Filing Error Terminates Perfection

While receiving payment from General Motors of a $300 million loan , JPMorgan Chase erroneously filed a UCC-3 termination of security interest regarding a different $1.5 billion loan to General Motors. In General Motors' subsequent Chapter 11 case, the creditors committee sought a ruling that the $1.5 billion loan was unsecured.

The parties argued over the meaning of the UCC's provision that a UCC-3 is effective only if "the secured party of record authorizes the filing." JPMorgan argued that it never intended to release the collateral securing the $1.5 billion loan, and, therefore, the filing was not authorized. The creditors committee argued that JPMorgan had authorized its attorneys to file the UCC-3, even if not intending the effect of the document.

The Delaware Supreme Court, in answering a certified question from a federal appeals court in New York, ruled in favor of the creditors committee that there is "no requirement that a secured party that authorizes a filing subjectively intends or otherwise understands the effect of the plain terms of its own filing."
Official Committee of Unsecured Creditors v. JPMorgan Chase Bank (In re Motors Liquidation Co.), 777 F.3d 100 (2d Cir. 2015).

Withdrawn LLC Member Subordinated

In 2005, Jane O'Donnell paid $100,000 for a 15 percent LLC membership interest in Tristar. In 2008, O'Donnell withdrew, and Tristar elected to repurchase her membership interest. Litigation ensued over the value of the membership interest, and O'Donnell obtained a$416,000 judgment against Tristar in 2010. In 2011, Tristar filed a Chapter 11 petition.

O'Donnell argued that her judgment was a debt of Tristar like that of any other creditor. Tristar argued that O'Donnell's claim was "damages arising from the purchase or sale" of an equity security, which was subordinated to other creditors under the bankruptcy statute.

The federal appeals court in San Francisco ruled that her claim was subordinated, because it resulted from her original membership interest in the LLC. The court declined to decide whether an equity-to-debt conversion, such as Ms. O'Donnell's, may ever be so "old and cold" that the causal link to the purchase or sale of securities would be severed. *Pensco Trust Co. v. Tristar Esperanza Properties (In re Tristar Esperanza Properties)*, 782 F.3d 492 (9th Cir. 2015).

Shareholders Meeting Not Stayed

Although the reach of the automatic stay in a bankruptcy case is extremely broad, the stay does not prevent a shareholder of a corporation in Chapter 11 from seeking a state court order requiring a shareholders' meeting to elect new directors. However, the bankruptcy judge has authority to enjoin such a shareholders meeting, if the existing management can show that the change in corporate governance would jeopardize the company's reorganization. *In re SS Body Armor I, Inc.*, 527 B.R. 597 (Bankr. D. Del. 2015).

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