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OCTOBER 2007

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Bankruptcy and the Good Humor Truck

I sat on a long bench in the hallway outside of the courtroom, surrounded by people waiting for their hearings. Some had come with their attorneys, some with little children that they couldn't leave at home. Laughter and good humor were in short supply and chances were high that no Good Humor truck would trundle by to distribute happiness and joy in the form of frozen confections. Too bad, really; I think it would've lightened a mood that needed to be lightened.

I looked around, trying to figure out which one was my customer: Tim B. Jenkins (not his real name).

Jenkins ran an electrical contractor firm (not really). More precisely, he ran it into the ground. Frankly, by this point, I secretly thought the more appropriate name for his company (instead of the real one, which will remain anonymous) was 'The Big Jerk Electric,' or TBJ. But this seemed immature, so don't tell anyone.

Anyway, I'd never met him, but he had been described as a sloppy looking, unkempt person with questionable hygiene. Well, okay, I'm kidding about the hygiene, but the rest is accurate.

I slid my eyes around the hallway, pretending to read my notes, morbidly interested to see if I might recognize him before the hearing.

Not everyone signs the guarantee, but if they do, we pull a credit report. It only costs about four bucks, and why would anyone accept a personal guarantee without making sure the guarantor's endorsement is worth the paper it's written on?

Nobody seemed to fit the description, and the trustee kept calling in new people for their Section 341 hearings. I figured that Jenkins probably cleaned up for today's proceedings. Maybe his physical description was no longer apt. So I kept an ear out for his name and started reading my notes in earnest. My stomach clenched in anticipation of what I knew was going to happen in the hearing. A Popsicle would come in handy for my dry mouth, but, well, the Good Humor truck doesn't deliver in courtrooms.



By the time we were done with him, Jenkins wouldn't be wanting a Popsicle. For you see, he had no idea that he was walking into an ambush.

Our firm is an electrical material distributor, and TBJ came to us in 2002 asking for credit. At the time, they were two years old, but their references weren't anything you could shake a stick at, so I asked for and received financials that showed solvency. He also signed the personal guarantee, so we pulled a TransUnion credit report on him as we do with any applicant who signs the guarantee incorporated in our application.

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Anyway, he checked out okay and we opened a charge account for him.

But about eight months later, he joined our 90/120 days as an habitual resident, and my assistant and his accounts payable person became phone buddies. Payment promises were cheap though, and they made many that were rarely kept. A few months later, I called and left a voice message for Jenkins saying that he was leaving us no choice but to get outside counsel involved.

Jenkins called back and said that he had to close the office for a bit and had laid off a lot of his men, but that he'd booked a lot of work and expected to get back in the black. I asked him for updated financials and he sent them without complaint. I usually do this with a customer in distress: both to gauge their cooperativeness

and because if there's a bankruptcy on the horizon, they might do some creative stuff to start squirreling away some assets. Plus, I could compare them to the financials that he'd given us the year before when he first applied.

The other thing that came out of this conversation was that he said he still considered us his primary supplier and he intended on paying cash while working through his troubles. I suggested instead that we sell to him on a COD-roll, where he would pay each time he bought material, but his payment would be applied to the past-due amount and we would allow the new sale as a new charge. This would help him by reducing his finance charges and help us by reducing 120 days.

COD-roll comes in other forms, too, and we use them all depending on circumstances. There's also the COD-roll 50% where, when someone pays, they can charge half as much as they buy. This drives their balances down, but allows them to nibble away rather than coming up with big chunks of money. Some

You see, the COD-roll only works if you're receiving money, and NSFs gum up the works.

customers might pay a lump sum and they are allowed to charge half of their paid amount. Others simply pay twice what they are buying at the time.

Jenkins also asked if he could return some material. Some people don't like to accept returns. But if a company's in distress, I'm all for it, especially for the resalable stuff. It helps both sides, as it reduces his balance and we simply restock the material and sell it to someone who can pay. Yes, I know if the company files a bankruptcy a return might be subject to a preference claim, but it's worth the risk because it's on A/R otherwise.

It was working pretty well ... until the NSFs.

You see, the COD-roll only works if you're receiving money, and NSFs gum up the works. He bounced two checks and that's when his numbers were disconnected ... his

cell, office number and fax. And we were left with \$27,000 on the books.

Our salesman learned that Jenkins had recently sold his house. I ordered a search of the property and found that he had sold it a couple months earlier. The new owner's bank had placed a mortgage on the property for \$281,000. Houses in the neighborhood were worth \$350,000-\$400,000 and it had been held in tenancy in the entirety, a deadbeat haven since it makes it impossible for you to attach the house unless you have both the husband and the wife's guarantee.

Meanwhile, I pulled a new credit report (our application says that we may pull one at any time) and found out two things: first, there had been two mortgages on his old house totaling \$178,000. There are several websites that list home sales, so I got onto one and, get this, it listed the sale of his

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