin, 2018 WL 1162533 (Bankr. S.D. Tex. Mar. 1, 2018)
Lien Validity/Proof of Claim

Prior to her divorce in 2012, Debtor executed a Note and Deed of Trust in favor of Creditor 1 to secure the purchase of a home. After the divorce, Debtor assumed sole ownership of the home and responsibility for payments, though Debtor's ex-husband remained liable on the Note. Under the divorce agreement, if Debtor defaulted on her payments, her ex-husband could make the missed payments and foreclose on the home. Escalating tensions resulted in Debtor's ex-husband initiating the foreclosure process on the home. Creditor 2 loaned Debtor the money needed to pay off Creditor 1 in exchange for a first priority lien on the home; the agreement was signed on November 8, 2016. Creditor 2 wired $188,000.00 directly to Creditor 1 to pay off the remaining balance, but Debtor failed to contemporaneously execute a promissory Note and Deed of Trust securing Creditor 2's interest. On December 2, 2016, Creditor 1 recorded its release of lien.

On December 3, 2016, Debtor filed an insurance claim after the home was destroyed by a fire. Debtor met with an attorney to create a Note and Deed of Trust securing Creditor 2's first priority lien on the home while simultaneously preparing to file for bankruptcy. The attorney filed the bankruptcy petition on December 5, 2016, before the Note and Deed of Trust were delivered to Creditor 2, who recorded their secured lien the following day. Debtor claimed her insurance proceeds from the home as exempt in her bankruptcy schedules. The Chapter 13 Trustee claimed a superior right to the insurance funds because Creditor 2 had an unperfected security interest in the property, which was preserved for the bankruptcy estate. However, Creditor 2 claimed a right to equitable subrogation to the lien on the property, and that the proceeds could not belong to the estate because the proceeds could be traced to the Debtor's exempt homestead. The bankruptcy court held that Creditor 2 was equitably subrogated to Creditor 1 with regards to the debt Debtor owed, but made no finding regarding whether equitable subrogation entitled Creditor 2 to a lien or an equitable right to a lien because the Bankruptcy Code treats them equally as a claim. The court recognized that the contract between Debtor and Creditor 2 was sufficient to create a lien, but that the obligation to pay may still be avoided because Creditor 2 failed to record either the contract or the Deed of Trust until after the bankruptcy petition. Because the Trustee lacked inquiry notice, Creditor 2's interest in the property was avoidable as a post-petition transfer, and Creditor 2 had no right to a secured claim on the home.

In re Garza, 577 B.R. 258 (Bankr. S.D. Tex. Nov. 9, 2017)
Lien Validity

Debtors purchased a home in 2007, which they financed by executing a Note for $275,998.00 secured by both a Vendor's Lien on the property's warranty deed and a Deed of Trust in favor of Lender. The Deed of Trust contained an acceleration clause that allowed Lender to demand the right to payment in full in case of default and foreclose if default was not cured. In April 2011, the loan servicer sent Debtors notice that they were in default and that Lender was exercising its right of acceleration under the Deed of Trust. However, in October of that year, Lender sent notice to Debtors that it was rescinding its election to accelerate the Deed of Trust. Subsequently, in November 2011, Debtors claimed that they received another notice of acceleration sent on Lender's behalf. Just under four years later in October 2015, the Assignee of Lender sent Debtors a notice stating that their account was in default and that the loan would be accelerated unless Debtors paid the defaulted amount within 45 days.

After Debtors filed for bankruptcy in December 2015, Lender filed an adversary proceeding to resolve the status of the Deed of Trust securing Debtors' home. Debtors argued that Lender's failure to foreclose on the house within four years of the November 2011 notice of acceleration rendered the security interest on the house unenforceable. Lender's Assignee argued that the acceleration initiated by the November 2011 notice was properly abandoned when it sent the October 2015 notice of default. The court held for the Assignee, finding that by the October 2015 notice the Assignee abandoned the right to the full accelerated amount because the notice demanded only the default amounts owed by Debtors.

In re Guiles, 580 B.R. 466 (Bankr. W.D. Tex. 2017)
Lien Validity

The Chapter 13 Trustee brought an adversary proceeding to avoid a lien as allegedly not properly perfected under Texas law when Debtor's chapter 13 petition was filed in exercise of the Trustee's strong-arm powers. In July 2010, Debtor took out a loan from Creditor, secured by Debtor's vehicle. Creditor noted its security interest on the Certificate of Title. In May 2014, Debtor took out a second loan from Creditor, secured by the same collateral. A portion of the money from the Second Note was used to pay off the remaining balance of the First Note. Creditor did not change the lien date on the Certificate of Title, so Trustee argued that when the First Note was paid off by funds from the Second, Creditor's lien was extinguished and the Second Note created a new indebtedness. In order to perfect its new security interest, Creditor should have noted its new 2014 lien on the Certificate of Title. The bankruptcy court held that the Trustee had standing to exercise strong-arm avoidance powers to avoid the allegedly unperfected lien, regardless of what effect such avoidance might have on Debtor. However, the court also found that the funds from the Second Note were in the nature of a future advance, for which Creditor had a properly perfected security interest by virtue of future advance clause.

In re Hutchings, 2017 WL 4174394 (Bankr. W.D. Tex. Sept. 19, 2017)
Lien Validity

Debtor obtained a home equity loan from Lender secured by her homestead. Sometime later, Debtor hired Creditor to construct a new home for her. After a dispute arose between them, Debtor and Creditor entered into a settlement agreement under which Creditor agreed to buy back the home and provide Debtor with financing in order to refinance her existing home equity loan. Subsequently, Creditor informed Debtor that it would be unable to refinance the home equity loan under Texas law. The parties reentered arbitration and the arbiter found that the settlement agreement could be legally performed by Creditor. Debtor then executed an unsecured promissory Note in favor of Lender, which stated that Debtor would pay all funds it received under the refinancing to Lender. Debtor later defaulted on the Note and Creditor obtained a default judgment in state court against Debtor, who then filed for chapter 7 bankruptcy.

