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## Connecticut Bankruptcy Court Rules on Issues of First Impression for Involuntary Petitions

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An involuntary petition in bankruptcy is a remedy made available by the Bankruptcy Code to creditors that may consider traditional collection channels an insufficient or less favorable alternative under the particular circumstances. Generally, the statutory requirements for commencing an involuntary petition will depend on whether the debtor has fewer than 12 creditors. Specifically, if the debtor has 12 or more creditors, the petition must be commenced by three or more creditors whose debts are not subject to bona fide dispute and total, in the aggregate, \$15,325 in amount on an unsecured basis (the “unsecured monetary threshold”). If the debtor has less than 12 creditors, the petition may be commenced by a single creditor that meets the same unsecured monetary threshold. If the petition is contested by the debtor, the petitioning creditors must prove that the debtor is generally not paying its debts as they come due.

The conventional wisdom is that creditors should be cautious in bringing an involuntary petition, principally because if it is not successfully proven, the bankruptcy court has the discretion to award reasonable attorneys’ fees to the debtor in contesting the petition without regard to the good or bad faith of the creditors that filed and pursued it. See 11 U.S.C. §303(i)(1)(B). Thus, it is important to understand the meaning in this context of a debt in “bona fide dispute” and what qualifies as not paying one’s debts as they come due.

In *In re EM Equipment, LLC*, 2013 WL 6859336 (Bankr. D. Conn. Dec. 30, 2013) (Rosenthal, J.), the bankruptcy court decided these two questions of importance in the context of a single-creditor involuntary petition. As the court acknowledged, the requirement that a debt be free from “bona fide dispute” has

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given rise to conflicting decisions as to whether a bona fide dispute of only a portion of a debt, in an amount that still would not reduce it to below the unsecured monetary threshold, would nonetheless disqualify a creditor from serving as a petitioning creditor. As to that issue, the court ruled that “a bona fide dispute as to amount is only relevant if it reduces the amount not in dispute below §303(b)’s statutory threshold.”

The court next addressed the requirement that the debtor “is generally not paying such debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount.” 11 U.S.C. §303(h)(1). In addressing that standard, the court first rejected the “almost per se” rule that courts are disinclined to grant a single creditor involuntary petition. It then went on to identify four factors that are relevant to the inquiry of whether a debtor is generally paying debts as they come due: “(1) the number of unpaid claims; (2) the amount of such claims; (3) the materiality of the non-payments; and (4) the debtor’s overall conduct of its financial affairs.”

In this case, the court ruled that the “generally not paying” standard can be met even if the debtor has just a single debt or very few outstanding debts as long as they are sufficiently substantial to establish the generality of the debtor’s non-payment.

The alleged debtor in this case also made an argument that the petitioning creditor conducted no pre-filing investigation before filing its involuntary petition and therefore violated Fed. R. Bankr. P. 9011(b). The court found no evidence in the record of a Rule 9011 violation and held that, in any event, it would not be a basis for denial of an involuntary petition as long as the standards under Bankruptcy Code § 303 were met.

Although it appears that no pre-filing investigation of the debtor’s status was conducted in EM Equipment, the better practice is to at least attempt to ascertain whether the debtor has 12 or more creditors and is not paying its debts as they come due before filing an involuntary petition. That way, even if the petition is eventually unsuccessful, the creditor(s) will be able to show the court that the best information they had at the time supported the filing of the involuntary.

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