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Did You Know?

Bankruptcy - Chapter 11



Ryan Penhallegon, Esq.

Chapter 11 bankruptcy - often referred to as “reorganization” - is typically used by businesses (in some instances, individuals) to restructure financial obligations through a plan of reorganization confirmed by the court. Unlike in a chapter 7 bankruptcy (which is a liquidation proceeding in which the debtor’s assets are turned over to a bankruptcy trustee) a chapter 11 debtor typically remains in control of its assets while attempting to reorganize. A successful reorganization preserves a business’s going concern value and maximizes the value of the debtor’s estate, and in turn, payouts to creditors.

Chapter 11 bankruptcy provides debtors with a number of mechanisms to restructure and confers a number of potential benefits, which include:

- the automatic stay, which suspends all litigation and collection efforts against the debtor and its property for a period of time;
- the ability to set aside (avoid) certain transfers occurring prior to the debtor’s bankruptcy filing;
- the ability to assume or reject certain leases and contracts;
- the ability to obtain financing on favorable terms by giving new lenders a first priority lien on the debtor’s assets;
- the ability to “lienstrip” certain liens that encumber assets of the debtor; and
- the ability to sell certain assets “free and clear” of liens and encumbrances.

However, it is not only debtors that benefit from a chapter 11 filing. In many instances, a debtor’s creditors may benefit from, and indeed welcome, a chapter 11 filing.

Among the potential benefits to a creditor of a debtor’s chapter 11 filing include:

- mandatory disclosure by the debtor of its assets, liabilities, and financial affairs, all subject to bankruptcy court control and oversight;
- the ability of unsecured creditors to form a creditors committee and retain professionals such as lawyers and accountants to investigate the debtor’s financial condition, operations and the circumstances that led to the debtor’s financial distress;
- the right to object to and oppose any chapter 11 plan proposed by the debtor, and to propose the creditor’s own plan;
- the requirements that must be satisfied under the Bankruptcy Code for any plan to be confirmed, including the “best interest of creditors” test and “absolute priority rule”; and
- the right to move for appointment of a trustee to assume control of the debtor’s business for “cause” or to seek dismissal or conversion of the case to chapter 7.



Success Story

SLG’s client legally terminated a problem employee who had work performance issues, who often failed to show up to work on time, and who attended company events while intoxicated. Upset with the firing, the employee sued SLG’s client alleging wrongful termination. SLG’s team discovered social media postings of the employee that revealed that the employee had been arrested for using and selling narcotics. By timely using this information, SLG was able to make the case go away. SLG’s client was very pleased with the outcome.

Tips to Avoid Business Litigation



Tanya Falleiro, Esq.

Going to court is expensive and can take your focus away from running your business for a significant period of time. Include these steps in your business practices to avoid litigation whenever possible.

Have effective, enforceable contracts: Every business relationship should be memorialized in a written contract. This includes

contracts between owners, clients and customers, employees and employers, vendors, and more. Having a contract that is properly drafted to best govern the specific relationship and responsibilities at hand can help avoid disagreements down the road. Each party will know his or her obligations and expectations because it is in writing and the contract can help dictate how disputes will be resolved out of court.

Have appropriate insurance coverage: It is critical to fully understand the risks of your business and have adequate insurance policies to cover those risks. If you are liable to another party and your insurance can cover the harm caused, the case often ends there and litigation can be avoided. Types of insurance to consider include: general liability, commercial property, professional liability, product liability, & workers' compensation.

Properly train and supervise employees: Hired employees are an extension of your business when they are on the job. Hiring or maintaining risky employees may lead to liability for their actions if they are negligent or cause intentional wrongdoing. Ensure all staff members are fully trained for their job duties and that disciplinary action is taken for employee misconduct.

Keep impeccable records: Some disputes arise due to mistaken impressions or misunderstandings. In such cases, maintaining relevant records to clear up the misunderstanding can be the end of the conflict. When it comes to employees, you should have a specific record system in place and understand what information should be kept in an employee file and what information should not.

Manage rising disputes: Prompt attention to potential conflict can be a powerful tool to prevent a conflict from escalating to litigation. If you believe that a client or business you have worked with is unhappy, address the situation head-on and try to find a solution that will be good for everyone. If you need professional assistance, mediation and arbitration are alternative methods to resolve your dispute before you head into court.

Popular New Year's Resolutions

Things to Watch For in 2017



E-Commerce - Terms of Use



Stephen Moses, Esq.

Businesses With an Online Presence

Whether it be social media, e-commerce, mobile, static or interactive sites, businesses should always craft carefully written Terms of Use. These terms are written to include a variety of different subjects relating to the business, the customer, information that is exchanged, information received and how that same information may be used. Terms of Use for a website are critical to maintain control of how users access and use the information on the website, and to limit liability for unapproved uses. That legal jargon protects from liability from users and allows control over the information contained on the website.

Avoid Using Boilerplate or "One Size Fits All"

Terms of Use should be unique and crafted according to the purpose of both the business and its online presence. This requires Terms of Use that are tailored carefully to match the business model and objectives while most effectively reducing potential liability. Because boilerplate is by its very nature broad in scope, it will very likely fail to account for the website's particular business model and objectives.

Receive Customer Information. Now What?

The majority of websites today collect a significant amount of information from those accessing a page. This information can include everything from IP addresses, shared third-party content, user contributions and anything that the user actively and willingly shares. How a business acquires, manages, and uses this information is of paramount importance in a website's Terms of Use. It is important that a business identifies both the information it seeks to access from customers and the manner in which it intends to use that information. This should be done prior to developing Terms of Use, as it will allow the business to tailor the language appropriately so that it can be read and understood by customers. Failing to provide clear terms can cause public relations nightmares or could altogether dissuade customers from visiting the business's website.



SLG Welcomes New Faces

Welcome to the team, Christopher Ford



Christopher Ford is a paralegal with Structure Law Group, LLP. He has extensive experience and assists the firm with both litigation and corporate matters. Mr. Ford received his Master's Degree in Medieval History from the University of St. Andrews, where he graduated with Honors of the Second Class (Division 1). Mr. Ford received his paralegal certificate from the University of San Diego.



Welcome to the world,
Cesar Diaz III
Congratulations to our employee
Maricela Flores and her family!



Employment Corner

Structure Law Group, LLP is proud to announce that it has expanded its practice to include bankruptcy, insolvency and debtor/creditor rights, which includes:

- Commercial debt collection and enforcement and defense of pre- and post-judgment remedies, including receiverships, writs, levies, debtor examinations other remedies;
- Prosecution and defense of fraudulent conveyance actions;
- Pre-bankruptcy counseling to companies in financial distress or looking to wind-down and/or sell their business;
- Business counsel to clients concerning secured transactions, lien rights, and their treatment and consequence in the event of a bankruptcy filing by either the company or a counter-party; and
- Bankruptcy and related commercial litigation.

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**DID YOU
KNOW?**

- A bolt of lightning is six times hotter than the sun.
- Your nose can remember 50,000 different smells.
- A day on Venus = 243 Earth days.
- In the 1980s, Fergie of the Black Eyed Peas was the voice of Charlie Brown's sister, Sally.
- Forty is the only number whose letters are in alphabetical order.
- Some cats are allergic to humans.



Mark Figueiredo



Rebecca McCracken



Rakesh Ramde



Ryan Penhallegon



Stephen Beals



Katya Mezek



Stephen Moses



Jaclyn Ford



Ethan Solove



Tanya Falleiro

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