

No Slowdown in Sight for Bankruptcy Practices

Residential real estate central to related filings, restructurings

By JANE YU

Bankruptcy lawyers aren't expecting a let-up in their busy pace.

"There's been a continuation of individual and business bankruptcies throughout last year," said Jeff Kaufman, a partner at Newport Beach-based **Newmeyer & Dillon LLP**. "The hope is that the economy is stabilizing, but so far there's been no indication of bankruptcies tapering off."

Real estate foreclosures and related bankruptcies are likely to keep attorneys hopping for some time, most agree, despite some stabilization in the commercial segment.

"There [are fewer] insolvency-related matters in the commercial real estate space," said Leonard Shulman, partner at Irvine-based **Shulman Hodges & Bastian LLP**. "What you'll see in OC is that owners of commercial buildings will be able to lease them up, probably start to charge a little higher rent, make the buildings more valuable. That might get more real estate transactions."

Loans Due

Shulman expects the dismal housing market to continue here, leading to related business bankruptcies.

"There are still a lot of loans that will be coming due this year," Shulman said. "While banks have been giving lip service to loan modifications, I don't know if that will hold. Consequently, there would be a slew of foreclosures."

Many agree the length of the recession and the modest recovery will eventually bring a



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tip in bankruptcy work.

"If the recession lasts for a long time, at some point, bankruptcy work starts to decline," Michael Reynolds, a partner at the Costa Mesa office of Phoenix-based **Snell & Wilmer LLP**. "That can be because the economy has technically become, in a way, stable.

I think that means we'll have a slight drop-off in business bankruptcy work."

The challenging real estate market could remain a busy sector for firms, translating to more restructuring work for lawyers.

"The workout, restructuring and enforcement of real estate-secured loans appear like-

ly to see continued growth into 2012," said Joseph Coleman, a partner at Snell & Wilmer.

Restructuring Trend

The trend is likely to include out-of-court work.

"Restructuring generally is going to be very active because there's a lot of insolvency out there that may not prompt the bankruptcy filing but may prompt other non-bankruptcy solutions, such as out-of-court restructuring," Reynolds said. "It really depends on the type of collateral involved. Much of the collateral in Southern California is real estate. And not many are seeing a short-term sunny scenario there."

Reynolds said he sees the effects of the recession lingering in areas such as construction.

The construction industry has been feeling the pressure for some time.

"A lot of construction companies here have been bidding jobs with lower margins in order to keep workers working," Shulman said. "That's been catching up to them. At the end of the job, they find that they haven't been bidding right, and consequently, a lot of the construction companies have been struggling."

Construction Collateral

The construction company could then default to its bank, Shulman said. The bank would subsequently seek to gather up collateral, such as equipment or real estate.

A whole other set of concerns could surface when it comes down to lenders' rights in bankruptcy cases, said Dan Chambers, a partner in the Irvine office of Atlanta-based **Troutman Sanders LLP**, who primarily works with banks.

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“A lot of banks are aware that their credit rights are sort of in flux right now.”

—Dan Chambers, Troutman Sanders

“A lot of banks are aware that their credit rights are sort of in flux right now,” Chambers said. “Whether the bank has the right to credit-bid first became an issue about a year ago. Previous to that, the bankruptcy bar generally thought the credit-bidding right wasn’t an issue.”

Credit-bidding is a right given to secured creditors in bankruptcy sales. It allows them to use the debt they hold as bid of their own in cases where the collateral is deemed to be worth less than the claimed amount.

Circuit courts have shown in two separate cases a split in opinions regarding a lender’s rights. The U.S. Supreme Court is set to hear a case regarding this in the spring.

“If banks are given the right, that’s good for my clients,” Chambers said. “But if the court decides banks do not have these rights, it will affect the way banks approach the bankruptcy process and underwriting standards.”

Chambers said he sees “a good chance” the high court will rule to support lenders.

“Any anti-bank ruling would further tighten lending and potentially push the economy in the direction nobody wants to go,” he noted. ■

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