Bankruptcy

W. Homer Drake Jr.

Michael M. Duclos

Follow this and additional works at: https://digitalcommons.law.mercer.edu/jour_mlr

Part of the Bankruptcy Law Commons

Recommended Citation
Available at: https://digitalcommons.law.mercer.edu/jour_mlr/vol49/iss4/5

This Survey Article is brought to you for free and open access by the Journals at Mercer Law School Digital Commons. It has been accepted for inclusion in Mercer Law Review by an authorized editor of Mercer Law School Digital Commons. For more information, please contact repository@law.mercer.edu.
Bankruptcy

by W. Homer Drake, Jr.* and
Michael M. Duclos**

I. INTRODUCTION

Unlike past years when the United States Court of Appeals for the Eleventh Circuit issued a tremendous number of bankruptcy decisions each term, 1997 turned out to be a very quiet year because the Eleventh Circuit issued only eight opinions addressing matters arising under the Bankruptcy Code.¹ This Article is a survey of those 1997 bankruptcy decisions.

II. FEES AND EXPENSES INCURRED BY BANKRUPTCY PROFESSIONALS

A. Reimbursable Expenses

In *Stroock & Stroock & Lavan v. Hillsborough Holdings Corp. (In re Hillsborough Holdings Corp.)*,² the Eleventh Circuit addressed an issue very close to the hearts of all bankruptcy practitioners—reimbursable attorney expenses. According to section 330(a)(1)(B) of the Bankruptcy Code,³ the bankruptcy court may award attorneys employed in the

---

² 127 F.3d 1398 (11th Cir. 1997).
bankruptcy case “reimbursement for actual, necessary expenses.”

During the early stages of the complex bankruptcy case involving Hillsborough Holdings, various law firms applied for interim compensation and reimbursement for expenses. With the first interim applications, the bankruptcy court ruled that it would not reimburse the law firms for certain expenses the court deemed “overhead.” These expenses included: postage, secretarial charges, word processing, local travel expenses, meals, express mail, messenger delivery expenses, copy charges, laundry, office supplies, and computer research charges. In subsequent fee applications during the course of the case, the bankruptcy court continued to deny “without discussion” these expenses. The bankruptcy court maintained this position through the final fee application. In the process, the firm of Stroock & Stroock & Lavan failed to obtain reimbursement for $341,953.01 of requested expenses, and the firm of Kaye, Scholer, Fierman, Hays & Handler failed to obtain reimbursement for expenses totaling $514,636.97. The law firms appealed.

The Eleventh Circuit noted that an attorney compensation award would be reviewed only for an abuse of discretion, but the failure of the bankruptcy court to apply the proper legal standard would constitute such an abuse. In this case the bankruptcy court determined at the outset (i.e., before most of the expenses actually were incurred) that the subject expenses were “overhead” and not reimbursable because they should have been “built into the applicant’s hourly billing rate.” As a result, no evidence or factual finding was ever made by the court that the law firms in question had actually incorporated the costs of those expenses into their hourly rates. In fact, the evidence indicated the contrary because the law firms claimed their hourly rates were set on the assumption that the subject costs and expenses would be billed separately. The Eleventh Circuit concluded that the bankruptcy court’s initial declaration that these expenses were “overhead,” without

5. 127 F.3d at 1400.
6. Id.
7. Id.
8. Id.
9. Id. at 1400-01.
10. Id. at 1401.
11. Id.
12. Id.
13. Id. (quoting the bankruptcy court order).
14. Id.
15. Id.
making any inquiry into facts, constituted the application of a legal
standard and not a finding of fact.\textsuperscript{16}

