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FACING THE ISSUES[®]

LEGAL BRIEFS FROM THE ATTORNEYS OF MACKALL, CROUNSE & MOORE, PLC

Creditors' Corner

Exemption in Farm Equipment Allowed Despite "Off-Farm" Job

In *In re Miller*, 370 B.R. 914 (Bankr.D.Minn. 2007), the bankruptcy trustee objected to debtors' claimed exemptions. Of particular concern were the joint debtors' claimed exemptions in five insurance policies and certain farm equipment. The trustee objected to the number of insurance policies included in the debtors' claimed exemptions. The court held that Minnesota law only permits one policy to be exempted by each debtor. With respect to the farm equipment, the trustee only objected to the wife's claimed exemption because of her employment off the farm. In overruling the objection, the court noted that off-farm work, even "full time" off-farm work, does not equate to disengagement from the farming operation. The court allowed the exemption because of the debtors' continuing farm efforts and use of the equipment.

Automatic Stay Termination Not Applicable to Property of the Estate

In *In re Dennis D. and Cynthia Stanford*, No. 07-BK-10477E. (Bkrtcy.E.D.Ark., Aug. 3, 2007), the court addressed the automatic termination of the stay for a repeat filer. The collateral at issue was a leased Peterbilt truck. In 2005, the debtor filed for Chapter 13. The court dismissed that filing in 2006 after the debtor failed to make payments to the trustee. Within one year of the dismissal, the debtor filed a second Chapter 13. The creditor wished to foreclose its interest in the collateral. Two issues were before the court. First, whether creditors are required to take formal action prior to the filing of a bankruptcy petition for the automatic stay to terminate within 30 days of the bankruptcy filing. Second, whether the automatic termination of the stay applied to property of the estate. With respect to the first issue, the court held that formal action is necessary for the stay to automatically terminate and found this requirement was met by the creditor's pre-petition commencement of a replevin action. But the court went on to hold that the stay only automatically terminated with regards to the debtor and property of the debtor, not property of the estate. Because the truck was property of the estate, the court held the stay did not automatically terminate.

Although this is the majority view, it is important to note not every court has agreed with this interpretation. Courts in disagreement hold that Congress intended the 30-day automatic termination of the stay to punish and discourage repeat and bad-faith filers, and interpret the statutory language broadly to include termination as to all actions, whether they are against the debtor, its property, or property that could be characterized as property of the estate. Check with counsel to determine what courts have held in your jurisdiction.

Law Firm Performing Foreclosure by Advertisement Largely Outside FDCPA

In *Chomilo v. Shapiro, Nordmeyer & Zielke, LLP*, Case No. 06-3103 (D. Minn. September 12, 2007), the plaintiff brought claims against defendant law firm Shapiro, Nordmeyer & Zielke under the Fair Debt Collection Practices Act ("FDCPA"). The plaintiff claimed the law firm violated a number of technical sections of the FDCPA in its efforts to foreclose the debtor's mortgage by advertisement. At issue was the scope of the definition of a "debt collector" under the FDCPA. The district court found that the law firm's primary business purpose was the enforcement of security interests, and thus only a "debt collector" as defined by the FDCPA under only one limited provision. The district court further held that the law firm's use of FDCPA notice language "out of an abundance of caution" did not mean it consented to be designated as a debt collector under the FDCPA.



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