



Insights

The Legality of Post-Bankruptcy Condo or Homeowner Association Assessments

Article
04.13.2017

A recent bankruptcy case illustrates how bankruptcy affects condominium or homeowner's association assessments. The Bankruptcy Court for the Southern District of Florida ruled that a condominium association was not in contempt when it attempted to collect post-bankruptcy assessments from debtors who had been discharged in bankruptcy. See, *In re Ramirez*, 547 B.R. 449 (Bankr. S.D. Fla. 2016).

The debtors were husband and wife and filed a chapter 13 bankruptcy, seeking to discharge their debts through a court-approved plan arranging for partial payment to their creditors. They received a discharge after they completed their plan payments. Later, their condominium association attempted to collect assessments that had accrued after the filing of the bankruptcy. The association sued the debtors and obtained a judgment. The debtors then filed a motion for sanctions against the association in the bankruptcy court, claiming that the effort to collect the assessments violated the "discharge stay" that prohibits a creditor from collecting discharged debts.

In 1994, Congress enacted 11 U.S.C. § 523(a)(16), stating that a discharge in bankruptcy does not discharge condo or homeowner's assessments arising after the bankruptcy for as long as the debtor continues to own the property, but that assessments arising prior to the bankruptcy are discharged.

The court in *Ramirez* noted that the new provision was not cross-referenced in chapter 13, and concluded that the assessments remained valid as a lien against the real estate, but that the personal obligation of the debtor to pay them was discharged (thereby precluding collection against the debtors' other assets).

Even so, the court declined to hold the association in contempt because the issue of whether the personal obligation was discharged had not yet been decided by the Courts of Appeal, and the last reported case held that the personal obligation was not discharged (citing *In re Batali*, 2015 Bankr. LEXIS 4050, 2015 WL 7758330 (B.A.P. 9th Cir. 2015)).

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In summary, prepetition assessments are discharged as a personal obligation, and the only recourse the association may have for prepetition assessments is to file a proof of claim in bankruptcy and enforce the assessment lien against the property. To the extent that the assessments arise after the filing of the bankruptcy, they are not dischargeable in chapter 7 so long as the debtor continues to own the property. In chapter 13, the law is not yet clear as to whether post-bankruptcy assessments may be discharged as a personal obligation of the debtor. However, in any event, the assessment lien may be enforced against the property.

One thing not discussed in the Ramirez case is the procedural impact of the automatic stay on the collection of the assessments, which is a separate issue from whether the obligation remains valid after the discharge. Generally, the automatic stay will remain in effect until the debtor is discharged and the property is no longer property of the bankruptcy estate. Therefore, before actually seeking to enforce the assessment, the association should enlist the services of a knowledgeable bankruptcy attorney.

If you have questions concerning the impact of a bankruptcy on condominium or homeowner's association assessments, contact Jason Johnson or David Peterson, both of whom practice bankruptcy law at Lowndes.