

BANKRUPTCY LAW

SPRING SEMESTER – MAY 2009
Professor Daniel W. Sklar

FINAL EXAMINATION

INSTRUCTIONS

Well kids, you are almost lawyers. Just one or two minor inconveniences to go (i.e., final exams, bar exam, etc.). As I indicated, you will find attached hereto four separate questions. You are to answer any three of them that you chose, each of which is equally weighted during this two (2) hour exam. You should take about 20 minutes to research and outline your answer and 20 minutes to write it out.

You may use your Codes but not your notes or textbooks.

As for me, I enjoyed the semester a great deal particularly in light of your active participation and questioning. I hope that this course will prove to have been a valuable experience for you over the course of your legal careers. Good luck and have a great summer.

QUESTION NO. 1

In December of 2002, the Debtor and the Landlord entered into a Lease Agreement under which the Debtor leased retail space from the Landlord for a period of five years. The Lease was set to expire in March of 2008. Rent was due and payable on the first day of each calendar month. On August 9, 2005, the Debtor and the Landlord executed a Lease Termination Agreement pursuant to which the Debtor agreed to pay the Landlord the sum of \$80,000 in exchange for the Landlord's releasing the Debtor from any further obligations or liabilities under the Lease. The Debtor made the payment on the day the Agreement was signed and vacated the property on the 30th of August, 2005. On the 30th of September, 2005, the Debtor filed a Voluntary Petition in Bankruptcy.

We have just started working at the firm of Thomson and Reuters for a senior partner who has been selected to serve as counsel to the Trustee in Bankruptcy. He has asked you to write a brief memo indicating whether or not you think the Trustee has a plausible claim or cause of action that he could pursue in order to recover the \$80,000 paid by the Debtor to the Landlord.

QUESTION NO. 2

You are clerking for Bankruptcy Judge Scholl. He has just held a lengthy evidentiary hearing. He has written the following Statement of Facts and left it on your desk with a short note stating "I have left for vacation, please complete this Memorandum Opinion."

1. "I. Findings of Facts"

The Debtor filed this case on October 22, 2007 pursuant to Chapter 11 of the Bankruptcy Code. The Debtor listed eighteen (18) creditors in the Schedules annexed to his Bankruptcy Petition. The Debtor scheduled Wells Fargo as the only secured creditor. The Internal Revenue Service, Sallie Mae Servicing, and the United States Department of Education were scheduled as priority, unsecured creditors. Debtor scheduled fourteen (14) non-priority, unsecured creditors. Of the fourteen (14) non-priority, unsecured creditors, eleven (11) involve claims that are not contingent, disputed or unliquidated (the "Liquidated Unsecured Claims"). Most of the debt represented by the Liquidated Unsecured Claims derives from the operation of the Debtor's Medical Practice and from legal fees incurred in defending medical malpractice suits. The Liquidated Unsecured Claims total, in the aggregate, \$627,000. The three (3) remaining non-priority unsecured creditors are asserting personal injury claims against the Debtor based on various theories of medical malpractice (the "Tort Claims"). The Tort Claims were also pending in State Court when the Bankruptcy Case was filed. The Tort Claims are contingent and unliquidated. The Debtor valued the Tort Claims at \$1 each on his Schedule F. On the other hand, the Tort Claimants have filed Proofs of Claim whereby they assert aggregate damages in excess of \$13 million dollars. No party has offered any analytical support for the dollar amount they seek to attribute to their respective Tort Claims.

The Debtor filed an objection to each of the Proofs of Claim filed by the Tort Claimants. In the motion, the Debtor seeks to submit a Chapter 11 Plan of Reorganization in which the Liquidated Unsecured Claims and the Tort Claims would be placed into separate classes but would receive similar recoveries. The motion also seeks to have the dollar amount of the Tort Claims estimated for voting purposes. The Tort Claimants have objected to the proposed treatment and classification of their claims in the Debtor's Plan of Reorganization. Having reviewed the briefs filed by each of the parties, together with the arguments submitted at the Hearing on the Merits, the Court finds and rules as follows:"

QUESTION NO. 3

It is September 5, 2007 and you have just arrived at your first job as the newest associate at Jordan & Morin. Within minutes of your arrival, a somewhat elderly senior partner, Mr. Jordan, summons you to his office. After the briefest of welcomes, he confirms that you did in fact study bankruptcy law during your law school career and goes on to indicate that his very dear old friend, Fleetwood McDonald, operates a retail clothing store in an area of town that has been, unfortunately, suffering some progressive urban blight. The Debtor had been a client of Mr. Jordan's for a very long time and even though Mr. Jordan had never really done any bankruptcy work before, he felt obligated to assist his very dear client in navigating successfully through a Chapter 11.