Debtor moved to avoid Creditor's judicial lien as an impairment of her exempt property. Creditor argued that it was entitled to equitable subrogation of Lender's rights because Creditor's loan was used to refinance Debtor's existing home equity loan. The bankruptcy court agreed with Creditor, finding that Creditor discharged the constitutional home equity lien encumbering Debtor's property by the refinancing of the home equity loan, allowing Creditor to step into the shoes of Lender and assume its rights against Debtor. Consequently, Creditor was entitled to equitable subrogation of the entire amount of the loan.

In re Garcia, 2017 WL 2859756 (Bankr. N.D. Tex. June 30, 2017)
Lien Validity

Debtors owned land secured by Creditor's lien and lived in a mobile home located on the land. Creditor did not have a lien on Debtors' mobile home. Debtor's chapter 13 plan bifurcated

Creditor's claim into secured and unsecured portions. Creditor objected to bifurcation, arguing that its lien was secured by Debtors' real property and was subject to anti-modification provisions in 11 U.S.C. § 1322(b)(2) because the lien covers the Debtors' principle residence and the debt securing the lien matured before the final payment under the plan was due. The bankruptcy court held that although "principal residence" includes mobile homes in the statutory definition of 11 U.S.C. § 101(13)(A), Creditor's lien only covered the Debtors' land and not the mobile home. Thus, the anti-modification provisions could not apply because the lien did not cover the debtor's personal residence.

In re Shank, 569 B.R. 238 (Bankr. S.D. Tex. 2017)
Lien Validity

Debtors filed for chapter 13 bankruptcy and filed a proposed plan that allowed secured creditors to retain their liens unless the Debtors specifically sought to avoid them under 11 U.S.C. § 522. Creditor holding mortgage on Debtors' home was properly noticed regarding bankruptcy filing and proposed plan. Chapter 13 Trustee challenged feasibility of the plan and moved to dismiss case, leading Debtors to amend their proposed plan. Creditor was not noticed regarding Amended Plan and the proof of claim bar date passed without Creditor filing a proof of claim. Debtors' Amended Plan was confirmed without objection. Debtors were forced to modify their Amended Plan due to illness which the bankruptcy court authorized. Creditor received notice of the bankruptcy court's Modification Order.

Debtors proceeded to complete all required payments under plan and Creditor accepted all payments from the Trustee. After completing their payments, Debtors filed a motion for discharge. However, Creditor disputed Debtor's discharge, and claimed its lien on Debtor's home was not paid in full under the terms of the confirmed chapter 13 plan. Court held that terms of plan did not avoid Creditor's lien and Creditor received actual notice of the plan and conformation order but failed to object. As a result, Creditor was bound by terms of the plan and Creditor's late-filed objection was barred under *res judiciata*. Bankruptcy court Granted debtors their discharge.

Miscellaneous

In re Marquez, 2017 WL 5438306 (Bankr. W.D. Tex. Nov. 13, 2017)
Miscellaneous

In Debtors' Statement of Intention for Individuals Filing Under Chapter 7, Debtors indicated that they intended to retain a mobile home that was subject to a lien and to continue making payments to Creditor who held the lien, but that they did not intend to reaffirm the debt. After Creditor sent Debtors' counsel a reaffirmation agreement, which Debtors ignored, Creditor filed a motion to compel Debtors to comply with 11 U.S.C. § 521(a)(2), and to delay Debtors' discharge until such compliance was obtained.

The bankruptcy court held that, once Debtors decided to retain the mobile home, they were required under § 521(a)(2) either to redeem the property or to reaffirm the debts secured by the property; Debtors were not entitled to a ride-through. The court further held that Debtors had to

amend their Statement of Intention within thirty days in order to comply with § 521(a)(2), had to perform their stated intention within 45 days, and that Debtors' discharge was suspended until both the amendment and performance were complete.

In re Hurtado, 2017 WL 5153567 (Bankr. S.D. Tex. Nov. 06, 2017)
Miscellaneous

The Chapter 7 Trustee filed an adversary proceeding seeking to avoid the transfer of certain property from Debtors to Debtors' daughter, and alleging that Debtors conveyed the property to the daughter over four years earlier but had retained control or possession of the property, paid the ad valorem taxes and maintenance, and received all the rental income from the property. The Trustee also alleged that Debtors concealed assets by failing to adequately disclose their interest in the property. In response, Debtors filed a motion to convert Debtors' bankruptcy case to a chapter 13 case. The Trustee argued that the bankruptcy court should deny the motion because Debtors would not be able to propose a feasible chapter 13 plan and had not acted in good faith.

The bankruptcy court found that, although Debtors failed to accurately disclose their assets on their Statements of Financial Affairs (SOFA) by not including the rental income, Debtors fulfilled their duty to disclose in both their Schedules and Means Test. The inaccuracies on the SOFA did not rise to the level of bad faith because the consistent disclosure of the rental income in their Schedules and Means Test demonstrated that Debtors were not attempting to conceal the rental income. The bankruptcy court found that Debtors did not engage in bad faith conduct because they did not intend to deceive the court, their creditors, or the Trustee regarding the existence of the property. Also, because Debtors transferred the Property to their daughter over four years prior to filing bankruptcy, it was reasonable for them not to disclose the property. Finally, the court found that Debtors' monthly net income of was sufficient to fund a chapter 13 plan.

