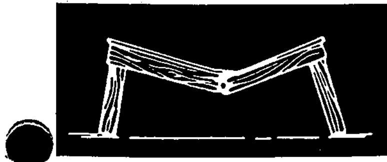

The Cram-Down

VOL. 2 NO. 3 | Tampa Bay Bankruptcy Bar Association Newsletter | Spring 1992

PRESIDENT'S MESSAGE

Annual Dinner Meeting

You will not want to miss our annual dinner meeting on May 28. Our program promises to be one of the most unusual you have seen. Thomas Jefferson, impersonated by Clay Jenkinson, will be with us. Mr. Jenkinson has made his presentation to judicial conferences, legislatures, and schools, colleges, and universities.

Mr. Jenkinson appears in costume, delivers a monologue, and takes questions from the audience, presenting an accurate, first person characterization of Jefferson.

Please make your reservations early for this enjoyable and educational program.

Officers and Directors

Our association's officers and directors have worked faithfully and effectively to make this year a successful one. Building on the efforts of past leadership, we have enhanced our continuing legal education programs, expanded the variety of topics discussed at our luncheon meetings, dramatically increased our membership, provided more support for bankruptcy court administration, and generally become a little more organized. We were able to accomplish these things because of the efforts of past presidents Leonard Gilbert, Don Stichter, Doug McClurg, Dick Prosser, and the officers and directors led by them.

Tom Mimms will be our president for the coming year. Having been a member of the founding board, an officer, and the one primarily responsible for computer access to the clerk's office, Tom is most qualified to lead our organization. I wish him and the rest of our officers and directors success for next year.

Bob Glenn

LENDER DECISION-MAKING IN CHAPTER 11

Part 1: The Effect of Bank Regulation, Reporting, and Disclosure Upon the Lender's Strategy

I. Introduction

As this bankruptcy era has progressed, experienced lenders have demonstrated increased willingness to participate in the reorganization process as an often rewarding alternative to other chapter 11 strategies. Loan officers, and more specifically work-out officers, have become adept at analyzing schedules and statements, questioning witnesses at creditors' meetings, reviewing monthly financial reports, and evaluating plans and disclosure statements. Work-out officers have refined their abilities to understand and harmonize the debtor's objectives with their own. Unfortunately, however, debtors lack the opportunity to develop a comparable understanding of their lenders' objectives. The debtor-in-possession is too busy tending to its own financial and legal affairs to appreciate the nuances of the lender's agenda.

Lawyers can achieve better results in chapter 11 if they better understand the lender's perspective. When a lender's counsel understands how the lender formulates strategy, counsel can more meaningfully communicate with debtor's counsel. When debtor's counsel possesses general understandings of how the work-out officer thinks and how the lender's management formulates policy, these understandings can be taken into account in responding to the lender. At least theoretically, the possibility of consensus doubles when everyone understands the lender's perspective as well as the debtor's. Even if communication does not ultimately produce consensus, the work-out officer's candid observations may ultimately prove valuable to a debtor.

This article will share some simplified insights on how lenders make decisions in a chapter 11 context. The first part of this article discusses the effect of regulation, reporting, and disclosure upon lenders' strategies in chapter 11. In the second part of this article, to be published in the next edition of The Cram-Down, experienced work-out officers will share their observations as to what constitutes a successful chapter 11 result.

II. The Significance Of Regulation, Reporting, and Disclosure To Lenders And Work-Out Officers

This is not only an era of record bankruptcy filings: this is also an era of record bank failures and of rapid consolidation of the national lending industry. All three of these interrelated conditions have produced a special emphasis on bank regulation, reporting, and disclosure. This emphasis affects the way a lender formulates chapter 11 strategy.