Mr. Jordan then informs you that the case is less than three weeks old and the prior Friday he received two separate Motions for Relief From the Automatic Stay filed in the case. It appears that the Debtor's real estate is subject to a first mortgage having an outstanding balance of \$350,000.00 in which is owed to First Bank and the property is also subject to a second mortgage in the amount of \$200,000.00 owed to Second Bank. Both Banks have filed motions seeking relief from the automatic stay. According to a recent appraisal, the property appears to be worth approximately \$450,000.00 but the appraiser noted that in his expert opinion, because of the urban blight, the property is declining in value at the rate of approximately \$1,000 per month. First Bank's loan accrues interest at \$2,300.00 per month and real estate taxes likewise accrue on the property at the rate of \$2,000.00 per month. Second Bank is accruing interest at the rate of \$1,500.00 per month.

Mr. Jordan has asked you to analyze each of the motions for relief from stay and advise him as to whether or not First Bank or Second Bank are likely to get relief from the stay and if so, what if anything can the Debtor do to avoid the granting of either motion by the bankruptcy court while the Debtor moves forward with the formulation of its plan of reorganization. Please draft a memo to Mr. Jordan advising him accordingly.

QUESTION NO. 4

It's six o'clock Friday afternoon and you are just heading out of your office for the weekend when the phone rings. Normally, you would never answer it but you think it might be a friend calling to invite you out for a couple of cold ones at Marguerita's so you stop and pick up the phone. Unfortunately, it is your annoying cousin from New Jersey who is ranting and raving something about "cramdown" and who wants to engage you to replace their totally incompetent bankruptcy counsel. After calming your cousin down, you were able to ascertain the following facts: your cousin, as well as other members of your extended family are limited partners in a New Jersey limited partnership called West Point, LP (the "Debtor"). West Point was formed for the sole purpose of developing an affordable housing project in Hoboken, New Jersey utilizing various programs sponsored by the Department of Housing and Urban Development ("HUD"). In September of 2006, the Debtor filed for Chapter 11 protection after defaulting on their HUD mortgages. Now, in May of 2007, the bankruptcy court has confirmed a plan of reorganization that was filed by a former creditor of the Debtor. Under the confirmed plan of reorganization, all of the limited partnership interests are canceled and limited partners do not receive anything under the plan. You also learned from your cousin that the bankruptcy court had determined, during the course of the Chapter 11 proceedings, that the Debtor's assets had a total value of \$56,500,000.00 and that the total allowed claims in the case exceeded \$75,000,000.00. HUD's original mortgage had an outstanding balance of \$50,000,00.00 and under the plan was to be paid in full over time with interest at a rate acceptable to HUD. All of the unsecured creditors were in a single class and accepted a payment plan resulting in a 30% recovery over five (5) years. The limited partners who constituted a separate class of interests voted to reject the plan and also filed an objection to confirmation alleging that the plan could not be confirmed over their objection. Your cousin also informed you that the plan proponents are obligated to invest \$2,000,000.00 in new capital into the Debtor post-confirmation something the limited partners were either unable or unwilling to do. He continues that despite all of the foregoing, the bankruptcy judge, who must be a total idiot, entered an order confirming the plan of reorganization. As noted above, your cousin is totally beside himself with outrage and has received the authority from the other limited partners to engage you and your law firm to appeal the bankruptcy court's decision. Lastly, when you asked him about the value of the real estate, he indicated that the bankruptcy court was probably right, although the property could have a value maybe as high as \$60,000,000.00. You inform your cousin that you are just on the way out the door to meet a dear friend whose grandmother recently passed away and, therefore, you are unable to discuss the matter at any length. However, you indicate to him that you will consider it over the weekend and will probably be able to send him an e-mail on Monday with your view of the case. Please tell your cousin whether or not you agree with the bankruptcy court's decision and, therefore, whether or not you will undertake to represent the limited partners in pursuing their appeal.