N O T E S O N

DEBTOR/CREDITOR

R E L A T I O N S

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Trustee No Better Than Debtor

With limited exceptions, a bankruptcy trustee "stands in the shoes of the debtor" and may only recover in a legal action what the debtor itself would have been able to recover. A second legal principle is that one wrongdoer cannot recover from another for joint wrongdoing, referred to by the Latin term *in pari delicto.* For example, two partners in a fraudulent scheme cannot sue each other for damages if the scheme does not succeed.

Together, these two principles mean that a bankruptcy trustee bringing a lawsuit may also be defeated by the defense of *in pari delicto*. A federal appellate court recently applied the doctrine of *in pari delicto* to a bankruptcy trustee standing in the shoes of a creditor, rather than in the shoes of the debtor.

Prior to its bankruptcy, the debtor corporation used "dodgy" accounting practices to artificially inflate its accounts receivable and, therefore, its revenues. After the company collapsed, its bankruptcy trustee sued one of the debtor's financial advisors, which the trustee alleged knew of the debtor's improper accounting practices, for its role in the debtor's collapse. The bankruptcy court concluded that the trustee's claims were defeated by the doctrine of *in pari delicto*, because the debtor itself was the primary wrongdoer with regard to the accounting practices which caused its demise.

The trustee appealed the bankruptcy court's decision arguing that he was able to bring the claims under a provision of the bankruptcy statute which allowed him to assert claims that a hypothetical creditor holding a judgment against the debtor could have asserted. The trustee argued that standing in the shoes of the innocent judgment creditor, he is not subject to the defense of *in pari delicto*. The appellate court disagreed, concluding that the hypothetical judgment creditor, also, could only stand in the shoes of the debtor and would itself have been subject to the *in pari delicto* defense. The trustee achieved no better position standing in the creditor shoes.

Anderson v. Morgan Keegan & Co. (In re Infinity Bus. Group), 31 F.4th 294 (4th Cir. 2022).

Easier Stay Relief

A Maryland bankruptcy judge recently made it easier to obtain relief from the automatic stay and foreclose on collateral.

A bank acting as trustee for a fund that purchased mortgages moved for stay relief to permit the continuation of a state court foreclosure on a mortgage in default. The homeowner opposed on the grounds that the bank could not establish a chain of title showing that the fund actually owned the mortgage. The bankruptcy judge held that proof of ownership of the mortgage was not necessary. The bank could obtain the stay relief provided it could show a "colorable claim" that it had a right to proceed with the foreclosure in state court.

Specialized Loan Servicing v. Byrd (In re Bird), 2022 Bankr. LEXIS 417 (Bankr. D. Md. 2022).

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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 *by email, go to www.jamesolsonattorney.com/newsletter.html and click on the link at the word "here".*

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

One Corporate Center Suite 400 10451 Mill Run Circle Owings Mills, MD 21117 410-356-8852 Fax 443-501-2636 jolson@jamesolsonattorney.com