A lender's problem loans (often termed "special assets") produce far-reaching effects that are easily noticed by regulators and investors studying the lender's reporting and disclosure documents. The lender's balance sheet will be affected, because the lender will be required by the Office of the Comptroller of the Currency (the "OCC") to increase its loan loss reserve in order to meet minimum capital requirements. The lender's income statement will be affected, because a lender cannot recognize or report interest income on a loan that is unlikely to be fully repaid. When special assets affect the lender's balance sheet and income statement, the trading value of its stock is affected. Depressed stock value limits the lender's ability to raise new capital, and thereby reduces its ability to lend. Ultimately, this chain of

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FAILURE TO OBJECT TIMELY TO EXEMPTION RESULTS IN ALLOWANCE NOTWITHSTANDING THE MERITS OF THE EXEMPTION CLAIM

In the last year, the subject of exemptions has gotten a significant amount of attention in the legislature and the press. Recently, the Supreme Court in Taylor v. Freeland & Kronz, _____S.Ct.____, 1992 WL 77247 (U.S.), held that a trustee may not contest the validity of a claimed exemption after the Rule 4003(b) 30-day period has expired, even though the debtor had no colorable basis for claiming the exemption.

Petitioner Taylor, the trustee, failed to object to the debtor's claimed exemption of anticipated proceeds from a pending employment discrimination lawsuit within the time limit established by Bankruptcy Rule 4003(b) although he had knowledge of the claimed exemption. Later, upon learning that the lawsuit had settled favorably to the debtor, Taylor filed a complaint against the debtor's attorneys, Freeland & Kronz, for turnover of the proceeds which were paid as attorneys' fees. The Bankruptcy Court for the Western District of Pennsylvania ordered the debtor and her attorneys to return the funds to the estate. The Court of Appeals for the Third Circuit reversed and the Supreme Court, in an opinion authored by Justice Thomas, affirmed.

Section 541 of the Bankruptcy Code provides that all property of the debtor becomes property of the estate. Section 522 of the Bankruptcy Code allows a debtor to withhold from the estate property claimed as exempt pursuant to either federal or state law, unless the law of the debtor's domicile does not authorize the availability of the federal exemptions. To properly claim the exemptions, in accordance with §522(1), the debtor must file a list of the property claimed as exempt. Absent an objection by a party in interest, the property claimed as exempt is exempt. Bankruptcy Rule 4003(b) provides that the timing of such objections by the trustee and creditors shall be within 30 days from the meeting of creditors or within such further time as is granted by the court. Section 522 is silent as to timing.

Notwithstanding the Court's acknowledgment that the debtor did not have a right to exempt more than a small portion of the proceeds, the Court applied the "plain meaning rule" to §522 and Rule 4003, without identifying it as such, to find that unless a party timely objects, property claimed exempt in the debtor's schedules is exempt. The Court rejected Taylor's argument that implicit in §522 is a good faith requirement that if recognized by the Court would discourage debtors from filing meritless exemptions. Taylor argued that because the debtor had no colorable basis for her claim the 30-day objection period should not apply.

In support of its position, the Court noted that "[d]eadlines may lead to unwelcome results, but they prompt parties to act and they produce finality." The Court also cited certain provisions of the Bankruptcy Code, (none of which dealt specifically with exemptions), which address improper behavior by a debtor. For example, the Court cited Bankruptcy Rule 9011 authorizing sanctions for signing certain documents not "well grounded in fact and...warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law" and 18 U.S.C. §152 imposing criminal penalties for fraud in bankruptcy cases as provisions which may "limit bad-faith claims" of exemptions by debtors. Finally, the Court concluded that to the extent those provisions prove ineffective, it is up to Congress to enact specific provisions limiting the application of §522(1) to exemptions claimed in good faith.

The Court declined to consider Taylor's second argument that the Court could look to §105 of the Bankruptcy Code for support, because it was raised for the first time in the petitioner's opening brief.

The dissent, authored by Justice Stevens, recognized that the adoption of Rule 4003 furthered the interest in orderly administration of a debtor's estate but questioned why equitable tolling principles that apply in other contexts do not apply in bankruptcy proceedings, particularly where fraud or misconduct is present. Stevens argued that because it was undisputed that there was no legitimate basis for the claimed exemption and because innocent creditors were harmed by the trustee's failure to timely object, a literal reading of the statute was inappropriate.

