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MACDONALD & ASSOCIATES NEWSLETTER

Bay Area • August, 2008 • Central Valley

We wish to share with you some of our firm's recent successes in bankruptcy litigation in the Northern and Eastern Districts of California. While we are known primarily as a San Francisco firm, we opened our office in Modesto a few years ago and have enjoyed becoming part of the Central Valley legal community, representing all major constituencies in bankruptcies — debtors, creditors and trustees.

We recently obtained an award in excess of \$300,000.00 in the Eastern District for Chapter 7 Trustee, Lawrence G. Gray, on claims for violation of the automatic stay and preference. *Gray v. Assali, et al.*, Adv. Proc. No. 07-09002 (*In re McGrath*, Case No. 05-90165). The judgment followed a four-day trial before Judge McManus, sitting in Modesto. In a 48-page opinion, the Court analyzed a complex set of facts to determine that a disputed corporate interest was property of the bankruptcy estate. The opinion, available on our website, www.macdonaldlawsf.com, discusses the current state of the law respecting damages for violating the automatic stay and the availability of attorney's fees.

An interesting footnote to this case is that, just weeks before trial, the defendants moved to dismiss the suit for lack of standing, arguing that the claim was community property which belonged to the debtor's ex-husband's bankruptcy estate, filed earlier. We successfully argued that the defendants raised an issue of "prudential standing," which, unlike constitutional standing, was waived due to the defendants' delay. The legal analysis may be pertinent to some of your cases, and is also available on our website.

Last fall, we obtained reversal by the Ninth Circuit from a decision of the Bankruptcy Appellate Panel on a preference issue in *Sigma Micro Corp. v. Healthcentral.com (In re Healthcentral.com)*, 504 F.3d 775 (9th Cir. 2007),



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resulting in the case being dismissed against our client, Sigma Micro Corp. The issue upon which the case was reversed was whether our client's ordinary course of business defense should have survived summary judgment. The court held that we had presented competent evidence that the payments were ordinary in light of prevailing business terms. The opinion, available on our website, has attracted attention because of its lengthy discussion of issues surrounding the right to a jury trial in a bankruptcy adversary proceeding, a bankruptcy court's ability to retain jurisdiction over all pre-trial proceedings, including summary judgment motions, and the procedure to transfer to district court. Judge Montali teases about it at every opportunity

because it required him to re-write the Northern District Bankruptcy rules to change the procedure when a jury trial right has been properly asserted. Under the new procedure, there is a two-step process: the party must first move in the bankruptcy court for an order certifying the matter for jury trial and then move in the district court for withdrawal of the reference.

Heather Cutler of this office recently chaired a Bar Association of San Francisco program speaking with Judge Montali, regarding the recent revisions to the national and local bankruptcy rules. The written materials which include the black-lined text of each revised rule are available at our website.

Earlier this year, in *Hawkins v. Garcia, et al.*, Adv. Proc. No. 07-01094 (*In re Sneed*, Case No. 06-10085), another Eastern District case, we



Heather A. Cutler

defeated a fraudulent conveyance action brought by a Chapter 7 Trustee. Judge Lee's 15-page decision offers a useful factual analysis of "fair consideration" and is found at our website.

While the cases we discussed regard disputes over property of the estate and avoidable transfers, we are skilled in all facets of bankruptcy practice, including complex Chapter 11 cases, both

corporate and individual. We presently represent a large retail jeweler in a case which is one of the few pending post-BAPCPA Chapter 11 cases in the Northern District with an active Creditors' Committee, and we expect to confirm a Plan by the end of summer. We also represent a national bank in an Eastern District case where we intervened in an action initiated by the



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Chapter 7 Trustee to recover property of the estate, asserted our client's superior lien position and obtained a \$650,000.00 judgment for conversion of our client's collateral. In another matter for that bank, we obtained the appointment of a receiver in Stanislaus County Superior Court.

If you would like to learn more about Macdonald & Associates, please feel free to call or write us, or visit us on the web at www.macdonaldlawsf.com.

"We speak the Code."

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