

NEW REPS

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Illinois Construction Stuff and Stuff

By Norm Cowie, CCE

Every once in awhile, someone puts one over on you. It happens to all of us, right?

Some deadbeat simply disappears into vapor, leaving you clutching a bunch of vestigial IOU's. You never hear of him again. He's just gone—an unpleasant memory. Worse, it leaves you without closure.

There's nothing more distasteful than being stuck without closure. When someone just runs away from his debt, there's no discharged bankruptcy, no settlement agreement, no paid account with just a remaining cluster of unpaid finance charges to remind you of their passage.

This happened to me a couple years ago until I received not just closure, but the ultimate closure—more like a slammed door closure.

Here's the story:

Harry Electric (fake name) was a small account who paid us pretty well for a couple years. Then their principal, Grant Ulysses (another fake name) bought a distressed financially, not emotionally rival electrical contractor and Grant changed their name to Hairy Electric and reapplied for credit with the new company.

Grant was a charismatic guy, handsome (not that I'd notice), drove a fancy car and the new company grew like a Shetland pony's hair. We were happy to grow along with them and they took pretty good care of their bills right up until they didn't.

A year after opening, they simply stopped paying.

We did all the usual stuff calling, letters, tears and stuff, which fell on deaf ears. Their phones

were disconnected and they simply closed up shop one weekend, leaving their employees sitting in the parking lot on Monday morning smoking cigarettes (yeah, smoking was still pretty much legal then, and not just by kids hanging around the doors of the mall).

So I called our branch manager and told him what happened and he goes, "Yeah, he probably gambled it away."

My eyebrows shot up into what's left of my hairline, "What?!"

"He's a gambler. You didn't know?"

My eyebrows spasmed, knocking off my glasses, "What?!"

"Yeah, he's on ESPN and stuff. He won a big tournament a couple years ago and won \$170,000."

"What?" I sputtered again.

I seem to have forgotten any other words, so I pulled out my thesaurus. Ah, it worked, and I rediscovered the rest of my vocabulary, "What are you talking about?"

"That's how he bought Hairy Electric, from his poker winnings."

My blood pressure shot up 20 degrees and I hissed through gritted teeth, "And you didn't think it was important that I know one of our customers has a gambling addiction?"

I could feel his shrug through the phone, "No, I guess not."

I chased Grant for a couple years. A silent partner came out of the woodwork and put the company through a Chapter VII bankruptcy, and we collected eight grand and wrote off sixty thousand dollars.

He wasn't a cheap date.

As the time went by, I learned more about Grant. First, I found his email address, so sent him an email. He was courteous enough after that to occasionally send a mocking email.

He called the branch manager and bragged that he takes stolen autos to the East, no, not New Jersey but Cambodia, Laos and Thailand. Then he said he would buy young women and bring them here and sell them into slavery in the States.

I swear I'm not making this up.

Meanwhile, he kept paying his ex-wife's mortgage. All of his other bills were abandoned. We subpoenaed the mortgage company, demanding copies of the payments. Just money orders that are untraceable. So I tried to let it go, but every few months I'd pull a new TransUnion credit report, and I set my TIVO to pick up ESPN poker shows.

Nothing. Until one day I was talking with another credit manager, and the subject came up.

He googled Grant's name and then hooted, "Hey, check out www.ricetimes.com."

"Rice Times" seemed to be an English language news accounting of Asian goings on, so I started reading. As I read, my jaw dropped, bounced off my keyboard, and rolled off the desk to land in a puddle of drool in the corner.

An American, Grant Ulysses, was reportedly in the hospital in Phnom Penh, Cambodia after murdering a 20-year-old prostitute with a coat hanger, dumping a mattress over her decomposing body and setting fire to it.

When his landlord smelled the smoke, he called the cops. As the cops busted in, Grant panicked,

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NEWS

Post-Petition Sales of Products to a Chapter 11 Debtor

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heard in opposition, the court finds that the secured party's interest in the cash will be adequately protected. 11 U.S.C. § 363(c)(2). "Cash collateral" is defined by the Bankruptcy Code as:

[C]ash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property ... whether existing before or after the commencement of a case under this title.

