

Wealthy Individual, You Just Filed for Chapter 11. What Are You Going to do Next? I'm Going to Disney World!

Written By **Lance P. Martin** (lpm@wardandsmith.com)

June 13, 2013



Although Chapter 11 of the United States Bankruptcy Code is more commonly associated with business reorganization, an individual or married couple also may use Chapter 11 to reorganize debts. In fact, Chapter 11 has become a popular avenue for high-net-worth individuals who have found it more attractive than the more traditional Chapter 13 process. One thought is that Chapter 11 gives the debtor more time and control when it comes to crafting a repayment plan and, unlike Chapter 13, Chapter 11 does not absolutely require a debtor to use

all disposable income to fund the plan. Creditors have watched with more than a little aggravation as ostensibly "wealthy" borrowers have sought to use Chapter 11 to reduce their liabilities while at the same time attempting to maintain a luxurious lifestyle. Whether the stories are true or apocryphal, bankers don't like to think that a borrower can avoid paying his loan but still keep his country club membership.

Fortunately, this approach just got harder thanks to a recent scathing decision from the United States Bankruptcy Court for the Eastern District of North Carolina. In this case, a husband and wife found out the hard way that a plan that was long on luxury living and short on payments to unsecured creditors could not survive the "good faith" requirements of the Bankruptcy Code.

In every Chapter 11 case, the Bankruptcy Court cannot confirm a plan of reorganization if the plan was not proposed in good faith – even if the debtors' secured creditors consent to the plan. In this case, the debtors' luxurious lifestyle begat expenses that included maintenance of a 4,200-square-foot house in Raleigh, a second home on Bald Head Island, a late-model Lexus, and private school tuition for their son. The debtors also sought to retain a \$140,000 "rainy day" fund and reported excessive and lavish spending on dining, clothes, and vacations. The \$4,269 trip to Disney World six months before the confirmation hearing, in hindsight, was not a wise idea. After using their income to pay for all of their expenses, the debtors proposed to pay only \$334 per month to their unsecured creditors – what the Court likened to "tossing the unsecured creditors a bit of spare change." The Court concluded that the plan did not satisfy the good faith requirement of the Bankruptcy Code and denied confirmation.

Do you have borrowers in, or threatening, bankruptcy that you believe will put their personal interests ahead of satisfying their obligations to you? If so, please contact our Creditors' Rights Practice Group for more information on how to effectively contest individual Chapter 11 plans of reorganization.

© 2023 Ward and Smith, P.A. For further information regarding the issues described above, please contact Lance P. Martin.

This article is not intended to give, and should not be relied upon for, legal advice in any particular circumstance or fact situation. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney.

We are your established legal network with offices in Asheville, Greenville, New Bern, Raleigh, and Wilmington, NC.