Stevens also argued that the language of §522 itself can be used by the courts to limit exemptions to "any property that is exempt under federal law...or state or local law..." and that any exemption improperly claimed under those laws would not be subject to the 30-day objection period.

Practitioners may have a problem reconciling the Supreme Court's "no exceptions allowed" ruling in the Taylor case with the Congressional intent of giving an "honest debtor a fresh start."

Lynn V.H. Ramey

ANNOUNCEMENTS

Doug McClurg recently joined Hill, Ward & Henderson in Tampa where he will head up their Bankruptcy practice.

Joryn Jenkins has announced that, effective July 1, 1992, she will join the Faculty at Stetson Law School. She will teach trial practice.

THE TAMPA BAY BANKRUPTCY BAR ASSOCIATION

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A FEW WORDS ABOUT BANKRUPTCY APPEALS

So, you want to appeal...you look at the Rules, local and otherwise. You find two ways to go, appeal by right, and appeal by leave of court. Which path to take? Let's review the difference:

Title 28 U.S.C. §§1291 and 1292 govern the appeals process. Section 1291 addresses appeals of final orders. Section 1292 governs interlocutory orders.

Title 28 U.S.C. §158 is the bankruptcy appellate statute. It states that final or interlocutory orders of the bankruptcy court can be appealed either to a bankruptcy appellate panel or to the district court. (This circuit does not use bankruptcy appellate panels). Decisions of the district court may be appealed to the circuit court. Circuit court orders may then be appealed to the Supreme Court.

Final orders are appealable as of right. Interlocutory orders require leave of the appellate court. Determining whether an order is final often leads the litigant into a murky area of the law. Courts often decide appeals without making this determination. To the litigant, it will be preferable to seek appeal of a final order, and avoid the murk.

What is the test? Catlin v. United States, 324 U.S. 229, 233 (1945). A final order is "one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment."

An order may be final concerning a particular issue in the litigation, but, unless the order concludes the litigation on the merits, it is not a final order under the Catlin test and therefore not immediately appealable. The final order doctrine determines when an order may be reviewed. If the order is final, the appeal must be within thirty days after the date of entry of the order. Orders that are not final can still be challenged at the end of the litigation on the merits.

An order that does not fit the traditional Catlin definition of finality may be appealed only if it falls into one of two categories of exceptions to the rule: statutory exceptions or judicial exceptions.

What are the statutory exceptions? These are stated in Sections 158 and 1292. Interlocutory appeals are allowed with leave of district court. The general rule is that courts should grant leave "sparingly, since bankruptcy appeals should be the exception, rather than the rule." United States Trustee v. PHM Credit Corp., 99 Bankr. 762, 767 (E.D. Mich. 1989).

Section 1292(a) provides for appeals from interlocutory orders regarding injunctions, receiverships and admiralty decrees that determine the rights and liabilities of the parties. These are situations in which the danger of harm outweighs the policy against interlocutory appeals. Note that the standard in this Circuit for granting an injunction includes a finding of irreparable harm.

Pursuant to 1292(b), both the trial court and the appellate court must agree that: (1) "[the] order involves controlling question of law; (2) there is substantial ground for difference of opinion, and (3) an immediate appeal will materially advance the ultimate determination...the trial court must certify and appellate court must agree to hear the appeal. This dual screening process avoids time-consuming jurisdictional determinations in the court of appeals and ensures appeals are restricted to appropriate cases.

What are the judicial exceptions? These include:

(1) the collateral order doctrine, stated in Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949): a. [The] Order must conclusively determine the disputed question; b. the Order must resolve an important issue completely separate from the merits of the action, and (c) the Order must be effectively unreviewable on appeal from a final judgment.

(2) The Forgay-Conrad doctrine, which allows review of orders that direct "immediate delivery of physical property," subjecting the party being stripped of the property to "irreparable harm" e.g. Martin Bros. Toolmakers v. Industrial Dev. Bd., 796 F.2d 1435, 1437 (11th Cir. 1986).