11 U.S.C. § 363(a). So if the debtor does not obtain the consent of the secured party or the approval of the court for the use of the cash collateral, it has no money to spend. As the Eleventh Circuit Court of Appeals stated: "(1) The bankruptcy code prohibited the transfer to Marathon altogether, because Capital Source had a perfected security interest in Debtor's cash proceeds while they were in Debtor's hands, and (2) the bankruptcy code allows the trustee to avoid and take back unauthorized transfers." The "Debtor was not authorized to transfer the funds to anyone post-petition without the permission of Capital Source or the

bankruptcy court."

So although a debtor-in-possession may "enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing," using the secured party's cash collateral is not "in the ordinary course of business" under § 363(c)(2).

Thus, if you want to do business with a debtor in Chapter 11 proceedings, you must first determine the status of the "cash collateral." Does the bank have all of the cash tied up? Has the debtor obtained permission to use the cash collateral? Without knowing that the debtor has spendable cash, you cannot afford to make the sales.

Marathon Petroleum should have participated in the hearing where Delco Oil sought to use the cash collateral. Marathon Petroleum needed a court order authorizing the use of cash collateral at least to the extent necessary to pay Marathon Petroleum for the products it would sell to Delco Oil. Marathon Petroleum needed to be diligent about the bankruptcy proceedings and become involved in them to make sure that its interests were being protected.

Still, one intuitively thinks that a COD

transaction should be safe. Ironically, Marathon Petroleum may have been better off extending credit on a "super priority basis" with the appropriate court order under § 364 of the Bankruptcy Code. Whether it wanted to sell for cash under § 363 or extend credit under § 364, Marathon Petroleum should have gotten court authorization for the debtor to spend the money for the products purchased. There are many ways to safely structure post-petition transactions with Chapter 11 debtors-in-possession. Asking the right questions and obtaining prompt legal advice are crucial to make sure that you are not jeopardizing your business. If you have questions regarding post-petition transactions with debtors, please feel free to contact me at mking@gblaw.com.

Michael R. King is a founding partner of Gammage and Burnham. His practice emphasizes creditors' rights and construction issues, but also includes consulting and supervising throughout the firm's areas of business, which include emphasis on creditors' rights, including bankruptcy cases, general litigation, lender liability litigation, loan documentation, workouts, foreclosures and forcible detainers as well as deficiency collection and accounts collection.

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jumped out of the window and broke his leg. I grinned, even a donut-scarffing cop can catch a guy with a broken leg.

Interviewed later, Grant said he and the girl had had an argument and he tried to get her to be quiet. So, he covered her mouth and nose until she was unconscious and then he went out to a bar. When he came back, he said he found that she was dead. They tried him for murder and convicted him in March 2008. My jaw gave a little whimper from the corner, so I picked it up, wiped off the slobber, and reinserted it.

Okay, there was no guarantee that this was the same Grant Ulysses. So I Googled some more and found a more recent article from the *Macau Daily Times*. I started reading and my jaw fell off again, followed by both ears.

The article said, "US murder suspect dies in Cambodian hospital."

I read on, absently fumbling for my ears and jaw.. yep.. found them ... good I could hear and talk again.

Anyway, it was the same guy.

They said that Grant had been an electrical contractor in the States, but after being convicted he felt he wasn't up to Cambodian justice, so on September 27, 2008, he made a rope out of his clothes and hanged himself.

SLAM! Closure. Not the kind of closure that I would have wanted. I mean, an innocent girl is dead, my customer is dead so it's pretty hard to feel good about it.

I wanted to feel good, still do (tickling myself didn't work) and if I think about it some more maybe I can

think of a way where it won't feel so ugly any more.

In the meantime, I figure I'll do my job and try not to deal with gamblers.

-Norm

Commercial: If you Google "Norm Cowie Amazon" all of my books pop up. Two of them are available on ebook for less than three bucks.

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