

Business Bankruptcy Case Developments - 2021

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TABLE OF CONTENTS

I. ADMINISTRATIVE MATTERS	1
A. JURISDICTION, CONSTITUTIONAL AUTHORITY AND POWERS OF THE COURT.....	1
<i>In re Senior Care Centers, LLC</i> , 622 B.R. 680 (Bankr. N.D. Tex. 2020) (Jernigan, J.).....	1
<i>In re Lac-Mégantic Train Derailment Litigation</i> , 999 F.3d 72 (1st Cir. 2021) (Selya, J.).....	1
<i>Cross Keys Bank v. Ward (In re Karcredit, L.L.C.)</i> , 630 B.R. 14 (Bankr. E.D. La. 2021) (Hodge, J.).....	2
<i>Rohi v. Brewer & Prichard, P.C. (In re ABC Dentistry, P.A.)</i> , 2021 WL 955932, 2021 Bankr. LEXIS 591 (Bankr. S.D. Tex. Mar. 12, 2021) (Isgur, J.).....	3
B. EXECUTORY CONTRACTS AND UNEXPIRED LEASES	3
<i>In re Cornerstone Valve LLC</i> , 2021 WL 1731770, 2021 Bankr. LEXIS 1120 (Bankr. S.D. Tex. Apr. 27, 2021) (Isgur, J.).....	3
<i>In re Legacy Reserves Operating LP</i> , 630 B.R. 787 (Bankr. S.D. Tex. 2021) (Isgur, J.).....	3
<i>Spyglass Media Group, LLC v. Bruce Cohen Productions (In re Weinstein Company Holdings, LLC)</i> , 997 F.3d 497 (3d Cir. 2021) (Ambro, J.).....	4
<i>Nine Point Energy Holdings, Inc. v. Caliber Measurement Services LLC (In re Nine Point Energy, LLC)</i> , 2021 WL 2212007, 2021 Bankr. LEXIS 1486 (Bankr. D. Del. June 1, 2021) (Walrath, J.).....	4
<i>In re CEC Entertainment, Inc.</i> , 625 B.R. 344 (Bankr. S.D. Tex. 2020) (Isgur, J.).....	4
C. PROPERTY OF THE ESTATE, THE AUTOMATIC STAY AND OTHER “FIRST DAY” ISSUES	5
<i>In re RGV Smiles by Rocky L. Salinas D.D.S. P.A.</i> , 626 B.R. 278 (Bankr. S.D. Tex. 2021) (Rodriguez, J.)..	5
<i>In re King Mountain Tobacco Company, Inc.</i> , 623 B.R. 323 (Bankr. E.D. Wash. 2020) (Holt, J.).....	6
<i>In re CM Resort, LLC</i> , 2021 WL 3889790, 2021 Bankr. LEXIS 2378 (Bankr. N.D. Tex. Aug. 31, 2021) (Morris, J.).....	7
D. PROFESSIONAL AND EXECUTIVE COMPENSATION	8
<i>Edwards Family Partnership, L.P. v. Johnson (In re Community Home Financial Services, Inc.)</i> , 990 F.3d 422 (5th Cir. 2021) (Elrod, J.).....	8
<i>In re Country Fresh Holding Company Inc.</i> , 2021 WL 2932680 (Bankr. S.D. Tex. Jul. 12, 2021) (Isgur, J.).....	8
E. SALE ISSUES.....	9
<i>In re Walker County Hospital Corp.</i> , 3 F.4th 230 (5th Cir. 2021) (Jolly, J.).....	9
<i>Sanford v. Piazza (In re Pursuit Holdings (NY), LLC)</i> , 845 Fed. Appx. 60 (2d Cir. Mar. 9, 2021) (per curiam).	10
<i>In re RE Palm Springs II, LLC</i> , 2021 WL 3213013, 2021 U.S. Dist. LEXIS 141351 (N.D. Tex. Jul. 29, 2021) (Boyle, J.).....	10
F. DISMISSAL, CONVERSION AND OTHER RELIEF	10
<i>In re National Rifle Association of America</i> , 628 B.R. 262 (Bankr. N.D. Tex. 2021) (Hale, J.).....	10
<i>In re Banner Resources, LLC</i> , 2021 WL 2189085, 2021 Bankr. LEXIS 1452 (Bankr. N.D. Tex. May 28, 2021) (Jones, J.).....	11
<i>In re Seven Three Distilling Company, L.L.C.</i> , 2021 WL 3814802, 2021 Bankr. LEXIS 2072 (Bankr. E.D. La. Aug. 4, 2021) (Grabill, J.).....	11
<i>In re Roman Catholic Church of the Archdiocese of New Orleans</i> , 2021 WL 454220, 2021 Bankr. LEXIS 302 (Bankr. E.D. La. Feb. 8, 2021) (Grabill, J.).....	12
G. SUBCHAPTER V AND SMALL BUSINESS CASES	12
<i>In re Johnson</i> , 2021 WL 825156, 2021 Bankr. LEXIS 471 (Bankr. N.D. Tex. Mar. 1, 2021) (Morris, J.)..	12
<i>In re 218 Jackson LLC</i> , --- B.R. ---, 2021 WL 3662377 (Bankr. M.D. Fla. Aug 17, 2021) (Vaughan, J.)...13	
H. PARTIES BEHAVING BADLY	13
<i>Highland Capital Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt. L.P.)</i> , 2021 Bankr. LEXIS 1533, 2021 WL 2326350 (Bankr. N.D. Tex. June 7, 2021) (Jernigan, J.).....	13
<i>Weigel v. Barnard</i> , --- B.R. ---, 2021 WL 3793794 (E.D.N.Y. Aug. 26, 2021) (Brown, J.).....	14