(3) The Gillespie doctrine, stated in Gillespie v. United States Steel Corp., 379 U.S. 148 (1964), which provides that since "It is often difficult to determine when an order is final, courts should give 'practical' not 'technical' construction to finality requirements, weighing the costs and inconvenience of piecemeal review against the potential injustice wrought by delay and the salutary effect of early disposition of questions 'fundamental' to the further conduct of the case."

Gillespie involved "an unsettled issue of national significance" and the Supreme Court has refused to extend Gillespie beyond its facts.

The three exceptions above were developed in civil litigation; the fourth exception, "the relaxed standard of finality" is unique to bankruptcy.

(4) "The relaxed standard of finality" wherein Courts generally take a flexible, pragmatic approach to finality in bankruptcy cases. "The rationale for viewing finality under a less rigorous standard in the bankruptcy area is clear. Bankruptcy cases frequently involve protracted proceedings with many parties participating. To avoid the waste of time and resources that might result from reviewing discrete portions of the action only after a plan of reorganization is approved, courts have permitted appellate review of orders that in other contexts might be considered interlocutory." In re Amatex Corp., 775 F.2d 1034, 1039 (3d Cir. 1985).

Examples of final orders:

1. An order directing turnover by a receiver to a bankruptcy estate;
2. An order dismissing a complaint objecting to discharge;
3. An order for a sale of property of the estate.

Examples of interlocutory orders:

1. An order denying confirmation of a chapter 13 plan;
2. An order approving payment of attorney's fees which does not determine the amount to be paid;
3. An order denying approval of a settlement agreement.

Why the final order rule? The policy reasons for the final order rule focus on judicial economy and prevention of harm. First, appealing a final order is more efficient, as all objections can be brought before the appeals court at one time. Second, some orders may never be appealed if the objecting party ultimately wins the trial. Third, the appellate court may be able to review the various rulings from a broader perspective after the trial court has issued a final order. Fourth, the trial process will proceed more rapidly if not interrupted by interlocutory appeals. Finally, this rule prevents parties from using the interlocutory appeal process as an expensive delaying tactic.

Julie C. Meisner

OMNIBUS BANKRUPTCY LEGISLATION PENDING IN CONGRESS

On March 19, 1992, the Senate Judiciary Committee approved its substitute for Senate Bill 1985. In addition to proposing both substantive and technical changes to the Bankruptcy Code and related provisions, this legislation proposes the establishment of a nine-member commission which would conduct a two year study of the bankruptcy process and system and make recommendations to Congress for improvement.

The legislation also proposes the creation of a new Chapter 10 for the reorganization of small businesses with no more than $1,500,000.00 in debt. This new Chapter would begin as a three year pilot program in eight federal judicial districts. As with Chapter 11, no solicitation for acceptance or rejection of a plan may be made until the plan or plan summary and a written disclosure statement is provided to creditors. The confirmation and consummation of a Chapter 10 case would not discharge a debtor from a debt excepted from discharge under section 523. Additionally, a debtor could be denied a general discharge if the debtor could be denied a discharge under section 727(a) if the case were one under Chapter 7. Specifically excluded from the definition of a small business are persons whose primary activity is the owning or operating of real property.

The legislation also makes significant changes to current law regarding pension plans. The assets and benefits of a pension, profit sharing, stock bonus or other plan qualified under sections 401(a), 403(a), 403(b), or 408(k), or a governmental plan under section 414(d) or 457, of the Internal Revenue Code of 1986 would not be property of the estate. However, to the extent that contributions to a plan are in excess of applicable limits on such contributions, those excess assets or benefits would be property of the estate. Additionally, the withholding of income from a debtor's wages to repay loans from certain pension, profit sharing, stock bonus or other plans would not be stayed under section 362 and such debts would be nondischargeable under section 523(a).

