

ANIMAL LAW CLE BANKRUPTCY CASE STUDY

By
Famose Garner

How 3 Collies Turned into 150+ Collies: A Legal Saga Involving an Ownership Dispute, Animal Cruelty,
Federal Bankruptcy, a Federal Animal Seizure and State & Federal Crimes

WHAT IS BANKRUPTCY?

- Bankruptcy is a legal term for when a person or business cannot repay their outstanding debts as they come due.
- The bankruptcy process begins with a petition filed by the debtor, which is most common, or on behalf of creditors, which is less common.
- Debtor is seeking a “FRESH START.”

USEFUL TERMS

- Pay advices - individuals
- Plan – 11 and 13
- United States Trustee
- Creditor
- Proof of Claim
- Initial Debtor Conference
- Creditors' Meeting
- Confirmation
- Discharge

TYPES OF BANKRUPTCIES

- Chapter 7 - Liquidation
 - Chapter 9 - Municipalities
 - Chapter 11 – Reorganization or Liquidation
 - Chapter 12 – Family Farmer and Family Fishermen
 - Chapter 13 - Rehabilitation or Reorganization; Wage Earner's Plan
 - Chapter 15 –Cross-border insolvency cases
-
- Note: Advising client



MOST COMMON TYPES OF BANKRUPTCY FILINGS

- Chapter 7
- Chapter 11
- Chapter 13

CHAPTER 7

- Liquidation
- Debtor does not have to worry about making payments to pre-petition creditors.
- Trustee Appointed – protects unsecured creditors and investigates debtor
- Once petition is filed, Debtor must cease operations. Trustee can operate until liquidated.
- Debtor can be individual or company but not railroads, domestic insurance companies or banks
- Asset vs. No Asset Case
- If Asset case, then file POC.

CHAPTER 13

- Reorganization of debts with future income
- Chapter 13 Plan – post-petition or future income utilized; voting is not required
- Trustee
- Debt limits: noncontingent, liquidated, unsecured debts of less than \$419,275 and noncontingent, liquidated, secured debts of less than \$1,257,850.
- Only for individuals with regular income
- Means Test

CHAPTER 11

- No Trustee unless there is cause; Debtor in Possession
- Debtor can be an individual or a company
- Plan of Reorganization or Liquidation: votes required and classes; objections
- Disclosure Statement: adequate information (explains what caused bankruptcy filing, classes of claims, and how debtor will get out of bankruptcy); objections
- Secured versus unsecured creditors
- Confirmation hearing and process
- No discharge for company

BENEFITS OF BANKRUPTCY: AUTOMATIC STAY

- Stops collection efforts and harassment
- Actions taken while the stay is in effect are void, not voidable
- Does not apply to Debtor
- Begins and Ends
- Pre-petition versus post-petition
- What is not covered?
- Who is not covered?
- Return of collateral
- BAPCPA (Bankruptcy Abuse Prevention and Consumer Protection Act of 2005)
Amendment: 1 prior case within year = 30 day stay after filing 2nd case; if 2 or more cases filed within 1 year = no stay

VIOLATION OF THE STAY

- Motion for Contempt
- Willful violation gets actual damages, attorney's fees and costs
- Act is willful if party (i) knew of bankruptcy and (ii) knowingly took actions that violated the automatic stay

BANKRUPTCY CRIMES

- 18 U.S. Code § 157 - Bankruptcy fraud
- 18 U.S. Code § 1343—WIRE FRAUD
- 18 U.S. Code § 1623 - False declarations before grand jury or court
- 18 U.S. Code § 152 - Concealment of assets; false oaths and claims; bribery
- Civil and Criminal Contempt

CLAIMS

- Creditor
- Proof of Claim: 7, 11, and 13
- Deadline
- Form
- Amount: contingent and unliquidated
- Supporting documents
- Bifurcation: Debtor's principal residence; PMSI within 910 days of filing
- Objections/responses

DISCHARGE

- Releases Debtor from personal liability
- Creditors beware!
- Section 523 and 727
- Secured creditors
- For individuals

THE CASE AT BAR

- Chapter 13
- Chapter 7
- Criminal Case
- Post-Supervision

QUESTIONS





Famose T. Garner

Mediator/ Attorney/ Receiver/Breeder/Trainer

Garner Law Group, PLLC

2525 Robinhood St.

Houston, Texas 77005

(832) 722-0881 (Telephone)

Famose@garnerlawgroup.com