

# DEBTOR/CREDITOR

January 2013

## *Modification Releases Guarantor*

A limited liability company borrowed from a bank, with the loan guaranteed both by the principals of the LLC and by the parents of one of the principals. Subsequently, the LLC again borrowed from the bank, with the second loan guaranteed only by the principals. The LLC experienced financial difficulties and commenced a Chapter 11 case. The LLC's confirmed plan of reorganization provided that the two loans would be consolidated and paid on a new schedule. However, the LLC was unable to make the payments required by its plan, and the bank sought payment from the guarantors.

The parents, who had guaranteed only the first loan, argued that the consolidation of the loan under the bankruptcy plan released them from their obligations as guarantors. The Alabama Supreme Court agreed, explaining that the confirmed bankruptcy plan created a new contract between the LLC and the bank, which included obligations that the parents had not agreed to guarantee. It was not a replacement for the old loan, but, rather, was a new loan, which the parents had not guaranteed.

*Eagerton v. Vision Bank*, 99 So.3d 299 (Ala. 2012).

## *Sanctions against Petitioning Creditors*

Where a debtor is not generally paying its debts as they become due, creditors holding undisputed, noncontingent claims may file an involuntary bankruptcy petition, forcing the debtor into bankruptcy. However, if the court determines that the involuntary case was commenced improperly and dismisses the case, sanctions are available against the petitioning creditors.

Six LLCs filed an involuntary petition against an individual. The bankruptcy court eventually dismissed the involuntary petition, finding that the claims of the petitioning creditors were not undisputed and noncontingent.

Following dismissal, the individual sought monetary sanctions for the improper petition. The Florida bankruptcy judge held that sanctions were available against both the petitioning LLCs and against the individuals who had signed on their behalf.

*Rosenberg v. DVI Receivables, XIV, LLC (In re Rosenberg)*, 471 B.R. 307 (Bankr. S.D. Fla. 2012).

## *Changing Life Insurance Beneficiary*

In 1999, Mrs. Meza purchased a term life insurance policy, naming her husband as primary beneficiary. Ten years later, three days before she died, Mrs. Meza submitted a change of beneficiary request, designating her daughter as the new primary beneficiary. Eighteen months later, her husband filed a petition for relief under Chapter 7.

Mr. Maza's trustee sought to reverse the change of beneficiary so as to bring the proceeds of the life insurance policy into Mr. Maza's bankruptcy case for distribution to his creditors. The trustee argued that Mrs. Meza's change of beneficiary was a transfer of property from Mr. Meza to the daughter, for which Mr. Meza did not receive anything in return. The Arizona bankruptcy judge disagreed, finding that under Arizona law, Mr. Meza had no vested interest in the insurance policy prior to his wife's death. Because he had no right to policy proceeds, no property was transferred. *MacKenzie v. Badillo (In re Meza)*, 465 B.R. 152 (Bankr. D. Ariz. 2012).

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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. Congress has required bankruptcy attorneys to state: "I am a debt relief agency. I help people file for bankruptcy relief under the Bankruptcy Code." 11 U.S.C. § 528.*

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