Plan Confirmation

In re Diaz, 2018 WL 2425969 (Bankr. W.D. Tex. May 14, 2018)
Plan Confirmation

Pursuant to the District Form Chapter 13 Plan used in the Western District of Texas, chapter 13 Debtor proposed to pay 100% of all her allowed administrative, secured, and priority claims, as well as 12% of her non-priority unsecured claims. Debtor's proposed plan struck the District Plan's section treating tax refunds and treated his tax refunds as pro-rated per month. The Chapter 13 Trustee objected to the plan, arguing that Debtor could not strike any of the District Plan's provisions, that the striking of the provision made the plan unfeasible, and that Debtor cannot pro-rate her tax refunds because they amount to less than $2,000.00 per year of the plan. The bankruptcy court granted the Trustee's objection and denied confirmation of Debtor's plan because, where a district adopts a form chapter 13 plan, which it may do pursuant to Federal Rule of Bankruptcy Procedure 9009, allowing any debtor the ability to modify the form or terms of the plan that would render its use meaningless. Additionally, the bankruptcy court stated that tax refunds under $2,000.00 are considered disposable income under 11 U.S.C. § 1325(b)(2),

making them property of the estate that must be turned over to the Trustee. Consequently, the tax refund provision needed to remain in the District Plan.

In re Amaya, 2018 WL 1773096 (Bankr. S.D. Tex. Apr. 11, 2018)
Plan Confirmation

In July 2017, Debtor filed for chapter 13 bankruptcy. Debtor's Schedule D listed a claim held by Creditor secured by Debtor's homestead. In October 2017, Creditor filed its proof of claim asserting a secured claim in the nature of a tax lien. In November 2017, Debtor filed her amended chapter 13 plan, which provided for plan payments to be made over 60 months. Debtor's counsel's priority claim was to be paid pro-rata from months 1 through 58. Creditor filed its objection to Debtor's plan, arguing that the plan did not provide fixed and equal payments and did not provide that Creditor shall retain its lien if the case is dismissed or converted. Creditor claimed that distributing payments to creditors on a pro-rata basis violated Debtor's duty to make equal monthly payments pursuant to 11 U.S.C. § 1325(a)(5)(B)(i)(II). The bankruptcy court found that Debtor's proposal to continue making equal monthly payments to the same creditors throughout the life of the plan satisfied Debtor's duty. On the second claim, the court found that Debtor's plan explicitly provided that Creditor shall retain its lien even in the event of dismissal or conversion. Accordingly, Creditor's objections were overruled and Debtor's Plan satisfied all statutory requirements and was confirmed.

In re Randall, 2018 WL 1737620 (Bankr. N.D. Tex. Apr. 10, 2018)
Plan Confirmation

Debtors filed for chapter 13 bankruptcy and proposed their chapter 13 plan on September 1, 2017. The plan provided for the payment of interest at 6% on two domestic support obligation arrearages, but did not provide for payment of all general unsecured creditors in full. The Attorney General filed two proofs of claim for child support arrearages on September 14, 2017. In November, the Trustee filed an objection to confirmation, objecting to the payment of post-petition interest on the domestic support obligation claims through the plan. Debtors filed an amended plan, which again did not provide for payment of postpetition interest on the domestic support obligation claims, and the Attorney General objected on that basis. The definition of domestic support obligation under § 101(14A) specifically included that interest accrued to such obligations were priority claims that must be paid in full through chapter 13 plans. The court confirmed the plan with the requirement that it provide for the payment of postpetition interest accrued on the domestic support obligation payments.

In re Gonzales, 2018 WL 501332 (Bankr. N.D. Tex. Jan. 19, 2018)
Plan Confirmation

Prior to filing for bankruptcy, Debtor was evicted and her house was foreclosed upon. Subsequent to remodeling and selling the house to a third party, Creditor discovered an error with the property description in the Deed of Trust. The error resulted in the rescission of the sale. Debtor moved back into the house and filed for bankruptcy to stop a second foreclosure. Creditor filed a proof of claim as a secured creditor for the balance of the Note, and as an unsecured creditor for the value of the remodeling. At the Debtor's chapter 13 plan confirmation

hearing, Creditor and the Chapter 13 Trustee opposed confirmation because the plan was not feasible. The Trustee also argued that Debtor filed her plan in bad faith because Debtor failed to provide adequate information that would allow the Trustee to determine if Debtor was dedicating all of her disposable income to the plan. Debtor testified that there were inaccuracies in her sworn schedules of income and expenses because she failed to report income from odd jobs and family contributions. Debtor testified that she was currently earning regular income in the form of self-employment income, Social Security Disability income, and rental income. The bankruptcy court determined that Debtor's plan was not feasible because she failed to prove by a preponderance of evidence that she had sufficient regular and reliable income to make the increased plan payments required. Instead, Debtor provided only speculative testimony as to her ability to supplement her income.

In re Garza, 575 B.R. 736 (Bankr. S.D. Tex. 2017)
Plan Confirmation/Modification

The Chapter 13 Trustee objected to confirmation of above-median Debtors' proposed debt adjustment plan as not satisfying the projected disposable income requirement based upon the inclusion in Debtors' chapter 13 plan of a monthly voluntary 401(k) contribution despite failing to contribute to the 401(k) prior to the filing of their bankruptcy petition. The bankruptcy court held that the exclusion of any amounts withheld by an employer from the wages of its debtor-employee as contributions to an employee benefit plan from the property of the estate applied to Debtors' voluntary post-petition contributions to the 401(k) retirement plan. The court found that Debtors' voluntary 401(k) contributions were excluded from their projected disposable income—irrespective of their failure to contribute prior to bankruptcy—provided that the plan was proposed in good faith, the contributions did not exceed the limits permitted by the 401(k) plan, and Debtors satisfied all Bankruptcy Code requirements.

In re Turcotte, 570 B.R. 773 (Bankr. S.D. Tex. 2017)
Plan Confirmation

At issue in this case was the interest rate to be paid under a chapter 13 plan to a secured creditor paid on a cramdown basis. Debtors' plan proposed to pay the contract rate of 1.99% interest on Secured Creditor's claim. Secured Creditor objected to confirmation of the plan on the grounds that this interest amount violated the Supreme Court's holding in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). Secured Creditor claimed that the cramdown rate should be the prime rate plus a risk adjustment of 2.0%. Debtors argued that the contract rate was appropriate because this rate was greater than the five-year treasury rate and thus accounted for any risk posed to Secured Creditor. The bankruptcy court found that the Supreme Court's ruling in *Till* required the use of the prime rate to determine the cramdown rate. Accordingly, the bankruptcy court denied confirmation of Debtors' plan because it violated 11 U.S.C. § 1325(a)(5)(B)(ii).

