

Insights: Publications

When Provisions in a Loan and LLC Agreements Do Not Impermissibly Restrict a Bankruptcy Filing

February 12, 2025

Written by **Eric S. Rein**

In *In re 301 W North Avenue, LLC*, 2025 WL 37897 (Bankr. N.D. Ill. 2025), a bankruptcy court recently addressed provisions in a loan agreement and limited liability company (“LLC”) operating agreement as to their effect on permitting the filing of a bankruptcy petition. The loan agreement provided that a bankruptcy petition can be filed with the unanimous consent of all members and the consent of the independent director. The agreement further provided that there must be at least one independent director reasonably satisfactory to the lender. The LLC agreement provided that certain “Major Decisions” required unanimous consent of all Members and Managers, including the Independent Manager, and one of those Major Decisions was the filing of a bankruptcy petition. The LLC agreement also provided for at least one Independent Manager who shall consider only the interests of the Members and the Company in acting and voting on matters provided in the agreement. And the Independent Manager shall, in exercising the rights and performing their duties under the Agreement, have a fiduciary duty of loyalty and care similar to that of a director of a business corporation.

The court held that these provisions did not impermissibly restrict the right to file a bankruptcy petition. The court found that the plain terms of the LLC Agreement provided express fiduciary duties of loyalty and care on the Independent Manager, which extended to the Debtor's members and creditors. The court did not agree that the filing be deemed violative of public policy because the Independent Manager served exclusively for the benefit of the Lender. The court reasoned that “the fact the position co-exists with the Loan is just logical. It does not lead inexorably to the conclusion that the Independent Manager is not subject to direct fiduciary duties affecting the ability to file a bankruptcy petition.” *Id.* at*13.

This decision adds to bankruptcy court rulings analyzing the validity of “blocking rights” in corporate organizational documents. This decision provides guidance for lenders seeking to influence a debtor's ability to seek bankruptcy relief. The holding suggests that subjecting independent members or directors to broad fiduciary duties might overcome the liberal standard for denying motions to dismiss for lack of corporate authority when the bankruptcy filing is in the best interests of the debtor.

Related People



Eric S. Rein

t 312.606.3227

rrein@ktslaw.com