Parties who are involved in the Celotex and Hillsborough Holding cases may find interesting the provision which allows a bankruptcy court to enter permanent injunctions similar to those entered in the Johns-Manville reorganization case. A bankruptcy court could enjoin persons or governmental units from attempting to directly or indirectly collect, recover or receive payment from third parties with respect to any claim which is to be paid in whole or in part by a trust established under the terms of a reorganization plan. An injunction could only issue if such a trust is funded in a manner set forth in the legislation and approved by the bankruptcy court. Such a trust could only be set up if 75% of the creditors who would be beneficiaries approved the trust.

Debtors whose sole asset is real estate also merit special attention in the legislation. These debtors would be required to file a plan of reorganization within ninety days. Additionally, a creditor who pre-petition instituted a foreclosure proceeding on the real estate asset could continue with the foreclosure proceedings up to, but not including, the foreclosure sale.

The legislation also proposes provisions to overrule DePrizio and to create a uniform nationwide method of perfecting an interest in rents or leases in real property by the recording of documents evidencing such an interest in the public records.

The proposed legislation also:

- regulates non-attorney bankruptcy petition preparers and demands that they meet certain minimum requirements; penalties, including punitive damages and fines, may be imposed for their failure to follow the law or to "negligently or fraudulently prepare bankruptcy petitions;"
- raises the debt limit for eligibility for Chapter 13 debtors to $1,000,000.00 without regard to whether the total debt is secured or unsecured;
- allows creditors to pursue guarantors or co-debtors in Chapter 13 cases under certain circumstances;
- requires a Trustee to orally examine a debtor at a section 341 meeting regarding the debtor's understanding of the consequences of bankruptcy and the various types of bankruptcy relief the debtor could have chosen;
- provides more detail on standards to be used by a court in making an award of professional fees;
- requires a debtor-in-possession to establish a separate bank account for post-petition taxes;
- raises the compensation level of Chapter 7 Trustees;
- adjusts the dollar amount to take inflation into account in several sections, including section 507 priorities and section 522 exemptions; and
- allows a debtor to reaffirm a debt without having to appear before the Court.

Copies of the pending legislation can be obtained for a nominal fee from the American Bankruptcy Institute, 510 C Street, N.E., Washington, D.C. 20002, (202) 543-1234.

Randolph A. Fabal

REPORT OF THE COURT, U.S. TRUSTEE AND CLERK LIAISON COMMITTEE

Hearings scheduled for the Ft. Myers' Division of the Middle District of Florida will be held at the Barnett Center, 2000 Main Street, Suite 302, Ft. Myers, Florida. Hearings will no longer be at the Federal Courthouse. The first meeting of creditors will continue to take place at the U.S. Trustee's Office.

Debtors' attorneys are encouraged to place a value in any Motion to Value Collateral, particularly in Chapter 13 cases. If a value is placed in the motion, the clerk will issue an order directing a response. If no response is filed, the debtor may obtain an order establishing the value of the collateral at the amount indicated in the motion, without hearing. Placing a value in the motion also facilitates settlement of the motion, even in the event that a response is filed.

Roberta A. Colton

LENDER

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events may prevent a lender from obtaining authorization to acquire another lender through merger. Worse yet, activity restrictions could be imposed upon the lender, or the lender could be placed in conservatorship or receivership.

The work-out officer who directs counsel is also generally responsible for reporting on the status of the special asset. The work-out officer's recommendations in loan committee meetings are ultimately used by lenders in the quarterly preparation of Consolidated Reports of Condition and Income ("Call Reports") or comparable reporting statements. The OCC has issued a detailed set of instructions (the "Glossary") for completion of the Call Reports. The Glossary (and related statements, updates, and bulletins) contains explanations of terms used to characterize special assets.

The contents of the Call Reports are of great importance to regulators, and pubic disclosure of the contents of Call Reports is strongly encouraged by regulators. Accordingly, work-out officers generally attempt to formulate a chapter 11 strategy for their special assets that will produce a good result while also permitting the most favorable characterization in the Call Reports. Two of the most significant regulatory concepts are those of the "nonaccruing asset" and the "troubled debt restructuring (or "TDR")."