Procedure

In re Min, 2018 WL 2041720 (N.D. Tex. May 2, 2018)
Procedure

Debtor filed for chapter 7 bankruptcy in September 2016 and received his discharge in January 2017. Creditor claimed to have received no notice of Debtor's bankruptcy and therefore did not appear in the bankruptcy proceedings. Debtor listed Creditor as a creditor in his Schedules and sent two notices of the proceedings to Creditor's address and attorney. Neither notice was returned as undeliverable, and, at the time of bankruptcy, Debtor filed suggestions of bankruptcy in the courts in which Creditor had pending cases against him. Electronic notices served on Creditor's attorney and his associate indicated that the notices were viewed. Debtor's bankruptcy case was closed as a no-asset case in February 2017.

Creditor claimed that notice was not received because the address used by Debtor was out of date, and that Creditor's new address had been registered with the Texas Secretary of State since 2015. Creditor filed a motion to reopen Debtor's bankruptcy case in May 2017, but the bankruptcy court denied Creditor's motion because Debtor's notice to Creditor's address and Creditor's attorney was reasonable. The district court affirmed the bankruptcy court's holding, finding that Creditor put forward no evidence showing that the notice was not reasonable.

Alpha Omega CHL, Inc. v. Min (In re Min), 2018 WL 684875 (N.D. Tex. Feb. 1, 2018)
Procedure/Appeal

Creditor's motion for rehearing alleged that the district court erred in dismissing its appeal for failure to file a timely appellant brief. Creditor timely filed its notice of appeal. The bankruptcy clerk transmitted the record on appeal to the district court. At that point, the record was electronically available on the court's electronic filing system website. Having received no appellant's brief, the district court ordered the parties to show cause why it should not dismiss Creditor's appeal. Creditor's counsel responded that, although she had been monitoring the appeal, she did not notice that the bankruptcy clerk transmitted the record on appeal because she was in the midst of a multi-day trial. Creditor claimed that the district court should not dismiss its appeal but instead give an extension to file the appellant's brief. Debtor opposed Creditor's motion to extend. The district court denied Creditor's motion to extend and dismissed the appeal, reasoning that the attorney's failure to notice that the bankruptcy record had been transmitted was not excusable neglect. Creditor presented new facts in a motion for rehearing. Creditor's counsel reviewed the record uploaded to the court's electronic filing system and understood, based on the notice and a review of the record, which revealed that an exhibit was missing from the record, that the record was incomplete, not triggering Federal Rule of Bankruptcy Procedure 8018(a)'s 30 day briefing deadline. As a mistake of law rather than fact, the court granted Creditor's motion for rehearing and reinstated its appeal.

Huddleston v. Whelan (In re Whelan), 582 B.R. 157 (Bankr. E.D. Tex. 2018)
Procedure/State Law Case

Creditor brought a prepetition state court action against chapter 7 Debtor, his oil and gas

company, and the company's agents. Creditor filed an adversary complaint against Debtor seeking to deny entry of any discharge order or, in the alternative, to declare the debt owed to Creditor nondischargeable. With no timely answer to the complaint despite proper notice, the bankruptcy court sua sponte issued an entry of default and granted Creditor's alternative nondischargeability request and Creditor's motion for default judgment in the amount of $641,134.50, including attorney's fees, prejudgment interest, and court costs under 11 U.S.C. § 523(a)(2)(A). Debtor filed a motion for relief from judgment 364 days after the entry of default judgment. Creditor objected. The bankruptcy court held Debtor's motion for relief from judgment untimely and, if timely, that Debtor would not have been entitled to relief from default judgment because: (i) Debtor's conduct was not inadvertent or excusable neglect but instead willful and unreasonable as seen by his failure to answer after proper notice; and (ii) Debtor failed to show that any misconduct on the part of Creditor prevented him from fully and fairly presenting his case; and (iii) applying the judgment prospectively was no longer equitable.

In re Thompson, 572 B.R. 368 (Bankr. S.D. Tex. 2017)
Procedure

Debtors filed for chapter 7 bankruptcy and scheduled Creditor as holding an undisputed liquidated debt of $22,000.00. Creditor filed a motion seeking relief from the automatic stay, which the bankruptcy court denied after a hearing. On the expiration date of the 60 day deadline to initiate an adversary proceeding, Creditor filed a pleading against the Debtors in the main bankruptcy case, but failed to initiate an adversary proceeding against Debtors. The bankruptcy court dismissed complaint as not filed in compliance with the rules, so Creditor filed a motion for leave and attempted to file an adversary proceeding. Court held that failure to comply with the deadlines established in Bankruptcy Rule 4007(c) is not excusable neglect. However, Creditor's filing a motion to lift stay within the 60 day window provided the Debtors with notice of creditor's intent to challenge discharge of his debt was adequate to allow relation back of an adversary complaint within the 60 day deadline.

Proofs of Claim

Pate v. Tow, 2018 WL 2426662 (S.D. Tex. May 29, 2018)
Proofs of Claim

Appellants held claims for child support arrearages against Debtor in his chapter 7 bankruptcy case. The bankruptcy court originally ordered Appellants claims, which were late-filed, to be distributed pursuant to 11 U.S.C. § 726(a)(3) as tardily-filed claims. Appellants filed a motion to vacate that order, which was granted, allowing Appellants' claims to be distributed pursuant to § 726(a)(2). On appeal, Appellants argued that their claims should be given § 726(a)(1) distribution priority—reserved for timely-filed proofs of claim—because they did not receive proper notice of the deadline to file their claims due to the Trustee's final report being mailed to the Illinois Department of Healthcare and Family Services ("IDHFS"), not to them individually, even though IDHFS was not their agent. The district court affirmed the bankruptcy court's ruling. First, the district court determined that the notice mailed to IDHFS satisfied Appellants' due process rights because IDHFS qualified as their agent due to Appellants giving IDHFS express authorization to file proofs of claim on their behalf, as well as their use of IDHFS to

enforce their unsatisfied child support orders. Second, the district court found that Appellants' claims were late-filed because Appellants failed to timely file their claim even though they received due process. Third, the district court affirmed that actual notice of Debtor's bankruptcy was withheld from Appellants by IDHFS, entitling Appellants to § 726(a)(2) distribution priority.

