

DEBTOR/CREDITOR

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Asset Purchaser Protected

The purchase of assets from a debtor in bankruptcy provides the purchaser with advantages that cannot be obtained elsewhere. For example, the bankruptcy court has the power to sell the assets free and clear of all liens and encumbrances. A federal appellate court in Richmond recently reaffirmed one of the other statutory protections that Congress provided asset purchasers.

The federal bankruptcy statute states that a reversal on appeal of any bankruptcy court order approving a sale of the debtor's property does not affect the validity of the sale, unless the appealing party obtains a stay pending appeal. The appellate court went one step further and dismissed the appeal where no stay was obtained. The court explained that Congress had expressed a strong preference for finality and efficiency in the bankruptcy context. The prospect of continued appellate litigation would depress the price for which bankruptcy assets could be sold. Because of these considerations, a party without a stay would have no appeal, even where the sale approved by the bankruptcy court violated state law.

Hazelbaker v. Hope Gas, Inc. (In re Rare Earth Minerals), 445 F.3d 359 (4th Cir. 2006).

Delayed Response Loses Vote

The federal appellate court in Richmond provides another cautionary tale for those who procrastinate.

With the permission of the bankruptcy court, a creditor obtained a judgment against a debtor in state court, which the debtor appealed. While the appeal was pending, the creditor filed a proof of claim in the bankruptcy case, to which the debtor filed an objection. The creditor did not respond to the debtor's objection immediately.

Shortly after the objection was filed, a hearing was scheduled to consider confirmation of the debtor's Chapter 11 plan. The creditor voted against confirmation of the plan, but the debtor refused to count the creditor's vote. The appellate court agreed with the debtor, because the presence of the objection removed the claim from the category of "allowed claims" permitted to vote. The court commented that the creditor could have either sought a ruling on the objection prior to the voting deadline or sought temporary allowance of the claim for voting purposes only.

Jacksonville Airport, Inc. v. Michkeldel, Inc., 434 F.3d 729 (4th Cir. 2006).

Reach of Automatic Stay

The automatic stay of litigation against the debtor also applies to actions which have no financial impact on the debtor.

A New Jersey bankruptcy court was recently asked to determine whether a probate proceeding to remove the debtor as executor of a decedent's estate violated the automatic stay. Although agreeing that such a probate proceeding normally should not be stayed, the court determined that the automatic stay initially applies, and only the bankruptcy court can modify the stay so as to permit the removal in probate court.

In re Steward, 338 B.R. 654 (Bankr. D.N.J. 2006).



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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