Client with Large Outstanding Invoice Files for Chapter 7

Have a client who has filed for Chapter 7 and received the Notice over the weekend. Anyone have any thoughts as to the best way to preserve interest in the amount owed? Thanks.

File a proof of claim.

D. Mathew Blackburn, Colorado

File a proof of claim and then talk to a local BK practitioner about a reaffirmation. I don't know if you can do this or if it is enforceable.

But, that will be your only chance of getting paid.

Jonathan Stein, California

Only thing you can do is file a proof of claim, though absent one of the reasons to preclude discharging the debt, you're probably out of luck.

Certainly don't try and collect on it without an action to determine dischargeabilty if that is appropriate.

Seth Crosland

Why would the debtor agree to a reaffirmation? I mean unless the client still wants him as his attorney I guess would be the only reason.

Seth Crosland

I don't think he would other than he may need legal help in the future and may not want to piss off his attorney, especially if his attorney is one of the few people who can do whatever legal issues are coming up. Like, if I needed an attorney who could probate an estate and I lived in Barstow, CA, there may only be one attorney who is competent to do that. If I owed that attorney money and filed for BK, but knew I would need him in the future, I may reaffirm so that he would represent me in the future.

Jonathan Stein

That's true. Plus, there's no harm in asking right? I always tell me kids that. I can't say no if you don't ask, but I'm still probably going to say no lol.

Seth Crosland

---

1. Talk to cl's bk attorney. Find out if cl intends to keep you as an attorney or drop you like a bad habit.

2. If atty won't talk to you, pull cl's schedules to see how you were listed.

3. Do not send cl a bill. Stop all automatic invoicing.

4. Read 11 U.S.C. 362 for more information on the automatic stay.

5. Most courts do not want you to file a proof of claim in a Chapter 7 unless the estate is an asset estate.

6. In 60 days after the meeting of creditors, your bill is normally discharged.

7. If you don't think it should be discharged, due to fraud, etc., you need to file an adversary proceeding (or maybe a motion, depends on your district) to have the debt declared nondischargeable. There are strict deadlines for this, which were listed on your Notice of Case Filing.

8. If you believe your bill is secured by something, you should definitely check the schedules to make sure it is listed as a secured obligation.

Feel free to contact me off-list for general advice or contact your local bankruptcy bar for more district-specific advice.

Corrine Bielejeski, California

Early in my solo practice, a client owed me several thousand dollars and kept promising to pay me. One day he called and said he was giving me a heads up because he planned to file for bankruptcy and offered me the option of taking a loss this year or being on his bankruptcy schedule. Since I'm a cash reporting filer, I can't take a loss at any time and learned that I should never let Accounts Receivable get that big.

I think that I did file a claim in his bankruptcy action but his doing me the favor of giving me the heads up was as worthless as his debt to me.

It was a painful but learned lesson.

Miriam Jacobson, Pennsylvania

Corrine hit on what I was thinking.

She mentioned a possible adversary proceeding.

The exceptions are listed at 11 USC 523.

I would not go that path unless I had a good fact for the exception.

Once in my career, years ago, I went that route and I got paid via a settlement. I think a main reason was that the filer's attorney did not want to fight the adversary proceeding, probably based on getting paid for the work.

Are you admitted to practice in federal court in that district? If not, the court may allow you to file on a pro hoc vice basis.

If you have good facts, you may wish to write a demand letter to the filer's lawyer first to see if the debtor might settle.

Corrine can comment here on whether my suggestion is a good one or not.

(Thanks, Corrine!)

Keep us posted on what you do and the result.

Rob V. Robertson, Texas

I wonder what Corrine thinks of showing up at a creditor's meeting. I have done it twice, but both were PI cases where the debtors attorney was a jackass and jerking me around. I questioned the debtor both times. But, in both cases, I was pretty sure there were unlisted assets and I wanted the trustee to know about it.

Jonathan Stein

I would lay low and learn to take retainers.

Lawyer I know had a client file a 13 and trustee wants to get ALL fees back, years later. Maybe that only happens in a 13, but determine if that can happen in a 7. If so, lay very, very low.

Joseph G. Bonanno, Massachusetts

As with most things, it's a cost-benefit analysis.

The cheapest thing to do is to pull the schedules off PACER. Then you can figure out whether what you know of the client's finances jives with what is on the schedules.