II. CONTESTED MATTERS AND OTHER LITIGATION.....	15
A. CLAIM ALLOWANCE, SUBORDINATION, PRIORITY AND LIEN DISPUTES	15
<i>Deutsche Bank Trust Co. Ams. v. U.S. Energy Dev. Corp. (In re First River Energy, L.L.C.)</i> , 986 F.3d 914 (5th Cir. 2021) (Jones, J.).....	15
<i>In re Sanchez Energy Corp.</i> , 2021 WL 1747364, 2021 Bankr. LEXIS 1175 (Bankr. S.D. Tex. May 3, 2021) (Isgur, J.).....	15
<i>In re Sanchez Energy Corporation</i> , 2021 WL 923182 (Bankr. S.D. Tex. Mar. 10, 2021) (Isgur, J.).....	16
<i>In re Alta Mesa Resources, Inc.</i> , 2021 WL 1731774, 2021 Bankr. LEXIS 1121 (Bankr. S.D. Tex. Apr. 27, 2021) (Isgur, J.).....	16
<i>2999TC LP, LLC v. Hodges</i> , 2021 WL 1375744, 2021 U.S. Dist. LEXIS 69973 (N.D. Tex. Apr. 12, 2021) (Pittman, J.).....	17
<i>In re Helios & Matheson Analytics, Inc.</i> , 629 B.R. 772 (Bankr. S.D.N.Y. 2021) (Jones, J.).....	17
<i>In re Cyber Litigation Inc.</i> , 2021 WL 4927550, 2021 Bankr. LEXIS 2905 (Bankr. D. Del. Oct. 21, 2021) (Goldblatt, J.).....	17
<i>Petty Bus. Enters., L.P. v. Chesapeake Exp., L.L.C. (In re Chesapeake Energy Corp.)</i> , 2021 WL 4190266, 2021 Bankr. LEXIS 2503 (Bankr. S.D. Tex. Sept. 14, 2021) (Jones, J.).....	18
<i>In re Expo Construction Group, LLC</i> , 630 B.R. 289 (Bankr. S.D. Tex. 2021) (Rodriguez, J.).....	18
<i>W. Wilmington Oil Field Claimants v. CJ Holding Co.</i> , 2021 WL 3356371, 2021 U.S. Dist. LEXIS 149292 (S.D. Tex. Jun. 29, 2021) (Rosenthal, C.J.).....	19
<i>Giuliano v. Ins. Co. of State of Pa. (In re LTC Holdings, Inc.)</i> , 10 F.4th 177 (3d Cir. 2021) (Smith, J.).....	19
B. CONFIRMATION DISPUTES	20
<i>In re Retail Group, Inc.</i> , 2021 WL 2188929, 2021 Bankr. LEXIS 1455 (Bankr. E.D. Va. May 28, 2021) (Huennekens, J.).....	20
<i>In re Ultra Petroleum Corp.</i> , 624 B.R. 178 (Bankr. S.D. Tex. 2020) (Isgur, J.).....	20
<i>In re Cuker Interactive, LLC</i> , 622 B.R. 67 (Bankr. S.D. Cal. 2020) (Adler, J.).....	20