In re Healey, 2017 WL 4863014 (Bankr. E.D. Tex. 2017)
Proofs of Claim

Prior to filing his bankruptcy petition, Debtor was a defendant in a state court lawsuit prosecuted by his father and in which Debtor was found liable for damages and attorney's fees in excess of $400,000.00. After entry of a final judgment in that lawsuit, Debtor filed for chapter 7 bankruptcy. The bankruptcy court modified the automatic stay so that Debtor could pursue an appeal of the state court judgment. Debtor never superseded the state court judgment. During the pendency of that appeals process, Claimant, Debtor's father, and the plaintiff in the state-court action, by and through an authorized agent, filed a proof of claim for $401,699.72, the cumulative amount of awarded damages and attorney's fees in the state court judgment. Debtor objected to Claimant's claim based on two arguments: first, since the matter was on appeal, the state court judgment was not a final judgment; and second, that the Durable Power of Attorney held by the authorized agent was invalid. The court held that the claim was properly filed and entitled to prima facie validity because the effectiveness of a proof of claim is not dependent on an authorized agent's demonstration of the existence of a power of attorney. The court also held that the state court judgment was a final judgment without the intervention of a superseded bond.

In re Odam, 2017 WL 4457430 (Bankr. N.D. Tex. Sept. 15, 2017)
Proofs of Claim

Pro se Debtor filed an objection to Creditor Bank's proof of claim and stated that, due to medical problems, he needed an extension of deadlines and an adversary proceeding on Creditor's proof of claim. Debtor's objection did not state a basis for the objection, did not identify his medical problem, and did not identify any deadline causing him hardship. At a hearing on Debtor's objection, the bankruptcy court found that Debtor presented no credible evidence rebutting the proof of claim but instead submitted only self-serving and untrue statements. The court accordingly denied Debtor's objection to the proof of claim.

In re Merkle, 574 B.R. 641 (Bankr. W.D. Tex. 2017)
Proofs of Claim

Debtor owns and operates an apartment complex purchased through a Note, the payment of which was secured by a Deed of Trust, Assignment of Rents, and Security Agreement. Debtor repeatedly failed to make timely and adequate payments on the Note, prompting Creditor to send Debtor a notice of default and a notice of intent to accelerate the Note. Debtor subsequently filed a voluntary chapter 11 petition and a chapter 11 plan was confirmed. Creditor filed a proof of claim in Debtor's bankruptcy case, which was subsequently amended, asserting a secured claim. Debtor filed objections and counterclaims to Creditor's proofs of claim; the counterclaims argued that Creditor violated the Deed of Trust and applicable Texas law because Creditor did

not give Debtor proper notice of foreclosure and failed to use insurance proceeds from a fire damaging several apartment units to pay down the Note's delinquency.

The bankruptcy court dismissed Debtor's breach of the Deed of Trust claim and notice claim after it determined that the Note and Deed of Trust were intended for commercial purposes, not for the purpose of a personal residence for Debtor, and found that Debtor's moving into the complex did not change the nature of these documents. Accordingly, the notice provisions and property protections of TEX. PROP. CODE § 51.002 did not apply because the property was commercial. The bankruptcy court additionally found that, even if the Deed of Trust required Creditor to apply the insurance proceeds to Debtor's delinquency on the Note, such an application would not have cured the balance due because the entire indebtedness was due pursuant to the Note's acceleration. Accordingly, the Court dismissed Debtor's counterclaims with prejudice.

In re Vega, 2017 WL 2954762 (Bankr. S.D. Tex. July 10, 2017)
Proofs of Claim/ Attorney's Fees

Debtors objected to Creditor's proof of claim for car payments, asserting that they surrendered the vehicle and thus satisfied the proof of claim in full. Debtors consequently requested that the bankruptcy court disallow the claim, preclude Creditor from presenting any evidence in support of its claim, and award Debtors their attorney's fees. The bankruptcy court found that Creditor's original proof of claim failed to include necessary account statements or explanations of the fees listed in it and therefore lacked prima facie validity; however, Creditor amended its proof of claim, which the court found valid because the amendments cured the issues with Creditor's original proof of claim by pleading a new theory of recovery and attaching adequate records of the transaction on Debtor's account. Nonetheless, the bankruptcy court awarded Debtors a portion of their attorney's fees because Debtors filed a notice of attorney invoices detailing the attorney's fees they incurred in order to draft their objection to Creditor's claim, contact opposing counsel, and prepare for trial.

Property of the Estate

In re Rosbottom, 701 F. App'x 330 (5th Cir. 2017)
Property of the Estate

Debtor and his wife owned a home as community property. The couple sought to transfer their interests in the home to separate trusts via four instruments: one instrument created a trust in Debtor's name, one instrument created a trust in the wife's name, and two instruments conveyed one spouse's interest to his or her respective trust. In 2005, Debtor and his wife sold the home and divided the proceeds evenly between their trusts. After Debtor and his wife divorced, Debtor purchased a condominium using his portion of the home's sale proceeds. Title to the condominium was transferred to Debtor's trust.