III. The Nonaccruing Asset

Income cannot generally be realized on an asset as long as it is reported as nonaccruing. Assets are generally reported as nonaccruing if (1) the lender maintains the asset on a cash basis due to the debtor's financial ability to repay; (2) the lender does not reasonably expect ultimate full repayment of interest and principal; or (3) the debtor has been in a state of contractual default, either with respect to principal or interest, for at least ninety days, unless the asset is both (a) well secured, and (b) in the process of collection.

The third basis for placing an asset on nonaccrual status is generally the most common found in the bankruptcy context. Ordinarily, many of a debtor's obligations are at least ninety days past due when the chapter 11 petition is filed. An asset must be both well secured and in the process of collection to satisfy the exception, and both of these terms are very conservatively defined. For example, the term "well secured" is much more rigorous than the term "secured" as used in the bankruptcy code. Additionally, the Glossary generally provides that an asset is "in the process of collection" only if pending litigation, workout, or collection efforts will result in payment of all arrearages within thirty days. Accordingly, the third basis is quite broad while its exception is quite narrow.

Unless the booked balance of the asset is determined to be fully collectible, the lender cannot realize and report income even when the debtor resumes making payments. Although these payments may reflect repayment of principal, it is best that the asset be restored to accrual status. Quarter after quarter, the special asset placed on nonaccrual status eats into the projected income of the lender.

An increase of nonaccrual assets on the balance sheet is received by the investment community as a sign of imminent increases in loan loss reserve requirements, and eventual increased losses. The work-out officer will therefore go to some trouble to help prevent the placing of the asset on nonaccrual status. Accordingly, if an adequate protection order or a feasible plan of reorganization proposes fair treatment that will permit the lender to keep the asset on accrual status, the work-out officer will probably consider it.

IV. The Troubled Debt Restructuring

If the special asset is already on nonaccrual status, the work-out officer's primary objective is to restore it to accrual status. In order to enhance the reporting status of the special asset, the experienced work-out officer will generally demonstrate a high degree of creativity and pragmatism. A work-out officer may authorize forgiveness of a portion of the debt, and charge off a portion of the debt against existing loan loss reserves. When the work-out officer attempts to restore an asset to accrual status, this must often be reported as a troubled debt restructuring, or TDR.

A TDR is generally described as a restructuring of an asset that results in the extension of concessions by the lender to the debtor that it would not consider absent the debtor's unfavorable financial position. A TDR can include (a) the lender's receipt of assets sufficient to satisfy some or all of the debt; (b) the lender's receipt of an equity interest sufficient to satisfy some or all of the debt; and (c) a modification of the terms of the debt. Many work-outs and reorganization plans involving a combination of the foregoing produce a TDR status reporting.

Several of the effects of TDR status render it undesirable for the lender. First, a credit analysis must be performed in order to determine the debt's collectibility. Based upon the results of the credit analysis, the lender must charge off the appropriate amount of the debt against loss reserves. This produces a reported loss. Additionally, a TDR on nonaccrual status will not be placed on accrual status until the lender is reasonably reassured of repayment and performance according to a reasonable payment schedule Such a determination must include, among other things, findings that (a) any charge-offs are taken in good faith based upon the lender's credit evaluation, (b) the ultimate collectibility of the debt is not in doubt, and (c) a satisfactory payment performance period occurs (either before or after the actual restructuring) for at least six months.

An asset will not be reported as a TDR if the value of assets

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EDITOR'S COLUMN

This issue of The Cram-Down includes articles by Julie Meisner, who is law clerk to Judge Elizabeth Kovachevich; Randy Fabal, who practices with Ketchey, Horan, Hearn & Neukamm in Tampa; and Lewis Messer, who is Vice President of First Union National Bank of Florida and works in its Special Assets department in Tampa, in addition to articles by our officers and editorial staff. We are very grateful to all contributors to The Cram-Down.