<i>In re Quintela Grp, LLC</i> , 2021 WL 4295247, 2021 U.S. Dist. LEXIS 179710 (S.D. Tex. Sept. 20, 2021) (Hanks, J.).....	21
C. POST-CONFIRMATION AND DISCHARGE MATTERS.....	21
<i>In re Buffets, L.L.C.</i> , 979 F.3d 366 (5th Cir. 2020) (Costa, J.).....	21
<i>In re Waggoner Cattle, LLC</i> , 2021 WL 2021202, 2021 Bankr. LEXIS 1367 (Bankr. N.D. Tex. May 20, 2020) (Jones, J.).....	23
<i>In re Tailored Brands, Inc.</i> , 2021 WL 2021472, 2021 Bankr. LEXIS 1375 (Bankr. S.D. Tex. May 20, 2021) (Isgur, J.).....	23
<i>In re United Refining Co.</i> , Bankr. 2021 WL 160433, 2021 Bankr. LEXIS 105 (Bankr. S.D. Tex. Jan. 16, 2021) (Lopez, J.).....	24
D. AVOIDANCE ACTIONS.....	24
<i>Sherman v. OTA Franchise Corp. (In re Essential Financial Education, Inc.)</i> , 629 B.R. 401 (Bankr. N.D. Tex. 2021) (Larson, J.).....	24
<i>Schmidt v. Fuchs (In re Black Elk Energy Offshore Operations, LLC)</i> , 2021 WL 346226, 2021 Bankr. LEXIS 227 (Bankr. S.D. Tex. Feb. 1, 2021) (Isgur, J.).....	25
<i>Faulkner v. AimBank (In re Reagor-Dykes Motors, LP)</i> , 2021 WL 1219537 (Bankr. N.D. Tex. Mar. 30, 2021) (Jones, J.).....	26
<i>Germans Pellets La., L.L.C. v. Wessel GmbH (In re La. Pellets, Inc.)</i> , 838 Fed. Appx. 45 (5th Cir. 2020) (per curiam).....	26
<i>Valley Ridge Roofing & Constr., LLC v. Silver State Holdings, Assignee—7901 Boulevard 26 LLC (In re Silver State Holdings, Assignee—7901 Boulevard 26 LLC)</i> , 2020 Bankr. LEXIS 3531, 2020 WL 7414434 (Bankr. N.D. Tex. Dec. 17, 2020) (Mullin, J.).....	27
E. OTHER LITIGATION AND CONTESTED MATTERS.....	28
<i>In re Chesapeake Energy Corp.</i> , 2021 WL 2270167, 2021 U.S. Dist. LEXIS 104253 (S.D. Tex. Jun. 3, 2021) (Rosenthal, C.J.).....	28
<i>In re Chesapeake Energy Corp.</i> , 2021 WL 4776685, 2021 U.S. Dist. LEXIS 196984 (S.D. Tex. Aug. 23, 2021) (Rosenthal, C.J.).....	28
<i>In re Vanguard Natural Resources, LLC</i> , 624 B.R. 400 (Bankr. S.D. Tex. 2020) (Isgur, J.).....	29