The court in \textit{Hillsborough} then decided that the legal standard applied
by the bankruptcy court was incorrect.\textsuperscript{17} In reaching this decision, the
Eleventh Circuit reviewed the legislative history of section 330(a)(2) and
noted that the intent of Congress was “to promote the same billing
practices in bankruptcy cases as in other branches of legal practice.”\textsuperscript{18}
In other words, it was customary practice in the legal industry to bill
clients for the expenses at issue in this case. Thus, to restrict payment
for certain expenses simply by virtue of the fact that this case was a
bankruptcy case would run contrary to Congress’s intent to promote
similar billing practices. While the bankruptcy court had considerable
discretion over the amount of fees and expenses awarded to attorneys,
this discretion did not include the authority to “arbitrarily exclude
by fiat whole categories of otherwise reimbursable expenses.”\textsuperscript{19} As a
result, the Eleventh Circuit remanded the case to the bankruptcy court
to allow it to make necessary factual inquiries and findings of fees and
expenses.\textsuperscript{20}

\textbf{B. Professional Accounting Fees}

In \textit{McMillan v. Joseph Decosimo \& Co. (In re Das A. Borden \& Co.)},\textsuperscript{21}
an accounting firm attempted to get court approval for payment of its
accounting fees as priority administrative expenses. The bankruptcy
court approved employment of Joseph Decosimo \& Company as
accountants for the Das A. Borden \& Company bankruptcy case. During
the pendency of the case, however, Decosimo rendered accounting
services not only for the debtor, but also for many other related business
tentities.\textsuperscript{22} Decosimo requested and received approval from the bank-
ruptcy court for payment as an administrative expense priority of its
fees totaling more than ninety-nine thousand dollars for the services it
rendered to these other related business entities.\textsuperscript{23} The district court
reversed the bankruptcy court decision, and Decosimo appealed.\textsuperscript{24}

\begin{itemize}
  \item \textsuperscript{16} \textit{Id.} at 1402.
  \item \textsuperscript{17} \textit{Id.} at 1403.
  \item \textsuperscript{18} \textit{Id.}
  \item \textsuperscript{19} \textit{Id.} at 1404.
  \item \textsuperscript{20} \textit{Id.} at 1404-05.
  \item \textsuperscript{21} 131 F.3d 1459 (11th Cir. 1997).
  \item \textsuperscript{22} \textit{Id.} at 1461-62. Most of these other related entities also had filed for bankruptcy
        protection. \textit{Id.} at 1461.
  \item \textsuperscript{23} \textit{Id.} at 1462.
  \item \textsuperscript{24} \textit{Id.}
\end{itemize}
According to section 330 of the Bankruptcy Code, a professional employed in bankruptcy may receive “reasonable compensation for actual, necessary services rendered” in the bankruptcy case. These fees may qualify for administrative expense priority under section 507(a)(1) of the Bankruptcy Code provided that the services were “actual and necessary to the preservation of the [bankruptcy] estate.” The Eleventh Circuit noted that in order for the fees to qualify as administrative expenses, the accounting services must run to the benefit of “the debtor and be fundamental to the conduct of its business.” In this particular case, however, Decosimo rendered the disputed services to entities other than the debtor, and any benefit from those services ran to those entities and not to the benefit of the bankruptcy estate of Das A. Borden & Company. Therefore, Decosimo could not recover payment for these fees as administrative expenses from the Das A. Borden & Company bankruptcy, and its claim was denied.

III. BAD FAITH AND INVOLUNTARY BANKRUPTCY PETITIONS

The question of whether a creditor acted in bad faith by commencing an involuntary bankruptcy petition was before the Eleventh Circuit in General Trading, Inc. v. Yale Materials Handling Corp. In actuality, this bankruptcy issue was a mere diversion from the greater dispute between General Trading and Yale Materials involving the termination of a franchise agreement. Yale Materials manufactured forklifts and parts, and General Trading was a dealer. General Trading brought a civil action against Yale Materials alleging wrongful termination of a franchise agreement, and a few months thereafter, Yale Materials filed an involuntary bankruptcy petition against General Trading. The bankruptcy court later dismissed the involuntary petition after concluding that Yale Materials had failed to prove that General Trading was not paying its debts as they became due because the debts in question were subject to a bona fide dispute. Thereafter, in the