Most good debtor's attorneys will happily talk to creditors about how they are listed and what that means. That is doubly true for attorneys. There is a chance that our client lied to us (shocking, I know). We may not know they are suing their employer or in the middle of a custody dispute. So, I would always start there.

I have found that most family law attorneys out here (the most frequent attorney-creditor on my clients' schedules) are more than happy to write off the client's bill when it is discharged, because they are usually able to step away from the case. On the other hand, a PI attorney or someone on a contingent fee is definitely going to want to fight a discharge, because the suit itself secures the attorneys' fees.

As far as the cost of an AP, you are right that it can be cost prohibitive, both to file and to defend. Settlements in that area are common. You may not need to get a pro hac vice appearance, though, if you are representing yourself. As always, check your local rules.

As far as attending a 341 meeting, it is a great way to ask 5 minutes of questions to the debtor, on the record, with them sworn in. So, if you need to ask where the money went, where the 3 cars disappeared to, etc., this is a good place to do it. Heck - free discovery. That said, you can get a similar result by e-mailing the trustee and alerting him or her to these issues. Some trustees are more aggressive than others, and they are probably going to want proof, but if I tell someone "hey, did you know the client has 4 houses, here are the addresses" they are going to get interested really quickly. You may need to check your attorney-client privilege rules, though, about what you can divulge.

Hope that helps!

p.s. If my clients ever owe you money, they have probably told you about it before they file. I suggest that they inform all counsel in order to figure out whether they will be continuing representation or not.

Corrine Bielejeski

Unless court says to file a POC, I am not sure it will be accepted. Is this an asset, or no asset, Ch 7. If no assets, then no reason to file a proof of claim.

Unless a reason to object to the discharge (I am going to guess this is not likely as one would expect more in the post), consider it a loss.

If you are actively involved in a case, you need to assess carefully what you can and cannot do. Make sure that withdrawing will not be a stay violation.

Phil A. Taylor, Massachusetts

Is there a way to push a Chapter 7 Debtor into a Chapter 13?

Travis Walker, Florida

Really, not much opportunity to force conversion unless debtor does not meet requirements for Chapter 7. Attorney not likely to file Chapter 7 unless debtor qualified.

Leon J. Letter, Michigan

No. It falls under the 13th Amendment to the Constitution. If the debtor is not eligible for a Chapter 7 case, all you can do is file a Motion to Dismiss it or ask the trustee to do it.

Mitchell P. Goldstein, Virginia

Well, yes and no. If you can show the court that a debtor is not eligible for a Chapter 7, you can essentially force the debtor to either convert to a 13 or dismiss the bankruptcy filing--at which point the stay will lift and you can go after him for sums owed.

Kevin W. Grierson, Virginia

The 13th Amendment to the Constitution abolished slavery as I recall. How does that impact bankruptcy?

Darrell G. Stewart, Texas

Note, however, that if the debtor's means test comes back negative, they can do a chapter 13 paying you $0 still (if you are unsecured). Thus, it's not going to help you.

Ultimately, you are hoping for (1) nonexempt assets that will be liquidated by the chapter 7 trustee or (2) an I/J that comes back with a positive and/or a means test that comes back with a positive number, either of which will force the debtor into a 13 and hopefully get you paid.

Note, however, that at least in my division, a debtor may move from a big payment plan to 0% at any time during the bankruptcy, if they can show changed circumstances.

(most of whose chapter 13 clients pay 5% or less to their general, unsecured creditors)

Corrine Bielejeski

Court used that to argue that you cannot force someone into Chapter 13 bankruptcy. It is basically indentured servitude which was also outlawed.

Mitchell P. Goldstein

So sorry to hear that. I have had that happen twice, lost a lot of money as a result. I have learned not to let the bills get ahead of the payments as a result.

Nanci Bockelie, Utah

Whether or not the client can discharge your fees depends. Here is a fairly recent blog by a Michigan bankruptcy attorney that discusses different scenarios regarding attorney fees:

http://hillalaw.com/can-i-discharge-attorney-fees-in-bankruptcy/

I can't at all vouch for the accuracy of this information but it might give you some ideas. It could also depend on your state's laws. I would talk to a knowledgeable Florida BK atty about your situation. There might be some hope than you think but if not, what a bummer.

Jordan Saint John, Colorado