Dispute Disqualifies Creditor

Three creditors holding claims in a combined amount exceeding $15,325 may file a petition commencing an involuntary case against a debtor. In order to be a petitioning creditor, the bankruptcy statute requires that the creditor's claim cannot be "the subject of a bona fide dispute as to liability or amount." Courts have been divided over whether the whole amount must be undisputed, or whether the absence of a dispute over a portion of a creditor's claim is sufficient.

A federal appeals court in Boston has recently sided with those who believe that Congress intended to disqualify a creditor from participating in an involuntary petition where there is any bona fide disagreement as to amount, no matter how insignificant. Thus, the debtor's dispute over the amount of interest on an admitted $1.25 million note excluded a creditor from acting as the third participant on an involuntary petition.

Fustolo v. 50 Thomas Patton Drive, LLC, 816 F.3d 1 (1st Cir. 2016).

Indirect Stay Violation

The reach of the stay that arises automatically with commencement of a bankruptcy case is broad. It includes any act to exercise control over property of the bankruptcy estate.

An Ohio bankruptcy judge determined that an arbitration proceeding against non-debtors violated this provision of the stay. While Jack Johnson's bankruptcy case was pending, one of his creditors obtained a ruling, in an arbitration against business associates of Mr. Johnson, that Mr. Johnson and his associates had pledged his multiyear contract with a professional sports team to secure a loan. That arbitration award was confirmed by order of a state court.

The bankruptcy judge concluded that obtaining such a ruling in litigation against others was still an attempt to exercise control over the debtor's major asset -- his employment contract.

In re Johnson, 548 B.R. 770 (Bankr. S.D. Ohio 2016).

Friendly Foreclosure Backfires

Elite Machining Services purchased the business of HIJ Industries with a combination of bank financing and seller financing. In order to thwart HIJ's collection efforts after default, Elite's owner arranged for Elite to default on its bank loan and for the transfer of Elite's assets to another entity through the bank's foreclosure sale of the assets. This prevented HIJ from collecting its debt from Elite.

However, Elite's owner guaranteed Elite's debt to HIJ, and was forced to file a bankruptcy. HIJ objected to a discharge of the owner's guarantor liability, because of his involvement in the friendly foreclosure of Elite's assets. A Kentucky bankruptcy judge determined that engineering a friendly foreclosure was "willful and malicious injury" that would prevent the owner from discharging the guaranty.

HIJ Industries v. Roy (In re Roy), 547 B.R. 760 (Bankr. E.D. Ky. 2016).

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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. If you wish to receive "Notes on Debtor/Creditor Relations", go to www.jamesolsonattorney.com/newsletter.html and click on the link at the word "here".