27. 131 F.3d at 1463 (quoting In re Colortex Indus., Inc. 19 F.3d 1371, 1383 (11th Cir. 1994)).
28. Id. (quoting In re Colortex, Indus., Inc., 19 F.3d at 1383).
29. Id. at 1464.
30. Id.
31. 119 F.3d 1485 (11th Cir. 1997).
32. Id. at 1489-90, 1493. According to 11 U.S.C. § 303(b) (Supp. 1997), one or more creditors may force a debtor involuntarily into bankruptcy provided that the claims the creditor or creditors hold against the debtor are not the subject of a bona fide dispute. Furthermore, the involuntary petition will be dismissed unless the creditor can show that
related action involving the franchise agreement claim, the district court ruled that Yale Materials had filed the involuntary bankruptcy petition in bad faith and assessed punitive damages and attorney fees against Yale Materials. On appeal, the Eleventh Circuit noted diverging case authority on the proper standard to determine whether a creditor acted in bad faith by commencing an involuntary petition. One line of authority utilized an "improper purpose" test that found bad faith if the petition was motivated by ill will, malice, or the desire to harass or embarrass the debtor. A second view found bad faith under an "improper use" test when a creditor improperly used the involuntary petition provisions of the Bankruptcy Code as a substitute for customary collection procedures. A third view analyzed bad faith under the requirements of Rule 11 of the Federal Rules of Civil Procedure.

Unfortunately, instead of resolving this conflict in case authority, the Eleventh Circuit concluded that the facts of this case did not support a finding of bad faith under any of the above tests. Specifically, the evidence presented showed that Yale Materials' primary concern in filing the involuntary petition was to protect itself against other creditors receiving a disproportionate share of General Trading's assets. General Trading had been liquidating its assets, including collateral that secured its debts to Yale Materials, without paying off its obligations to Yale Materials. Other evidence indicated General Trading was making payments to insiders and unsecured creditors instead of to Yale Materials. The Eleventh Circuit further noted that case authority existed upon which Yale Materials could argue that the debts in question were not subject to a bona fide dispute. Had the bankruptcy court followed that line of authority, the petition would not have been dismissed. Thus, Yale Materials had a legal basis, in addition to a
factual basis, to file the involuntary bankruptcy petition. As a result, bad faith did not exist, and the decision of the district court was reversed.

IV. GOOD FAITH AND FRAUDULENT TRANSFERS

The availability of a good faith defense in a fraudulent conveyance action was questioned in Torcise v. Community Bank of Homestead (In re Torcise). The debtor in that case was one of the largest tomato farmers in Florida. Unfortunately, he began experiencing severe cash flow problems and found himself deeply indebted to Community Bank and various other individuals, including Torcise's two brothers and two stockholders of Community Bank. The debts to Community Bank, his brothers, and the bank stockholders were unsecured. In order to take care of these debt obligations, a scheme was set up whereby Community Bank would lend $3.55 million to Torcise's brothers and the two stockholders, but Torcise and his business pledged over $7 million in account receivables to secure the debt. The loaned money actually was used to satisfy the debts Torcise owed to the two stockholders and his brothers. In return, Community Bank took control of Torcise's account receivables. The result was that Community Bank received full payment on its debts, but small tomato farmers who did business with Torcise lost millions of dollars.

Some months after the unsecured debts to Community Bank, the two stockholders, and Torcise's brothers had been satisfied, Torcise and his business filed for bankruptcy. Thereafter, the committee of unsecured creditors in the bankruptcy brought an adversary proceeding on grounds of fraud to recoup the moneys Community Bank took from Torcise to pay the claims of the bank, its two stockholders, and the two brothers. The case was tried in district court before a jury, which returned a multi-million dollar verdict against Community Bank. Community Bank appealed to the Eleventh Circuit.

