

DEBTOR/CREDITOR

April 2007

No Bankruptcy Stay for Subsidiary

When a corporation files a petition for relief under the federal bankruptcy statute, it obtains the protection of the automatic stay. This stay prevents creditors from taking any action to commence or continue legal proceedings against the debtor, to perfect liens against the debtor's property, or to obtain possession of the debtor's property.

A federal appellate court recently ruled that the protection of the automatic stay does not extend to property owned by a subsidiary corporation. The debtor corporation argued that a foreclosure of the real property held by a wholly-owned subsidiary was an act to obtain possession of property, as the effect of the foreclosure would be to render the subsidiary valueless. However, the appellate court was not willing to disregard the separate corporate existence of the subsidiary from its debtor parent. Because the debtor corporation had no direct interest in the real estate owned by its subsidiary, that real estate was not property of the debtor to which the automatic stay extended.

Kreiser v. Goldberg, 47 BCD 233 (4th Cir. Feb. 26, 2007).

Cybersquatting Punished

Cybersquatting is the "deliberate, bad-faith, and abusive registration of Internet domain names in violation of the rights of trademark owners." Cybersquatters register well known brand names as their own Internet domain names in order to force the rightful owner of the trademark to pay for the right to engage in electronic commerce under its own brand name. In 1999, Congress passed the Anti-cybersquatting Consumer Protection Act, which made this practice illegal.

A California bankruptcy court has determined that a judgment obtained by a trademark holder against a

cybersquatter is not dischargeable in the cybersquatters subsequent bankruptcy case. Bankruptcy does not discharge debts arising from "willful and malicious" actions by the debtor. Because cybersquatting is an intentional attempt to obtain money from a trademark holder through an activity Congress has declared illegal, the court found that both the "willful" and the "malicious" requirements were satisfied. *Choice Hotels International v. Wright (In re Wright)*, 355 B.R. 192 (Bankr. C.D. Cal. 2006).

Receiver Displaced

Various creditors filed suits in state court alleging that a corporation had defrauded them. The state judge appointed a receiver to operate the corporation and enjoined the corporation's management from "doing any act to interfere with the receiver's custody and management," including, specifically, from filing a petition for bankruptcy relief. The debtor's management filed a Chapter 11 petition on its behalf, anyway.

The Arizona bankruptcy court denied the receiver's motion to dismiss the Chapter 11 case, opining that the state court had no authority to enjoin the debtor corporation and its management from exercising a right granted by federal law.

In re Corporate and Leisure Productions, Inc., 351 B.R. 724 (Bankr. D. Ariz. 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.

Prepared by James C. Olson, Attorney and Counselor at Law