

## JUNE CLIENT ADVISORY

## Good News for Creditors in Eastern and Middle Pennsylvania Court District! Our Recent Bankruptcy Victory Makes It Easier to Collect What You're Owed.

Last week Bernstein Law Firm won an interesting victory for a mortgage foreclosure client. This case—led by managing partner Bob Bernstein and associate Peter Ashcroft—could have wide-ranging impact for creditors in bankruptcy cases in a variety of Courts, including the Eastern District and Middle District of Pennsylvania.

The case in question was a Chapter 13, presided over by Eric L. Frank, U.S. Bankruptcy Judge.

A bit of background: In 2000 the firm's client instituted foreclosure proceedings on a couple we'll call John and Jane Smith. The Smiths promptly declared bankruptcy (Chapter 13), so our client couldn't foreclose. The Court set up a payment plan in which the Smiths were ordered to repay the amount on which they defaulted ("cure the arrears" in legalese) through a trustee. However, due to the procedures for Chapter 13 cases in the Eastern District of Pennsylvania, John and Jane were responsible for paying their *regular* mortgage payments (above and beyond the default payments) "outside the plan." In other words, these payments were to be made outside the supervision of the trustee. (You'll see later why this is important.)

Now, fast-forward to 2005. A few months before the bankruptcy closed, the Smiths once again had trouble making payment on their *regular* mortgage. They made their plan payments, but not all of the payments outside the plan. When they got their discharge order and the case was closed, they were two *regular* payments behind. So the Bernstein Law Firm re-started the old foreclosure action and scheduled a sheriff's sale. The Smiths objected strenuously. "We have cured the default," they cried (we are paraphrasing, obviously). "Our mortgage was 'reinstated.' Therefore, you should have to start from scratch (filing a new suit) instead of starting where they left off! We want to reopen bankruptcy and get the Court to tell you that."

So the Smiths made a motion to reopen and enforce confirmation and discharge orders.

Here's the point: The Smiths felt that because they had cured the default that they had finished the bankruptcy and "reinstated" the mortgage. We believed that because of the two missed *regular* payments—which the Smiths admitted they had missed—that they had not.

The judge ruled in favor of our client. Because this was a bankruptcy in which the debtors had to make *regular* payments outside the plan, the discharge order wasn't conclusive. Why? Because it made no factual determination that the debtors had stayed current with their *regular* payments during the bankruptcy. The discharge order stated only that the Smiths cured the arrears. It said nothing about whether they maintained their *regular* mortgage payments. So the Smiths' mortgage was not reinstated and the client was allowed to proceed with its foreclosure sale.

Why is this ruling good news for creditors? If you do business with customers in the Eastern and Middle Districts of Pennsylvania (where Chapter 13 cases often have payments made outside the plan), and the customers default on a debt, the burden of proof is now on them. In the event of a dispute, the debtors have to prove that they maintained payments outside the plan during a bankruptcy.

The bottom line: You no longer have to be intimidated by a debtor's waving of the "discharge order" banner. If your books show that he didn't make post-petition mortgage payments, you have the right to continue on with your current foreclosure action rather than filing a new one.

Our advice? Keep your books meticulously up to date . . . and never hesitate to go after what you're owed.

## The Bernstein Bikers Ride Again!

Robert Bernstein, managing partner of Bernstein Law Firm, P.C., and his son Alex once again participated in the annual MS Bike Tour "Escape to the Lake"—a fundraising event held by the Allegheny District Chapter of the National Multiple Sclerosis Society. The event took place on Saturday and Sunday, June 10<sup>th</sup> and 11<sup>th</sup>. Bob's team, "The Big EL at the Rivers Club," has been the number one fundraising team for the past two years and is looking to hold that title for the third year in a row. They began the tour in Cranberry, PA, and rode 150 miles over the course of two days to Conneaut, OH. Everyone had a great time!

Please join us in thanking Bob and his team for participating in this event and all of our friends for supporting this worthy cause!

*Bernstein Law Firm has more board-certified creditors' rights specialists in Pennsylvania than any other law firm.*