On appeal, Community Bank argued that the district court erred by failing to instruct the jury on a good faith defense to fraudulent

41. Id. While the Eleventh Circuit did not expressly approve any of the three standards used by other courts to determine bad faith, it is interesting to note that the conclusion that Yale Materials had a reasonable basis in law and fact to support its involuntary petition is very similar to an analysis under Rule 11.

42. Id. at 1505.

43. 116 F.3d 880 (11th Cir. 1997).

44. Id. at 862. It appears that Torcise was a personal friend of certain stockholders, directors, and officers of Community Bank. Id.

45. Id. at 862-63.

46. Id. at 864.
transfers as provided by section 548(c) of the Bankruptcy Code. The Eleventh Circuit ruled, however, that the alleged failure to give the instructions was not cause for reversible error. "Fraud" and "good faith" were mutually exclusive findings, and Community Bank did not have a good faith defense if it had committed fraud. Based upon the evidence presented at trial, the Eleventh Circuit concluded that Community Bank simply did not have a factual basis to assert a good faith defense. At the time of the transactions in question, Community Bank was aware that Torcise and his business were insolvent and owed millions of dollars. Community Bank was aware that Torcise was committing fraud with respect to the small tomato farmers, and Community Bank became an integral part of the fraudulent scheme by taking control of Torcise's account receivables. As a result, the small tomato farmers lost millions of dollars, while Community Bank and others were paid in full on their unsecured claims. Under these facts, the evidence did not support a good faith defense for Community Bank.

V. EXEMPTION OF INDIVIDUAL RETIREMENT ACCOUNTS

In Meehan v. Wallace (In re Meehan), the Eleventh Circuit decided an important issue concerning the exempt status of a debtor's individual retirement account ("IRA") in bankruptcy. The debtor, Virginia Ann Meehan, filed a Chapter 7 petition, and she argued that her IRA, which she valued at $20,954.47, was excluded from her estate in bankruptcy pursuant to section 541(c)(2) of the Bankruptcy Code. Section 541 of

47. Id. See 11 U.S.C. § 548(c) (1994), which provides in relevant part that "a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred." Community Bank also raised two other issues on appeal. One concerned a procedural matter of joining an allegedly indispensable party, but the Eleventh Circuit ruled that the party in question was not indispensable. 116 F.3d at 865-67. The other issue was whether the $3.55 million verdict returned by the jury met mathematical scrutiny. The Eleventh Circuit ruled that the evidence presented only authorized a verdict of $2.253 million and remanded the case. Id. at 869-70.

48. The appellees argued that the district court actually did give instructions on the good faith defense. 116 F.3d at 867-68.

49. Id. at 868.

50. Id.

51. Id. at 869.

52. Id.

53. Id.

54. 102 F.3d 1209 (11th Cir. 1997).

55. Id. at 1210.

56. Id.; 11 U.S.C § 541(c)(2) (1994).
the Bankruptcy Code addresses what property makes up the debtor's estate. According to subsection (c)(2), "[a] restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable" in a bankruptcy case. In view of this section, the debtor argued that her IRA was not estate property because it was subject to a restriction on transfer enforceable under Georgia law. Specifically, Meehan relied upon section 18-4-22(a) of the Official Code of Georgia Annotated ("O.C.G.A."), which stated that "funds or benefits from an individual retirement account . . . [are] exempt from the process of garnishment until paid or otherwise transferred to a member of such program or beneficiary thereof."

Both the bankruptcy and district courts rejected the debtor's argument and concluded that her IRA was a part of the bankruptcy estate. The Eleventh Circuit, however, reversed the lower courts. The lower courts found it significant that the restriction in question existed in state law and was not contained in the trust document itself. This fact was deemed significant in view of language in the Supreme Court decision in Patterson v. Shumate suggesting that an IRA ordinarily would not fall under section 541(c)(2) because it lacked transfer restrictions. Nevertheless, the Eleventh Circuit found the language from Shumate to be inapplicable to the case at hand:

[R]ead within its context, it is clear that the Court was commenting upon the fact that IRAs are not subject to the ERISA-mandated anti-alienation provision (i.e., federal law does not mandate that IRAs contain such clauses). Thus, the Court was commenting on the fact that IRA documents typically would not contain transfer restrictions. It is clear from the context of the Shumate dicta that the Court was not addressing the very different factual situation of this case - i.e., where state law provides a restriction on the transferability of the IRA.