In 2009, Debtor filed for bankruptcy. After Debtor's chapter 11 plan was confirmed, the court-appointed Trustee sought a declaratory judgment that the condominium belonged to Debtor's bankruptcy estate rather than Debtor's trust. The Trustee argued that the transactions creating

the trust violated state law since the home sale proceeds amounted only to the reshuffling of community assets and liabilities. The bankruptcy court agreed and granted summary judgment in the Trustee's favor. On appeal, the district court reversed the bankruptcy court's ruling, concluding that Debtor and his wife had made a single donation of their former residence. The Fifth Circuit reversed the district court, finding that the Debtor's and his wife's transfers violated state law because they attempted to transfer their undivided interest in community property to a third entity without termination of the community status of the property. Accordingly, title to the home was never transferred, making the condominium property of Debtor's bankruptcy estate.

King v. Select Portfolio Servicing, Inc., 2017 WL 5998222 (E.D. Tex. Dec. 4, 2017)
Property of the Estate

Prior to filing for chapter 7 bankruptcy, Debtor brought an action seeking a declaratory judgment granting him quiet title to real property. Debtor failed to include his claim against Defendants in his bankruptcy Schedules, but disclosed the lawsuit in his statement of financial affairs. The quiet title claim involved Debtor's homestead and only sought declaratory relief as it pertained to a mortgage. At a summary judgment hearing, Debtor introduced evidence of e-mails between himself and the Chapter 7 Trustee wherein the Trustee appeared to waive the bankruptcy estate's rights to the lawsuit. The district court found that, while there was sufficient evidence to show that Debtor's quiet title lawsuit is potentially a "claim," there was insufficient evidence in the record to conclude that the lawsuit belonged to the bankruptcy estate. Even though Debtor failed to disclose the claim in his bankruptcy Schedules, he was not judicially estopped from asserting a claim. Based on the e-mail exchange between Debtor and the Trustee, it was not clear that Debtor purposefully failed to disclose the lawsuit in his bankruptcy Schedules. Accordingly, the district court found that Debtor had standing and was not judicially estopped from pursuing his undisclosed claim.

Featherston v. DRRF II SPE, LLC, 2017 WL 3908169 (W.D. Tex. Sept. 5, 2017)
Property of the Estate

Defendants initiated foreclosure proceedings against Debtors pursuant to a default on their home loan payments. Debtors filed chapter 7 bankruptcy to stay the foreclosure proceedings, but Defendants were granted relief from the automatic stay by the bankruptcy court. Subsequently, Debtors' home was noticed for foreclosure, but the previous foreclosure order was vacated by the state court. Debtors then brought consumer protection claims against Defendants, which were removed to federal court. The district court found that Debtors' bankruptcy Schedules listed no contingent or unliquidated claims against any of the Defendants, but did state that the amount and validity of Defendants' lien on their home was in dispute, precluding them from bringing those claims. Additionally, the Debtors lacked standing because the court determined that Debtors' claims existed before bankruptcy and so were assets of Debtors' bankruptcy estate. Debtors filed a motion to amend the judgment, which the district court denied because Debtors failed to raise any additional evidence or change in controlling law showing why they held standing to bring any claims against Defendants in relation to the foreclosure of their home.

In re Jones, 573 B.R. 665 (Bankr. N.D. Tex. 2017)
Property of the Estate/Automatic Stay

Chapter 13 Debtor brought an adversary proceeding to determine that a non-judicial foreclosure sale of her property that occurred one day before she filed for bankruptcy was not completed prepetition, making the property an asset of her bankruptcy estate. Alternatively, Debtor brought the adversary proceeding to avoid the sale on strong-arm grounds and to recover for an allegedly willful violation of the automatic stay due to the post-petition recording of the substitute Trustee's Deed. Defendant, a loan servicer and lender, moved for summary judgment. The bankruptcy court found that the sale had the effect of terminating any meaningful interest Debtor had in the property under Texas law, preventing it from entering Debtor's estate. Also, the original Deed of Trust was recorded prepetition, which was sufficient to place Debtor on inquiry notice, foreclosing her strong-arm claim. Finally, the bankruptcy court found that the automatic stay was not violated by the post-petition recording of the Deed because the foreclosure sale terminated Debtor's rights to the property before bankruptcy, placing the property outside of Debtor's bankruptcy estate.

Representation

In re Whitcomb, 575 B.R. 169 (Bankr. S.D. Tex. 2017)
Representation

In 2008, Debtor's grandmother left her estate to Debtor and Heir. Debtor and Heir entered into a Family Settlement Agreement in 2012. In 2013, Heir accused Debtor of breaching the Agreement by retaining Counsel 1 for the ensuing arbitration. Debtor then sought representation from Counsel 2 and sent Counsel 2 confidential information regarding the estate in preparation for the arbitration, such as the estate's financial condition, strategies for the arbitration, and strategies of the opposing party. Counsel 2 eventually declined to represent Debtor in the arbitration. However, during the time that Counsel 2 was receiving confidential information, Counsel 2 was in talks with Counsel 1 to create Law Firm. The arbitrator denied Debtor's subsequent motion to disqualify Law Firm as Heir's counsel for the arbitration, for unknown reasons. The arbitrator issued a decision for Heir in September of 2016, but the arbitration award had not been confirmed.

Debtor filed for chapter 13 bankruptcy in March 2017, invoking the automatic stay and precluding any attempt to confirm the arbitration award. Heir then filed a motion to lift the stay to confirm the award. In response, Debtor filed a motion to disqualify Law Firm from representing Heir in any of the bankruptcy proceedings. In June 2017, the bankruptcy court ruled that no attorney-client relationship ever existed between Debtor and Counsel 2, but that confidential information had been shared between them. Accordingly, Law Firm was disqualified from representing Heir in the bankruptcy case.

