

DEBTOR/CREDITOR

January 2010

Stay Trumps Free Speech

Even though the First Amendment is a foundation of American democracy, it may not be permitted to interfere with the operation of bankruptcy law.

Mr. Collier purchased \$984.23 worth of parts and materials on credit from Hill's Mobile Home Parts & Service for improvements to his mobile home. Mr. Collier could not pay this and other debts, causing him to seek the protection of bankruptcy. In response, Mr. Hill posted a large sign at his business location next to the main highway which read: "BRAD COLLIER OWES ME \$984.23 WILL YOU PLEASE COME AND PAY ME!"

Mr. Collier sued Mr. Hill in the bankruptcy court, claiming that the sign was an attempt to collect a debt in violation of the bankruptcy stay. Mr. Hill argued that his sign was an exercise of free speech protected by the First Amendment. The Texas bankruptcy court agreed with Mr. Collier and required Mr. Hill to pay him \$21,820 plus \$500 per day for each additional day that the sign remained visible.

Collier v. Hill (In re Collier), 410 B.R. 464 (Bankr. E.D. Tex. 2009).

Priority for 20-Day Claims

The 2005 Amendments to the Bankruptcy Code created a new priority for "the value of any goods received by the debtor within 20 days before the date of commencement of the case." Thus, creditors who ship goods just before the bankruptcy filing receive payment in full for those goods before earlier creditors receive any distribution from the bankruptcy case.

A Delaware bankruptcy judge recently explained that the creditor has the burden of proving that the goods it sold were received within 20 days prior to the filing. However, the judge also ruled that the invoice or purchase price is

presumptively the best indication of the "value" of the goods received, and other proof is not normally required.

In re SemCrude, L.P., 416 B.R. 399 (Bankr. D. Del. 2009).

Attorney Opinion Letter Stops Suit

The attorney's opinion letter is a standard feature of large financial transactions. Typically, the attorney for the borrower opines that the transaction is properly authorized, that the documents are enforceable as written, and that the acts contemplated do not violate any laws or regulations. The usefulness of the opinion letter was highlighted in a recent decision by a Florida bankruptcy court.

A property owner borrowed \$10,000,000 to convert an apartment building to condominiums. The borrower's attorney issued an opinion letter that the loan documents were valid and enforceable in accordance with their terms. In its subsequent Chapter 11 case, the borrower attacked the loan, arguing that a usurious interest rate rendered the notes unenforceable and that the loan should be recharacterized as an equity investment. The court rejected both of these arguments, citing the statements in the opinion letter that the documents were valid and binding according to their terms. Because the lender relied on the representations in the opinion letter to make the loan, the borrower could not now argue contrary to the representations.

Vision Development Group v. TMG Sunrise, LLC (In re Vision Development Group), 411 B.R. 768 (Bankr. S.D. Fla. 2009).



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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