57. 11 U.S.C. § 541.
58. Id. § 541(c)(2).
59. 102 F.3d at 1210-11.
60. Id.; O.C.G.A. § 18-4-22(a) (1991).
62. 102 F.3d at 1214.
63. Id. at 1211.
64. 504 U.S. 753 (1992). In that case, the Supreme Court interpreted the meaning of the phrase "applicable nonbankruptcy law" as used in 11 U.S.C. § 542(c)(2). Many courts had interpreted that language to refer only to state spendthrift law, but the Court concluded that ERISA-mandated anti-alienation provisions also fell within the scope of section 542(c)(2). Id. at 765. Therefore, the restriction could be found in state law, federal law, or the trust document itself.
65. 102 F.3d at 1211.
The O.C.G.A. qualified as "applicable nonbankruptcy law;" it contained a restriction on the transfer of the IRA and thus fell within the scope of the section 541(c)(2) exclusion. The court in Meehan reached this conclusion based upon the plain language of section 541(c)(2) and the "common sense" interpretation that "a restriction is no less enforceable because it is located in the statute rather than in the [trust] document."7

Another argument raised to challenge the application of section 541(c)(2) to the debtor's IRA was that the debtor could withdraw the corpus of the trust at any time and suffer only a small penalty. The Eleventh Circuit rejected this argument. The court pointed out that in Shumate the Supreme Court dealt with an ERISA-qualified plan over which the debtor had extensive control. While the Supreme Court did not explicitly decide the issue, the Eleventh Circuit found that the holding in Shumate "necessarily mean[t] that such control [by the debtor over the trust] d[id] not bar exclusion pursuant to § 541(c)(2)."71 In view of the language of section 541(c)(2), the decision in Shumate, and "congressional concerns about protecting pension benefits," the Eleventh Circuit held that Meehan's IRA was excluded from her bankruptcy estate because it was subject to a statutory restriction.72

VI. ADMINISTRATIVE EXPENSE PRIORITY OF INCOME TAX CLAIMS

In United States v. Hillsborough Holdings Corp. (In re Hillsborough Holdings Corp.), an attempt by the Internal Revenue Service ("IRS") to grab a bigger piece of the distribution pie proved to be unsuccessful. The dispute arose because the debtor's fiscal tax year straddled the filing of the bankruptcy petition, resulting in a portion of the tax liability, which became due after the filing of the petition, being attributable to income earned prior to the bankruptcy. The issue was whether the entire tax liability should qualify as an administrative expense under

66. Id. at 1211-12.
67. Id.
68. Id. at 1212.
69. Id.
70. Id. at 1213.
71. Id. The court further noted that this conclusion was consistent with decisions of the Ninth and Eighth Circuits. Id. See In re Conner, 73 F.3d 258 (9th Cir. 1996), cert. denied, 117 S. Ct. 68 (1996); Whetzal v. Alderson, 32 F.3d 1302 (8th Cir. 1994).
72. 102 F.3d at 1213-14.
73. 116 F.3d 1391 (11th Cir. 1997).
74. Id. at 1392-93.
section 507(a)(1) of the Bankruptcy Code because it became due after the date of the petition, or whether only that portion of the debtor's taxes attributable to its postpetition income could qualify as an administrative expense. Both the bankruptcy court and the district court ruled that only the taxes for the postpetition income could qualify as administrative expense, and the IRS appealed.

Answering the dispute required the Eleventh Circuit to determine whether the taxes in question were "not assessed before, but assessable . . . after, the commencement of the case" as stated in section 507(a)(8)-(iii) of the Bankruptcy Code. If the debtor's income tax fit within the language of that subsection, then it could not qualify as an administrative expense. According to the Eleventh Circuit, the unpaid taxes fell within the "plain language" of the statute. Because the taxes in question were not assessed until after the debtor filed for bankruptcy, they did not qualify as an administrative expense.

