AMICUS MANAGEMENT

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Case Study
Shah Hotels

In April, 2012, the National Republic Bank of Chicago appointed Amicus Management, Inc. as a receiver for five hotels operating in Michigan. During the operational take-over of the hotels, Amicus discovered evidence of severe mismanagement and learned that the borrower intended to file the hotels in separate Chapter 11 proceedings to regain possession and operational control of the hotels during the peak summer months. Amicus prepared a motion under 543(d)[1] to excuse turnover of the property as a contingency and immediate response if the borrower filed Chapter 11.

The Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code at 4:47 PM on Friday May 11, 2012. Amicus convened a conference call with its counsel and the bank and decided that retaining control was necessary to preserve and protect the property and other collateral. Amicus filed its motion requesting that the Court excuse the Receiver from turnover under section 543(d) within an hour of receiving notice of the Chapter 11 petitions and thereby thwarted the borrower's plan to retake operational control of the hotels over the weekend. The Bankruptcy Court validated the receiver's actions and permitted the receiver to operate the hotels until the case was converted to a Chapter 7 proceeding while the hotels were marketed and sold with the receiver's assistance through 363 sales.

In a similar case, the United States Bankruptcy Court of the Western District of Michigan ruled on a receiver's motion seeking excusal from the requirements of 11 U.S.C. §543. The Court held that divesting the custodian of estate property would not serve the interests of the creditors. The Court focused on the practical result of the outcome of the receiver's motion and held "requiring the Receiver to deliver the [property] to the Debtor would be a fruitless and meaningless gesture in light of the court's decision to grant relief from the stay. The relief granted on the Lift Stay Motion will permit the Bank to return to state court to pursue its state law remedies, including receivership." In re Ying Hua Tam Case No. 12-06379 (August 9, 2012). Significantly, the Court granted the receiver's motion despite a lack of misconduct by the Debtor in managing the property. The Court ultimately concluded that "requiring the receiver to relinquish the property would produce unnecessary delay and expense, especially given the court's decision to lift the automatic stay." Id.

[1] **Summary of 11 U.S.C. §543**

Section 543 of the Bankruptcy code sets forth certain duties and rights for a receiver as a custodian, and creates a procedure for a bankruptcy court to determine whether a receiver, as a custodian should continue in possession, custody or control of the debtor's property once a bankruptcy case is filed. Section 543(a) makes it clear that once a receiver has knowledge of the commencement of a bankruptcy case, the receiver may not make any disbursements, nor take any action in the administration of, the debtor's property, except to the extent necessary to preserve such property.

Section 543(d) addresses whether or not the receiver, as custodian, will continue to hold possession, custody or control of the debtor's property notwithstanding the filing of the bankruptcy case. Section 543(d)(1) permits the court to excuse compliance with § 543(a) through (c), and continue to have the receiver maintain possession, custody or control of the debtor's property if the court finds that the interests of the creditors are better served by permitting the receiver to continue. If the debtor is solvent, the court is also directed to consider the interests of the equity security holders in the debtor.

- Quick Action Preserving Value
- Simultaneous Takeover 5 Hotels
- Receiver Awared by Court to Remain in Control