<i>Krisjenn Ranch, LLC v. DMA Properties Inc. (In re Krisjenn Ranch, LLC)</i> , 629 B.R. 589 (Bankr. W.D. Tex. 2021) (King, J.).	30
<i>Dean v. Seidel</i> , 2021 WL 1541550, 2021 U.S. Dist. LEXIS 75418 (N.D. Tex. Apr. 20, 2021) (Starr, J.).	31
<i>Stermer v. Old Republic National Title Insurance Co. (In re ATIF, Inc.)</i> , 622 B.R. 127 (Bankr. M.D. Fla. 2020) (Delano, C.J.).	31
<i>Cross Keys Bank v. Ward (In re Karcredit, L.L.C.)</i> , 630 B.R. 14 (Bankr. E.D. La. 2021) (Hodge, J.).	31
<i>Carmichael v. Balke (In re Imperial Petroleum Recovery Corp.)</i> , 2021 WL 933989 (Bankr. S.D. Tex. Mar. 11, 2021) (Isgur, J.).	32

I. ADMINISTRATIVE MATTERS

A. JURISDICTION, CONSTITUTIONAL AUTHORITY AND POWERS OF THE COURT

Express Plan Reservation Language is “Icing on the Cake” – Bankruptcy Courts Always Have Post-Confirmation Jurisdiction to Enforce Their Own Orders.

In re Senior Care Centers, LLC, 622 B.R. 680 (Bankr. N.D. Tex. 2020) (Jernigan, J.).

The post-confirmation lessor to the reorganized debtor brought an action in a Texas state district court seeking to enjoin the sale of the reorganized debtor’s equity interests, alleging violations of the “change of control” provisions of the master lease agreement entered into under the terms of the confirmed chapter 11 plan. The reorganized debtor and parent removed the action to the Bankruptcy Court where they were joined by the liquidating trustee. Lessor sought to remand the case back to state court, arguing that the Bankruptcy Court did not have subject matter jurisdiction over the post-confirmation dispute.

The Bankruptcy Court found that it possessed subject matter jurisdiction over the dispute. In reaching this decision the Bankruptcy Court noted that the Supreme Court has provided that Bankruptcy Courts always maintain jurisdiction to enforce their orders even absent explicit language stating so, and that the addition of any explicit retention of jurisdiction is “icing on the cake.” The icing was present here as the Bankruptcy Court had expressly retained jurisdiction over the assumption of unexpired leases and the adjudication of disputes related to distributions under the plan pursuant to the confirmation order. The Bankruptcy Court also found that it possessed subject matter jurisdiction over the dispute as the lessor’s actions interfered with the implementation of the reorganized debtor’s plan which was not yet fully consummated, and amounted to a collateral attack on the plan and confirmation order by seeking to enjoin the liquidating trustee’s ability to sell the reorganized debtor’s equity in accordance with the terms thereof when such objections could have been brought during the confirmation process.

In Non-Core “Related-To” Proceedings, the Shorter Deadlines under the Bankruptcy Rules Apply.

In re Lac-Mégantic Train Derailment Litigation, 999 F.3d 72 (1st Cir. 2021) (Selya, J.).

Under Rule 59(e) of the Federal Rules of Civil Procedures (the “Civil Rules”), a party has 28 days after entry of a final order to move for reconsideration. Rule 9023 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”) makes Civil Rule 59 applicable in bankruptcy proceedings, but the deadline under the Bankruptcy Rules is reduced to 14 days. A timely motion filed either under rule tolls the deadline for filing a notice of appeal.

This case tested the limits of these competing rules and deadlines. The U.S. Court of Appeals for the First Circuit¹ held that the Bankruptcy Rules—not the Civil Rules—applied to the dispute, which was a non-core “related to” lawsuit between non-debtor parties. In so holding, the First Circuit agreed with the only two other Circuit Courts of Appeal to address the issue.² As a result, the shorter deadline applied, and the Court of Appeals dismissed the appeal for lack of appellate jurisdiction because the appellants failed to file a timely Rule 59 motion in the trial court below.

The dispute in *Lac-Mégantic* arose from a train derailment and explosion in Lac-Mégantic, Canada. Plaintiffs filed wrongful death actions in various state courts in Illinois and Texas. One of the co-defendants—Montreal, Maine, and Atlantic Railway (MMA)—commenced a bankruptcy case in the District of Maine. The lawsuits were removed to federal court and, because 28 U.S.C § 157(b)(5) provides for the

¹ Unless otherwise noted, this document refers to one or more of the thirteen federal appellate courts as “circuit courts” or “courts of appeals” collectively and “First Circuit,” “Second Circuit,” and so on individually, general trial courts as “district courts” collectively and “district court” individually, and “bankruptcy courts” collectively and “bankruptcy court” individually. If capitalized, the term “Circuit Court,” “Bankruptcy Court,” or “District Court” refer to the specific court that issued the relevant decision.

