Chapman and Cutler LLP
Attorneys at Law · Focused on Finance®

Client Alert

Current Issues Relevant to Our Clients

June 24, 2015

Judgment Creditors: How Building a Strong Record During Citation Proceedings Can Pay Dividends in Bankruptcy

The issuance of a Citation to Discover Assets ("Citation") against a judgment-debtor often represents the first step a creditor will take to collect on a civil judgment in state court. However, the citation may also trigger the judgment-debtor to file a bankruptcy petition, thus temporarily foiling a creditor's collection efforts. However, a creditor who is diligent in building a record during the citation proceedings has a chance of a greater recovery in a subsequent bankruptcy. Judgment-debtors must tell the truth under oath, no matter the court, and the transition of post-judgment proceedings from a state court to a bankruptcy court does not relieve a judgment-debtor of this burden. Further, creditor may have grounds to object to the judgment-debtor's bankruptcy discharge should it be found that the judgment-debtor has not kept his or her story straight between the state court citation proceedings and the bankruptcy case.

An excellent illustration of this concept is found in the 7th Circuit's recent opinion in *In re Carol A. Marcus-Rehtmeyer*.[1] After judgment was entered against Carol Marcus-Rehtmeyer (*"Rehtmeyer"*) in a breach of contract case, one of her creditors, Chivalry Consulting, Inc. (*"Chivalry"*), issued a citation to discover assets along with a rider directing Rehtmeyer to produce a variety of documents relating her income (the *"Citation"*). During an examination under oath pursuant to the Citation, Rehtmeyer provided only tax returns and no other responsive documents. After substantial legal wrangling, Rehtmeyer responded that she did not possess any documents relating to bank accounts held in her name, and in particular, she had no documents pertaining to mortgages or deeds of trust. Frustrated, Chivalry filed a motion for a rule to show cause; however, the day before the hearing, Rehtmeyer filed for bankruptcy, never having produced the requested documentation.

Upon reviewing Rehtmeyer's bankruptcy filings, Chivalry quickly realized that the bankruptcy documents directly contradicted the information Rehtmeyer provided during the state-court citation proceedings. For example, in the bankruptcy court, Rehtmeyer stated that she held mortgaged real property, despite having previously sworn under oath that she had no mortgage documents. She also listed certain personal property, including stocks and computer equipment, as personal property, all of which had been asked for, but none of which had ever been disclosed, in the prior citation proceedings. Most egregiously, Rehtmeyer's Statement of Financial Affairs filed with the bankruptcy court listed income that was never disclosed in the post-judgment proceedings. These were not mere omissions, but substantial, material, and purposeful contradictions. Chivalry, having spent the time and effort creating a robust record in the citation proceedings, objected to Rehtmeyer's discharge of her debt under 11 U.S.C § 727(a)(2)(A).[2]

Rehtmeyer offered several excuses for the inconsistencies, explaining that she may not have had assets or known the extent of them at the date of the citation examination, and thus did not know to provide the information to opposing counsel. The bankruptcy court conducted a trial, agreed with Rehtmeyer, and denied Chivalry's objections. The district court affirmed.

On appeal, the 7th Circuit reversed the lower courts' rulings, relying on the record established during the citation proceeding. The Court emphasized that debtors subject to a citation are under a continuing duty to disclose financial information truthfully, regardless of when during the proceeding the information may have become available. This continuing duty is apparent from the statue governing citation proceedings, the citation rider, and the Bankruptcy Code. The Court chastised Rehtmeyer, noting that "it belies reason to think that anyone, particularly a person represented by counsel, would think that she need not disclose employment or associated income as an asset."[3] As the Court pointed out, "it would be nonsensical then, to allow a judgment debtor…to avoid the discovery of assets by merely stating that she could not recall precisely when she received particular assets, or that she did not receive the assets by the time the citation was first issued."[4] Under Illinois law, Rehtmeyer was required to truthfully divulge all payments made to her from the date the citation was issued until the date it expired. Under the Bankruptcy Code, her duty was the same: to provide

truthful information to the bankruptcy court and her creditors. The striking inconsistencies in her disclosures made it clear to the Court that Rehtmeyer had been concealing documentation relating to her financial wherewithal in violation of 11 U.S.C. § 727(a)(2)(A).

The lesson of *Rehtmeyer* is that although it may be costly to create a detailed record post-judgment, doing so can pay dividends in proceedings involving a dishonest judgment-debtor, including a subsequent bankruptcy. It is hard to catch a liar in a lie, and harder still to prove it. A complete record allows a creditor to do both, and places it in the best position to object to the bankruptcy discharge of a judgment-debtor who is attempting to conceal his or her assets from collection.

---

1 No. 14-1891 (7th Cir. Apr. 28, 2015).

2 Section 727 of the Bankruptcy Code allows a party to object to a debtor's discharge where the "debtor, with intent to hinder, delay, or defraud a creditor… has transferred or concealed or has permitted to be transferred …or concealed property of the debtor within one year before the date of the filing of the [bankruptcy] petition."

3 *Rehtmeyer*, No. 14-1891, slip op. at 18.

4 *Id.* at 15.

For More Information

For more information, please contact Jim Sullivan (312.845.3445), Bryan Jacobson (312.845.3407), Sara Ghadiri (312.845.3735), your primary Chapman attorney or visit us online at chapman.com.