Res Judicata & Estoppel

Lohri v. Specialized Loan Serving, LLC (In re Lohri), 2018 WL 893892 (E.D. Tex. Feb. 14, 2018)
Res Judicata & Estoppel/Appeals

Debtor purchased property and executed a Note payable to Bank. Debtor also executed a Deed of Trust in favor of Bank in order to secure the Note. After several assignments of interests, Creditor assumed service of the mortgage. Creditor alleged Debtor stopped making payments in 2010 and filed numerous actions challenging the validity of the mortgage and attempting to avoid foreclosure proceedings. Debtor then filed for chapter 7 bankruptcy. The bankruptcy court dismissed the bankruptcy case because of Debtor's failure to file all required documents. Debtor subsequently filed suit pro se against Creditor in state court. Creditor timely removed the case. Debtor claimed that Creditor made certain misrepresentations or acted unfairly regarding the mortgage, that prior interest owners lacked an enforceable interest to transfer, and that the subsequent "splitting" of the Deed of Trust and Note rendered her indebtedness void. These claims were dismissed with prejudice. Debtor filed suit for a second time in state court and Creditor filed a counterclaim for judicial foreclosure. The state court denied Debtor's motion for summary judgment. The same day, Debtor again filed for chapter 7 bankruptcy. Debtor initiated an adversary proceeding naming Creditor as the servicer of her home mortgage, similarly asserting that the interest assignments were invalid. Creditor filed a motion to dismiss the adversary proceeding. The bankruptcy court dismissed Debtor's claims due to res judicata and collateral estoppel stemming from the previous court rulings on these issues. Debtor filed a notice of appeal, which Creditor moved to dismiss. The district court found the notice of appeal to be untimely and dismissed the appeal, as the untimeliness was not due to excusable neglect. If an appeal from a bankruptcy court order is untimely, the district court lacks jurisdiction to hear the appeal, and has no authority to create equitable exceptions to jurisdictional requirements.

In re Scott, 2017 WL 4457432 (Bankr. N.D. Tex. Sept. 22, 2017)
Res Judicata & Estoppel/Proofs of Claim

Debtor purchased a home through a home equity loan from Lender secured by the property. Debtor defaulted on the loan at the time Defendant began to act as servicer for Lender. The security instrument required Debtor to keep the home insured against loss or else Lender could establish an escrow account and obtain force-placed insurance coverage for the home at Debtor's expense. Debtor failed to pay insurance premiums on the home, entitling Defendant to hold and suspend payments received from Debtor until sufficient funds to apply to a full monthly payment under the instrument were received and to require Debtor to pay escrow items under the instrument. Defendant also paid and charged Debtor for property taxes assessed, but not owed, on the property.

Debtor filed for chapter 13 bankruptcy. Defendant, on behalf of Lender, filed a proof of claim asserting a secured claim against Debtor. No party filed an objection to the proof of claim. The bankruptcy court's confirmation order bound all parties to the Chapter 13 Trustee's recommendation that Lender held a secured claim. Subsequently, Debtor filed an adversary proceeding against Defendant that asserted claims for violations of various Texas consumer

protection laws. The bankruptcy court raised res judicata sua sponte based upon its confirmation order, barring Debtor's claims against Defendant.

Sanctions

In re Houston, 2017 WL 4861930 (Bankr. S.D. Tex. Oct. 25, 2017)
Sanctions

Defendant disclosed proposed witnesses and two exhibits after discovery was closed, which deprived Plaintiff of the opportunity to depose the witnesses or propound additional discovery. Defendant also responded to discovery requests two days late, resulting in a deemed admission of the matters requested to be admitted. The bankruptcy court granted Defendant's motion to withdraw the deemed admissions, reasoning that such withdrawal would serve the presentation of the case on the merits because it would permit the cross-examination of Plaintiff's witnesses and would not prejudice Plaintiff. However, the bankruptcy court also imposed on Defendant monetary sanctions in the amount of $5,000.00 for Defendant's late discovery designations, finding them to be an abuse of the discovery rules.

State Law Cases

DeFranceschi v. Seterus, Inc., 2018 WL 1989974 (5th Cir. 2018)
State Law Cases

Debtor purchased a property in 2007. The secured Deed of Trust was assigned to Lender and later to Fannie Mae. In 2015, Servicer became the loan servicer agent for Fannie Mae. In 2009, Lender provided Debtor with a notice of default and notice of acceleration. In 2010, Lender offered Debtor a forbearance agreement that explicitly did not abandon the 2009 acceleration. Lender then offered Debtor a loan-modification agreement, which Debtor signed in 2010. Debtor failed to make the proper payments and received another notice of default and intent to accelerate in 2010. Debtor sued Lender in November 2015, seeking declaratory and injunctive relief to prevent foreclosure of the property, arguing that the right to foreclose is barred by the 4-year statute of limitations. The Fifth Circuit affirmed the district court by finding that Lender abandoned the 2009 acceleration by giving the subsequent 2010 notice of acceleration, so that a new statute of limitations period did not begin to accrue until Debtor defaulted again on the Deed of Trust and Lender again accelerated.

Handawy v. Bank of America, N.A., 2018 WL 453912 (E.D. Tex. Jan. 17, 2018)
State Law Cases

In 2012, Debtor filed for chapter 7 bankruptcy and listed Defendant as an oversecured creditor and Debtor's homestead as collateral. Subsequent to discharge, Debtor continued to make timely monthly payments to Defendant. As a result of the discharge, Defendant reported the balance of the debt as zero to three credit reporting agencies and did not report that Debtor was making regular payments on the Note. After his discharge, Debtor retained Company to clear up his credit. Company requested that Defendant correct its reporting to the three credit agencies, but Defendant refused. In 2017, Debtor brought suit under the Fair Credit Reporting Act against

Defendant seeking lost profit damages for an alleged missed opportunity to purchase two franchises as a result of Defendant's failure to report his timely mortgage payments. The district court determined that some of Debtor's claims were barred by the statute of limitations under the Act because Debtor was aware of Defendant's failure to report when he hired Company. Accordingly, such claims were barred, but any republication of credit information within the statute of limitations gave rise to a separate claim.

