legal matters

BANKRUPTCY LAW

Workable, innovative, cost effective solutions for clients.

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Bart Sarsh is a lawyer at SimpsonWigle LAW LLP who practices in the areas of bankruptcy/insolvency and commercial litigation. Bart acts for trustees, creditors, debtors, and other stakeholders in the insolvency and restructuring process. He also provides legal opinions on risk management and asset protection strategies to individual and corporate clients. Bart has trial and appellate-level experience, and regularly appears before the Ontario courts.

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I run a business and my customer, who owes me money, went bankrupt. What are my options to get paid?

Unsecured creditors have a number of options under the Bankruptcy and Insolvency Act ("BIA"). Unfortunately, unsecured creditors tend to prematurely throw in the towel upon receiving paperwork from a trustee because they think that bankruptcy is a dead end when, in fact, the road has simply taken a turn into unfamiliar territory. This is where a lawyer who practices bankruptcy law can act as your guide on the journey to getting paid.

Upon the creditor receiving notice of the bankruptcy, the creditor must file a Proof of Claim with the trustee. The trustee will examine the Proof of Claim and decide whether the Proof of Claim should be admitted for a dividend. If the Proof of Claim is admitted for a dividend, then the creditor will receive a dividend from the money that the trustee eventually collects during the course of administrating the bankruptcy.

The amount of the dividend that the creditor receives will depend on the amount of the debt that is owed to that creditor and how that amount compares to the value of the debt owing to each of the other creditors. For an unsecured creditor, the objective is to maximize the amount of the dividend by maximizing the amount of money that the Trustee is able to collect in the administration of the bankruptcy.

You, as an unsecured creditor, can try any of the following strategies to increase the chances of receiving a larger dividend:

1. Under s. 161(1) of the BIA, request that the Office of the Superintendent of Bankruptcy examine the bankrupt under oath with respect to the bankrupt's conduct, the causes of the bankruptcy, and what happened to the bankrupt's assets;
2. Under s. 163(2) of the BIA, and upon obtaining a court order, examine the bankrupt under oath; or
3. Request a meeting of the creditors in order to decide upon a strategy to investigate the bankrupt's conduct. Note that, under s. 103(1) of the BIA, a meeting of the creditors can only be held if 25% of the creditors holding 25% of the value of the proven claims (that is, 25% of the claims admitted for a dividend) request a meeting.

After completing one or more of these strategies and if there is enough evidence – a lawyer that practices bankruptcy law can help you figure this out –you can file a Notice of Intended Opposition to Discharge before 9 or 21 months have passed from the date of bankruptcy. This will trigger a discharge hearing.

A discharge hearing is like a trial with oral evidence and is subject to the rules of evidence. The court can make one of four orders set out in s. 172(1) of the BIA: an absolute discharge; no order; a suspended discharge for a specified period of time; or a discharge subject to terms and conditions.

To an unsecured creditor, the goal is to prove that the bankrupt has committed one or more of the "facts" in s. 173(1) of the BIA. If at least one s. 173(1) "fact" is proven, the court cannot grant an absolute discharge.

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