The IRS, however, countered that such a reading of the statute would render an "absurd result," thereby requiring the court to venture beyond the statute's plain language. According to the IRS, the statute's plain language would exclude that portion of the taxes attributable to income earned by the debtor postpetition because those taxes also were not assessed until after the debtor filed for bankruptcy. Nevertheless, the

75. 11 U.S.C. § 507(a)(1) (1994). Under this section, certain unsecured claims receive priority of distribution over other unsecured claims if they qualify as administrative expenses, such as expenses incurred in the administration of the bankruptcy estate.

76. 116 F.3d at 1393.


78. 116 F.3d at 1393.

79. 11 U.S.C. § 507(a)(8)(iii) (1994). "The Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, redesignated § 507(a)(7) as § 507(a)(8). This case was initiated prior to that change; [the court] adhered to the designation applicable at the start of these proceedings." 116 F.3d at 1394 n.1. This Article, however, refers to the revised designation.

80. In order for a tax to be an administrative expense, it must meet the following requirements: (1) it must be incurred by the bankruptcy estate; and (2) it must not be a kind of tax that is specified in 11 U.S.C. § 507(a)(8). 116 F.3d at 1394. Case law on the first element was split on whether taxes assessed postpetition on prepetition income were "incurred" by the estate. Unfortunately, the Eleventh Circuit chose not to settle this argument; instead its decision rested on whether the tax was of the kind specified in section 507(a)(8). Id. Furthermore, while section 507(a)(8) lists a variety of tax obligations, the only question was whether the tax was of the kind described in subsection (iii). Id. at 1395.

81. 116 F.3d at 1395.

82. Id.

83. Id.

84. Id.
debtor and the lower courts accepted, without question, that the taxes for postpetition income did indeed qualify as administrative expenses. To avoid an absurdity, the IRS suggested "that the phrase 'not assessed before, but assessable after' be interpreted as referring to taxes that 'were assessable both before and after' the filing." The Eleventh Circuit rejected this interpretation because it "stretch[e] the statutory language so far from its plain meaning." Instead, it chose to interpret section 507(a)(8)(iii) as addressing only those taxes that derived from prepetition events, but that were not actually assessed until after the filing of the bankruptcy petition. In adopting this interpretation, the Eleventh Circuit joined two other circuits that had reached the same conclusion and avoided the "absurd result" claimed by the IRS. In this case, the taxes in question were derived from prepetition events (i.e., prepetition income), but they were not actually assessed until after the debtor had filed for bankruptcy. As a result, these taxes were of the kind described in section 507(a)(8)(iii) and thus could not qualify as administrative expenses.

VII. CHAPTER 13 PAYMENTS TO CREDITORS

In Ford Motor Credit Co. v. Stevens (In re Stevens), the Eleventh Circuit considered a trustee's authority to recover alleged overpayments from a creditor. Under the debtor's confirmed Chapter 13 plan, Ford Motor Credit had a claim secured by a truck that would be paid out at twelve percent interest, the interest rate being limited by local court rule. During the course of the Chapter 13 plan, the debtor's truck was destroyed, and the insurance company paid to Ford, as the loss payee under the debtor's insurance policy, the remainder of the debt plus the contract rate of 13.5% interest. As a result of the increased interest rate, Ford received almost two thousand dollars more than it would have received under the Chapter 13 plan. The trustee requested that Ford return the alleged overpayment. After Ford refused, the trustee