Duke v. Wells Fargo Bank, N.A., 2017 WL 4862788 (N.D. Tex. Oct. 26, 2017)
State Law Cases/Property of the Estate

Defendants filed motions to dismiss Plaintiff's claims. Plaintiff had filed claims against Defendants for trespass and violation of the Fair Debt Collection Practices Act (FDCPA). Plaintiff based her trespass claims on the allegations that Defendants had trespassed on her by administering her property without rights, using an unverified claim of debt, and by threatening to sell her property through an agent. Plaintiff based her FDCPA claims on the allegations that Defendants attempted to collect a debt without first providing verification. The district court found that Plaintiff failed to sufficiently allege either claim. First, Plaintiff failed to show that she owned the property in question, and, even if she had, she failed to plead all of the elements of a trespass claim. Further, the court found that Plaintiff failed to plead facts sufficient to support a claim for FDCPA violations because Plaintiff did not allege that she was a consumer, or that either Defendant was a debt collector. Accordingly, the court dismissed Plaintiff's claims.

Janeiro v. Calvillo (In re Calvillo), 2018 WL 2425967 (Bankr. W.D. Tex. May 24, 2018)
State Law Cases

Plaintiffs commenced an adversary proceeding against Debtors to determine the dischargeability of certain debts in 1997. A judgment was entered in favor of Plaintiffs in 1998. The clerk of court prepared a writ of execution in 2008 and Plaintiffs filed an application to renew judgment, which the bankruptcy court granted. Aside from an e-mail referencing a telephone conversation between Plaintiffs' attorney and the United States Marshal's office, Plaintiffs provided no evidence showing that the writ of execution was ever delivered to the Marshal for execution. In opposition, Debtors produced a certificate from the Marshal's office certifying that no writ of execution could be found in its records. Plaintiffs subsequently filed another application to renew judgment in the bankruptcy court. The bankruptcy court denied the application, finding that the dischargeability judgment became dormant under Texas law in 2008 when the writ was not delivered to an appropriate officer for enforcement within the 10 year time period prescribed by TEX. CIV. PRAC. & REM. CODE § 34.001(a).

Hargrave v. PennyMac Corp., 2018 WL 1806522 (N.D. Tex. Apr. 27, 2018)
State Law Cases

In November 2006, Debtors secured a home equity loan with Creditor 1. After Debtors failed to make any payments on the loan, Creditor 1 accelerated the loan and filed an application to authorize foreclosure. Debtors filed for bankruptcy and the foreclosure proceeds were stayed. Creditor 1 transferred the loan to Creditor 2. Debtors' bankruptcy case was dismissed in April 2009 and Creditor 2 sent Debtors another notice of acceleration. Creditor 2 filed an application

to foreclose on the property in May 2009, but non-suited the foreclosure action in November 2009. Creditor 2 transferred the loan to Creditor 3 in September 2013. Creditor 3's application for foreclosure was approved in October 2016 and the sale was scheduled for later that year. Debtors argued that the foreclosure was precluded by the 4-year statute of limitations on when a lender must enforce a lien. Creditor 3 removed the case to the district court and filed a motion for summary judgment. The district court found that Debtors' arguments failed as a matter of law because abandonment of acceleration resets the statute of limitations. The court found that when a lender non-suits a foreclosure action it abandons acceleration. Accordingly, the court found that the statute of limitations was reset each time a creditor non-suited foreclosure actions, and Creditor 3 was thus within the 4-year period to enforce its lien.

Carmona v. Carmona (In re Carmona), 580 B.R. 690 (Bankr. S.D. Tex. 2018)
State Law Cases

Debtor claimed that his wife fraudulently sold community real property in Mexico. A final divorce decree awarded the wife a monetary judgment and finalized a settlement agreement resolving all claims and controversies between the parties. Shortly after the final decree, Debtor filed a civil suit in Mexico seeking a judgment for the sale of the community property in Mexico. After several years of litigation, the Mexican court issued several judgments against the wife. In 2016, Debtor filed for chapter 11 bankruptcy. The wife filed an adversary proceeding seeking to hold the divorce judgment exempt from discharge. The wife filed a motion requesting that the bankruptcy court not recognize any of the Mexican judgments under the Texas Recognition Act on the basis that: (i) the Mexican judgments were rendered under a judicial system that does not provide impartial procedures compatible with the requirements of American due process of law; (ii) the Mexican judgments were rendered in circumstances that raise substantial doubt about the integrity of the Mexican court; (iii) the specific proceedings in the Mexican court were not compatible with the requirements of due process of law; (iv) the Mexican judgments are repugnant to the public policy of Texas and the United States; and (v) that the Mexican judgments conflict with the divorce decree. Debtor filed a motion seeking bankruptcy court recognition of the Mexican judgments and that the wife owed his bankruptcy estate per the judgments.

The bankruptcy court determined that: (i) the wife's evidence, which consisted solely of a human rights report regarding corruption in the Mexican judicial system, failed to meet her burden of proof regarding fundamental fairness; (ii) the wife failed to raise substantial doubt about the integrity of the Mexican court with respect to the judgments when she focused on the finding that her signature was forged; (iii) the Mexican judicial proceedings were compatible with the requirements of due process of law because the wife received notice of the proceedings; (iv) the Mexican judgments were repugnant to Texas public policy because all claims and controversies between the parties were settled under the final decree; and (v) that the Mexican judgments conflicted with the final divorce decree.

Taxes

In re Ramirez, 575 B.R. 159 (Bankr. S.D. Tex. 2017)
Taxes

The IRS objected to chapter 11 plans jointly filed by Debtors and sought a determination that Debtors' interests, as beneficiaries and co-executors of their late father's probate estate, were not included in the property of the estate. The bankruptcy court determined that the interests of Debtors in the assets of their father's probate estate were vested, contingent interests included in their bankruptcy estate as of the filing of their respective bankruptcy petitions, and that federal income tax debt of the probate estate of Debtors' father could be dealt with in plans filed by Debtors within their jointly-administered cases.