

DEBTOR/CREDITOR

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IRS Trumps Secured Lender

Medina Reforestation contracted with the Department of Agriculture to plant trees for the United States Forest Service.

Offord Finance, Inc. paid Medina ninety-five percent of the value of invoices submitted by Medina to the USDA and took an assignment of those invoices.

When Medina filed a Chapter 11 petition, the IRS sought to set off the amount of Medina's taxes against the amount owed to Medina by the USDA. Offord opposed the IRS request, claiming that the USDA's payment obligation had been assigned to Offord.

The Bankruptcy Appellate Panel in Oregon ruled in favor of the IRS. The court reasoned that Medina could assign to Offord no more than Medina possessed. Offord had taken the invoices subject to the right of one government agency to set off against an obligation from another government agency.

United States v. Offord Finance, Inc. (In re Medina), 205 B.R. 216 (Bankr. 9th Cir. 1996).

Withdrawal Liability Discharged

Under the Employee Retirement Income Security Act of 1974 (ERISA) an employer who withdraws from a multi-employer pension fund is required to pay withdrawal liability to cover that employer's pro rata portion of the unfunded benefits of the pension plan. A Massachusetts bankruptcy court recently broadened the ability of a reorganizing business to eliminate its withdrawal liability.

Condyne Freezers, Inc. successfully confirmed a Chapter 11 plan of reorganization. Because Condyne had not withdrawn from its pension fund, Condyne did not list the pension fund as a creditor for statutory withdrawal

liability. After confirming the plan, Condyne ceased doing business, thereby withdrawing from the pension fund.

The bankruptcy court decided that the withdrawal liability was a contingent claim prior to confirmation of the reorganization plan. Because the pension fund had not filed a claim for the withdrawal liability prior to confirmation, the pension fund could not seek payment from the reorganized company.

In re CD Realty Partners, 205 B.R. 651 (Bankr. D. Mass. 1997)

Bankrupt Pays Full Rent

A federal district court in Maryland recently rejected a tenant's attempt to limit the rent due after the filing of a Chapter 11 petition.

The tenant vacated the premises prior to filing its Chapter 11 petition and formally rejected the lease four months later. The debtor/tenant argued that the unused premises provided no benefit to the bankruptcy estate, and therefore the tenant should not be required to pay post-petition rent as an expense of the administration of the estate. The district court rejected this argument, finding that the full amount of the rent due under the lease for the four-month period must be paid as an administrative expense regardless of benefit to the estate.

Norritech v. Geonex Corp., 204 B.R. 684 (D. Md. 1997).



This newsletter is intended to inform its readers of developments in the area of debtor/creditor relations. It is not legal advice or a legal opinion regarding any specific matter. You should consult a lawyer regarding any questions relating to your particular situation.

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