85. Id.
86. Id.
87. Id.
88. Id.
89. See Towers v. United States (In re Pacific-Atlantic Trading Co.), 64 F.3d 1292 (9th Cir. 1995); Missouri Dept. of Revenue v. L.J. O'Neill Shoe Co. (In re L.J. O'Neill Shoe Co.), 64 F.3d 1146 (8th Cir. 1995).
90. 116 F.3d at 1396.
91. Id. at 1395-96.
92. 130 F.3d 1027 (11th Cir. 1997).
93. Id. at 1028-29.
withheld from Ford a disbursement check that included payments due to Ford from all debtor accounts administered by the trustee.\textsuperscript{94}

The argument on appeal was whether the insurance proceeds for the destroyed truck were property of the bankruptcy estate.\textsuperscript{95} If the proceeds were, then they would be placed in the estate and distributed according to the terms of the Chapter 13 plan, resulting in Ford receiving only twelve percent on its claim.\textsuperscript{96} The Eleventh Circuit noted that the insurance policy at issue protected both the debtor and Ford from the loss of the truck.\textsuperscript{97} Thus, the insurance proceeds acted as a substitute for the truck. As a result, Ford's interest in the insurance proceeds were no greater than its interest in the truck itself. Because Ford's interest in the truck was determined by the terms of the Chapter 13 plan, Ford received no greater interest in the insurance proceeds and was limited to only twelve percent interest on its claim.\textsuperscript{98}

Having ruled that Ford was overpaid on its claim, the court addressed the trustee's act of withholding disbursement checks it owed to Ford.\textsuperscript{99} Under section 1326(c) of the Bankruptcy Code, a Chapter 13 trustee is obligated to make payments to creditors as required under the terms of the confirmed Chapter 13 plan.\textsuperscript{100} On account of the dispute in the bankruptcy case, the Eleventh Circuit concluded that the trustee violated this duty when he withheld payments to Ford from unrelated Chapter 13 plans.\textsuperscript{101} Thus, the district court decision that the trustee acted properly by withholding funds was reversed.\textsuperscript{102}

\section*{VIII. APPELLATE JURISDICTION}

The tricky question of appellate jurisdiction over bankruptcy appeals arose twice in 1997. In the first case, \textit{United States v. Hillsborough Holdings Corp. (In re Hillsborough Holdings Corp.)},\textsuperscript{103} the Eleventh Circuit decided it had jurisdiction over an appeal by the IRS of a district court order concluding that the IRS did not have an administrative expense claim\textsuperscript{104} for prepetition income taxes.\textsuperscript{105} In finding appellate

\begin{itemize}
\item \textsuperscript{94} \textit{Id.}
\item \textsuperscript{95} \textit{Id.} at 1029.
\item \textsuperscript{96} \textit{Id.}
\item \textsuperscript{97} \textit{Id.} at 1030.
\item \textsuperscript{98} \textit{Id.}
\item \textsuperscript{99} \textit{Id.} at 1030-31.
\item \textsuperscript{100} 11 U.S.C. § 1326(c) (1994).
\item \textsuperscript{101} 130 F.3d at 1031.
\item \textsuperscript{102} \textit{Id.}
\item \textsuperscript{103} 116 F.3d 1391 (11th Cir. 1997).
\item \textsuperscript{104} Under 11 U.S.C. § 507(a)(1), certain unsecured claims receive priority of distribution over other unsecured claims if they qualify as administrative expenses.
\end{itemize}
jurisdiction, the court noted that "[i]n the bankruptcy context . . . finality is not limited to the last order that concludes an entire bankruptcy case."\(^{106}\) Instead, jurisdiction exists when a particular adversary proceeding or controversy is finally resolved.\(^{107}\) The district court's conclusion that the tax liability in question did not qualify as an administrative expense concluded that particular controversy. Because nothing remained "for either [the] district [court] or [the] bankruptcy court to do with respect to the administrative claim[,]" the order was rendered final and appealable.\(^{108}\)

