**Other Bankruptcy Cases in the Supreme Court – 2014 Term**

***Bank of America, N.A. v. Caulkett*, No. 13-1421; and *Bank of America v. Toleo-Cardona*, No. 14-163.**

Petitions granted November 17, 2014; on appeal from the Eleventh Circuit; not yet set for oral argument.

Synopsis: This appeal addresses the effect of Bankruptcy Code §506(a) on a junior lien in Chapter 7 cases in which the value of the collateral is no greater than the senior lien or liens.

In *Dewsnup v. Timm*, 502 U.S. 410 (1992), the Court held that Section 506(a) does not void the lien of a *partially* secured creditor. The stature provides that a claim is a secured claim only “to the extent of the value of such creditor’s interest in the estate’s interest in such property,” and is an unsecured claim for the balance. The *Dewsnup* Court held that such a lien is not rendered void post-bankruptcy, thus avoiding a rule that would have left the partially secured creditor without the benefit of subsequent appreciation in the property.

The Eleventh Circuit has held that the rule is different for a junior lien where the value of the collateral is no greater than the senior lien or liens. In several cases, the Eleventh Circuit has held that the bankruptcy court may order such a junior lien to be void and unenforceable. This result is contrary to rulings in the Fourth, Sixth and Seventh Circuits.

***Harris v. Viegelahn*; No. 14-400**

Petition granted December 12, 2014; on appeal from the Fifth Circuit; not yet set for oral argument.

Synopsis: This appeal addresses the disposition of funds accumulated in a Chapter 13 case after good-faith conversion to Chapter 7.

Bankruptcy Code §1348(f)(2) provides that upon a conversion from Chapter 13 to Chapter 7 “in bad faith,” then “property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.” But for a conversion made in “good faith,” Section 1348(f)(1) provides that “property of the estate in the converted case shall consist of property of the estate, as of the filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion.” This distinction suggests that upon a good faith conversion, the debtor is allowed to retain all post-petition earnings rather than having same distributed to creditors.

There has long been a split among lower courts as to whether funds already paid by the debtor to the trustee are to be refunded to the debtor or distributed to creditors. The Fifth Circuit, stating that other courts ruling to the contrary have read the statute “too literally,” reversed the district and bankruptcy courts and held that such funds are to be paid to creditors.

***Bullard v. Hyde Park Savings Bank*,** No. 14-116

Petition granted December 12, 2014; on appeal from the First Circuit; not yet set for oral argument.

Synopsis: This appeal addresses the question of whether an order *denying* confirmation of a Chapter 13 plan is appealable. Three Circuits, including the Fifth, have held that such an order is appealable. In *Mort Rana v. Gorman*, 721 F.3d 241 (5th Cir. 2013), the court described this as the “practical” rather than “traditional” approach. Six circuits, including the First (from which this appeal arises), have held to the contrary.

**Also worth noting: *Law v. Siegel*, 134 S.Ct. 1188, 571 US \_\_\_ (2014)**

At issue in this appeal was whether a debtor’s homestead could be surcharged with the trustee’s attorney’s fees for the trustee’s successful adversary proceeding to set aside a fraudulent mortgage on the homestead.

The Ninth Circuit relied on Bankruptcy Code §105 and principles of equity to allow the trustee to recovery the substantial cost of investigating and remedying an extensive fraudulent scheme to make it falsely appear there was a mortgage on a homestead. The Court, in an opinion by Justice Scalia, notes that there is no statutory provision for such relief and that Section 105 is not intended to full gaps in the statute. Thus – yet another Supreme Court ruling that relies on a close, literal reading of bankruptcy statutes.