

Chapman Sidebar

Updates from Chapman's Litigation, Bankruptcy and Restructuring Group

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Good News for Creditors Filing Proofs of Claim!

A Nebraska bankruptcy court recently upheld the longstanding principle that a creditor filing a proof of claim may seek the entire amount due despite amounts collected from other obligors who may be jointly and severally liable for the debt.

In June 2014, a bankruptcy court in Nebraska found that a creditor need not credit a bankrupt debtor for amounts received from other obligors on its claims against the bankrupt debtor. See *In re Biovance Technologies, Inc.*, No. 566 BK 10-82441 (D. Neb. June 6, 2014).

In *Biovance Technologies*, the bankrupt debtor objected to a creditor's proof of claim ("POC"), arguing that the POC needed to be amended to apply a \$50,000 credit received by the creditor from a third party settlement related to the same debt. See *id.* at 2 and 4. The creditor argued that until it received the full amount of the debt owed, it was not required to reduce the amount claimed in its POC. *Id.* at 4. While admitting that it "is entitled to only one recovery of the full amount," the creditor nonetheless argued that "until it has received full recovery, [the creditor] is entitled to assert the entire indebtedness against all parties who are liable." *Id.*

The court agreed with the creditor, reaffirming the longstanding principle that a creditor may "assert a claim against the debtor for the full amount of the debt, not merely for the balance required to make the creditor whole." *Id.* (citing *Ivanhoe Bldg. & Loan Ass'n of Newark, N.J. v. Orr*, 295 U.S. 243, 245-46 (1935)); see also *Reconstruction Fin. Corp. v. Denver & R.G.W.R. Co.*, 328 U.S. 495 (1946) (explaining that a creditor does not have to deduct amounts collected from other sources in proving up debt against a bankrupt debtor); *In re Realty Assocs. Sec. Corp.*, 66 F. Supp 416, 424 (E.D.N.Y. 1946) ("the holder of a claim upon which several parties are liable may prove its entire claim against the estate of any who become bankrupt and recover dividends calculated on the basis of such entire claim as it existed when the petition was filed, without regard to partial payments made by other obligors until from all sources it has been paid in full"). The court also relied on an 8th Circuit decision and a Northern District of California bankruptcy decision which both held that a POC "need not be reduced by amounts recovered from a third party unless the creditor would otherwise reap a double recovery." *Id.* at 4-5 (citing *Bd. of Comm'rs of Shawnee Cty., Kansas v. Hurley*, 169 F. 92, 97 (8th Cir. 1909); *In re Del Biaggio*, 496 B.R. 600 (Bankr. N.D. Cal. 2012)). The court reasoned that even when a plan is confirmed, the creditor does not collect 100% of the debt. *Id.* at 5. Rather, a court's confirmation of a plan merely gives rise to "a promise to pay." *Id.*

The principle reaffirmed by the court in *Biovance Technologies* should aid creditors pursuing collections against multiple entities or individuals for a single debt. Effectively, the court adhered to the longstanding principle that a creditor is only allowed one satisfaction on a debt, but nonetheless permitted a creditor to seek the highest recovery possible. This allows creditors to more effectively pursue full recovery with the hope of collecting a higher percentage of the total amount owed.

As an illustration of this principle, imagine that you are a judgment creditor with a judgment against three judgment debtors jointly and severally. Your initial judgment against all three is in the amount of \$1,000,000.00. You settle with two judgment debtors for the total amount of \$600,000.00. Thereafter, the third judgment debtor files for bankruptcy protection, requiring you to seek recovery of the remaining \$400,000.00 balance in the bankruptcy case. Pursuant to the authority set forth above, you, as the judgment creditor, are permitted to file a proof of claim in the third judgment debtor's bankruptcy for the full amount of \$1,000,000.00. The benefit of being able to file a proof of claim for the total amount owed, as opposed to the reduced amount of \$400,000.00, is that in most bankruptcies a creditor typically recovers only pennies on each dollar claimed. Thus, for example, if the payment to unsecured creditors in the bankruptcy is 30 cents on the dollar, you will recover \$300,000.00 in the bankruptcy as opposed to only \$120,000.00 if you were required to reduce your claim to \$400,000.00 to credit other receipts. Though as a creditor you would not be permitted to recover more than the \$1,000,000.00 owed, thanks to the precedent set forth above, you will be able to collect a higher percentage of the total debt owed.

For More Information

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