In the second case, *Clay County Bank v. Culton (In re Culton)*,\(^{109}\) the Eleventh Circuit concluded it had no appellate jurisdiction over a district court's reversal of a bankruptcy court's dismissal order.\(^{110}\) The debtors had received a Chapter 7 discharge, but sometime thereafter they were the victims of a burglary, and claimed in a police report that jewelry and coins worth $42,800 had been taken.\(^{111}\) Upon learning this information, Clay County Bank was able to reopen the debtor's bankruptcy case. The bank then filed an adversary proceeding to revoke the debtors' discharge for their failure to declare the later-stolen assets.\(^{112}\) The bankruptcy court dismissed the proceeding after concluding that the statute of limitations barred the bank's claim, but the district court reversed on appeal.\(^{113}\)

On further appeal, the Eleventh Circuit raised sua sponte the issue of its own immediate appellate jurisdiction over the district court order.\(^{114}\) Appellate jurisdiction over bankruptcy appeals is limited to final decisions of the district court.\(^{115}\) When a district court remands a case to a bankruptcy court and the remand order requires significant activity, the district court order generally is not appealable.\(^{116}\) Thus, in *Culton* the district court order was not a final order because it

---

105. 116 F.3d at 1393-94. For further discussion of the merits of this case, see *supra* notes 73-91 and accompanying text.
106. *Id.* at 1393.
107. *Id.*
108. *Id.*
109. 111 F.3d 92 (11th Cir. 1997).
110. *Id.* at 92-93.
111. *Id.* at 93.
113. 111 F.3d at 93. The district court concluded that the statute of limitations was equitably tolled. *Id.*
114. *Id.*
116. 111 F.3d at 93 (citing *In re TCL Investors*, 775 F.2d 1516, 1518-19 (11th Cir. 1985)).
required the bankruptcy court to conduct further proceedings to reinstate the bank's complaint and render a judgment on the merits. 117

Both the debtors and the bank argued that appellate jurisdiction existed under another statute. They pointed to 28 U.S.C. § 1292, which provided, in part, that the courts of appeals had jurisdiction over interlocutory orders concerning injunctive relief. 118 Not only must an order be injunctive in effect, but a litigant must show that the order could have "‘serious, perhaps irreparable consequence,’ and that the order can be ‘effectively challenged’ only by immediate appeal." 119

With respect to the requirement that the order be "injunctive in effect," the parties argued that the district court order modified the discharge injunction of section 524 of the Bankruptcy Code 120 because the order allowed the bank to commence a proceeding against the debtors based upon a debt already discharged in bankruptcy. 121 While not making a definitive ruling on this argument, the Eleventh Circuit expressed doubt about whether the mere reinstatement of a discharge revocation proceeding was "injunctive in effect" for the purposes of appellate jurisdiction under 28 U.S.C. § 1292. 122 Instead, the court in Culton based its decision on the second requirement that a litigant might suffer "irreparable consequences" should immediate appeal not be had. 123 The debtors argued that they would suffer by having to continue to litigate the issues raised by the bank, expending significant amounts of time and money in the process. 124 The Eleventh Circuit was unpersuaded by this reasoning and noted instead that the threshold for review under 28 U.S.C. § 1292 was a high one. 125 The court then held that the appeal was premature and could not be brought until the bankruptcy injunction of 11 U.S.C. § 524 had been dissolved by revocation of the debtor's discharge. 126

IX. CONCLUSION

Despite the sparse number of bankruptcy opinions, 1997 will be known for its significant decisions, most notably with respect to the exempt

117. Id.
118. Id. (referencing 28 U.S.C. § 1292(a)(1) (1994)).
121. 111 F.3d at 93-94.
122. Id. at 94.
123. Id.
124. Id.
125. Id.
126. Id.
status of individual retirement accounts127 and with respect to reimbursable expenses for bankruptcy professionals.128 On the flip side, the Eleventh Circuit in 1997 declined to settle a dispute in existing case law about the proper legal standard for determining bad faith in involuntary bankruptcy cases.129 Nevertheless, it is likely that this and many other issues important to bankruptcy practitioners will be decided in years to come.

127. Meehan v. Wallace (In re Meehan), 102 F.3d 1209 (11th Cir. 1997).