² See *In re Celotex Corp.*, 124 F.3d 619, 629 (4th Cir. 1997); *Phar-Mor, Inc. v. Coopers & Lybrand*, 22 F.3d 1228, 1238 (3d Cir. 1994); cf. *Double Eagle Energy Servs., L.L.C. v. MarkWest Utica EMG, L.L.C.*, 936 F.3d 260, 264 (5th Cir. 2019) (applying Bankruptcy Rule 7004 to a “related to” proceeding).

District Court with jurisdiction over a bankruptcy case to adjudicate personal injury and wrongful death claims related to the bankruptcy proceeding, the plaintiff-appellants joined the MMA bankruptcy trustee's requests to have all cases transferred to and consolidated in the District of Maine.

The plaintiff-appellants then settled with all defendants except appellee Canadian Pacific, a non-debtor co-defendant. Thus, the claims of non-debtor plaintiffs proceeded against a non-debtor defendant in the United States District Court for the District of Maine, as a non-core proceeding that was "related to" MMA's bankruptcy.

The District Court granted Canadian Pacific's motion to dismiss and denied the plaintiffs' motion for leave to amend the complaint. **Twenty-eight (28) days later**, the plaintiffs filed a motion under Civil Rule 59(e) to reconsider the District Court's orders. The District Court denied the motion in a margin order. This appeal followed.

Canadian Pacific moved for summary dismissal of the appeal for lack of appellate jurisdiction, arguing that the appeal was untimely because the plaintiffs' Rule 59 motion failed to toll the appellate deadline since it was not filed within the **fourteen (14) days** required by Bankruptcy Rule 9023. Thus, the issue presented to the First Circuit was: Which rules apply?

The Court of Appeals explained that support for the application of the Bankruptcy Rules could be found in the language of Bankruptcy Rule 1001. That rule applies to "cases under title 11 of the United States Code." While this language does not precisely mirror the definition of core cases in 28 U.S.C. § 157, the Court concluded that the term "under title 11" as used in Bankruptcy Rule 1001 could be read to apply to non-core cases that remain in federal district court under § 1334(b) as merely "related to" a bankruptcy case, such as this case. As support for this broader interpretation of the rule, the Court explained that the Bankruptcy Rules were adopted in 1987, three years after Congress passed the Bankruptcy Amendments and Federal Judgeship Act of 1984 (BAFJA) in response to *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982).

The First Circuit found further support for its conclusion in what it called "the practicalities attendant to the efficient operation of the modern bankruptcy system." The Court explained that it would be impractical for a federal district court, presiding over both core and non-core claims among the same parties, to apply different sets of rules within the same proceeding. "We, too, think it implausible that Congress could have intended to create such a Rube-Goldberg-like adjudicative contraption."

The First Circuit then considered and rejected the plaintiffs' "fallback position" that a district court has discretion to apply either set of rules to non-core "related to" cases, finding no statutory support for "such a pick-and-choose approach." Finally, it addressed the plaintiffs' plea for equitable relief based on their argument that they received insufficient notice of the possibility that the 14-day deadline under the Bankruptcy Rule 9023 might apply. To this argument, the Court of Appeals explained that there was no basis for equitable exceptions to jurisdictional requirements. Further, it noted that the plaintiffs had joined a request to transfer their cases to the District of Maine as cases "related to" MMA's bankruptcy case. "At the time, the existing case law, though sparse, put them on notice that the Bankruptcy Rules would apply." Thus, the Court declined to provide an exception and dismissed the appeal for lack of jurisdiction.

Jurisdiction Existed Over Collection Action Having a "Conceivable Effect" on Bankruptcy Estate.

Cross Keys Bank v. Ward (In re Karc Credit, L.L.C.), 630 B.R. 14 (Bankr. E.D. La. 2021) (Hodge, J.).

"Related to" bankruptcy jurisdiction existed over third-party claims brought by the non-debtor lenders against the non-debtor issuer of stock in a scheme concocted by the debtor's insiders to "double-pledge" stock in a non-debtor entity as security for loans made to the debtor. The Court concluded that the "conceivable effect" test was "easily satisfied" because a lender's successful recovery of money or collateral from the non-debtor defendant "could result in a dollar-for-dollar reduction of the amount of its claim against the estate."

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