This is the first issue of The Cram-Down without our Official Crossword Puzzle. We will plan to resume that feature in the fall if the clamor from our readers demonstrates sufficient interest. Let us hear from you in this regard.

Have a good summer.

Edward M. Waller, Jr.

LENDER

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or equity received by the lender is sufficient to satisfy the full amount of the debt. Additionally, a lender can avoid TDR status if a work-out or plan provides for a reduction of interest rates primarily reflective of an actual decrease of market rates. Several related bases for excepting a special asset from TDR classification exist as well.

At the minimum, TDR status will cause the asset to remain on nonaccrual for at least six months, and require a significant dedication of the work-out officer's resources. Accordingly, the lender will take great interest in avoiding or minimizing the effects of TDR status. Timely receipt of adequate protection payments can aid in this regard, by permitting the satisfactory payment performance period to occur before confirmation. Honest, accurate completion of the debtor's monthly financial reports can assist the work-out officer in performing the TDR credit evaluation. Most importantly, the careful negotiation and drafting of the plan of reorganization can help a lender avoid TDR status altogether. Even if the debtor's plan does not propose ideal treatment, the lender's ability to report an asset favorably could prove important in obtaining the vote at confirmation.

V. Conclusion

Whether or not they are happy about it, lenders have successfully accustomed themselves to the bankruptcy process. As lenders become more sophisticated, it is incumbent upon lawyers to learn more about the lending industry as a means toward improving the result for all parties to the bankruptcy process.

(Special thanks to H. Bruce Bernstein, senior banking partner with Sidley & Austin's Chicago office, for his presentation regarding regulation and reporting of nonaccrual and restructured credits, delivered on April 11, 1992, at the Southeastern Bankruptcy Law Institute.)

John A. Anthony and Lewis C. Messer

RECENT DEVELOPMENTS

Tate Cheese Co., Inc. v. Crofton & Sons, Inc. (In re Crofton & Sons, Inc.), Case No. 91-1501-8B1, Adv. No. 91-302 (Bankr. M.D. Fla., April 30, 1992):

Although creditor fulfilled the technical requirements of §546(c) of the Bankruptcy Code and §672.702(2) of the Florida Statutes, it lost its right to reclaim cheese where it made a written reclamation demand and then waited almost eight months to seek judicial assistance to enforce the demand.

In re Wasp, Case No. 91-2091-8P7 (Bankr. M.D. Fla., Feb. 18, 1992):

Community Association that filed state court action for unpaid post-petition association fees after debtors received discharge violated the permanent injunction set forth in §524(a)(2) of the Bankruptcy Code. Debtors' personal obligation, which arose pre-petition, to pay post-petition association fees was discharged. The association's lien was still enforceable.

Union Trust Co. v. Welsh (In re Welsh), Case No. 91-9444-9P7, 1992 Bankr. Lexis 498 (Bankr. M.D. Fla., March 9, 1992):

FRBP 9006(a), which governs computation of time, applies to FRBP 4007, which provides that complaints objecting to the debtor's discharge or the dischargeability of a debt shall be filed not later than 60 days following the first date set for the meeting of creditors. Therefore, a complaint filed on Monday, October 28, 1991 was timely filed where the sixtieth day after the first date set for the meeting of creditors fell on Saturday, October 26, 1991.

In re Airport Executive Center, Ltd., Case No. 91-103?-8P1, 1992 Bankr. Lexis 497, 22 BCD 1228 (Bankr. M.D. Fla., March 5, 1992):

Where State Court appointed receiver in possession of office building owned by debtor entered into lease with U.S. Postal Service post-petition, debtor could not reject the lease under §365(a) of the Bankruptcy Code after regaining possession of the property.

Patricia B. Hancock

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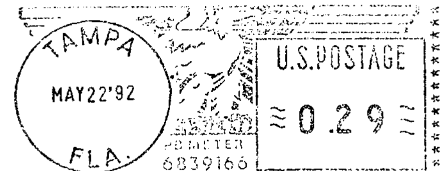

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