N O T E S O N

DEBTOR/CREDITOR

R E L A T I O N S

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Tax Lien Beats Creditor's Setoff

In 1995, Nerland Oil sold a Conoco station to Superpumper, taking a $350,000 note as part of the sale price. Under the note, Superpumper was to pay Nerland $7,545 quarterly. Nerland also acted as agent for Conoco to distribute to station owners the receivables generated by customers using a Conoco credit card.

As Nerland's financial problems increased, Nerland fell behind in remitting the credit card receivables to Superpumper. Superpumper responded by stopping payments under the note. Superpumper obtained an arbitration award confirming the setoff of note payments against receivables due. Nerland commenced a bankruptcy case.

In Nerland's bankruptcy case, the IRS claimed that its liens for unpaid 1993 and 1994 taxes attached to the note payments due from Superpumper to Nerland, preventing the setoff. A federal appeals court agreed with the IRS, reasoning that Superpumper's setoff rights were a form of lien on the note payments. Because the setoff rights arose after the tax assessments, Superpumper's lien on the note payments was inferior to that of the IRS.

Superpumper, Inc. v. Nerland Oil, Inc. (In re Nerland Oil, Inc.), 303 F.3d 911 (8th Cir. 2002).

Bad Marketing Saves Guarantor

This is the story of a bank that was penny wise and pound foolish.

Mr. and Mrs. Kelaidis opened a restaurant with a bank loan to their corporation, Dad's, Inc. The loan was secured by all of Dad's property. The Kelaidises personally guaranteed the loan and secured that guaranty with mortgages on two houses they owned.

After default, the bank sought to sell Dad's real estate together with the furniture and equipment inside. However, the party with the best offer for the real estate did not want the furniture and equipment. The bank decided that the cost of removal was too great to justify separately marketing the furniture and equipment, and convinced the real estate purchaser to buy the furniture and equipment for a small fraction of its actual value.

Even though the guaranty waived all of the Kelaidis' rights to object to the manner of the collateral sale, the court found the sale of the furniture and equipment to have been commercially unreasonable and released the Kelaidises from all liability under the guaranty.

Kelaidis v. Community First Nat'l Bank (In re Kelaidis), 276 B.R. 266 (Bankr. 10th Cir. 2002)

Unmatured Interest Denied

The bankruptcy statute limits interest on unsecured or undersecured creditor claims to that which accrued prior to commencement of the bankruptcy case. However, "interest" is not limited to the amounts so defined in the loan documents.

A Dallas bankruptcy judge reduced a lender's claim by $54,243.06, through recharacterizing loan origination fees as disguised interest. After amortizing the fees over the life of the loan, the post-petition portion was subtracted from the lender's claim.

Mims v. Fidelity Funding, Inc. (In re Auto Int'l Refrigeration), 275 B.R. 789 (Bankr. N.D. Tex. 2002)

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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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