CHAPTER 11 DEBTOR NEED NOT HAVE ONGOING BUSINESS

In yet another recent Supreme Court decision, a majority of the Justices have held that a Chapter 11 debtor need not have an ongoing business in order to qualify for relief under that Chapter. The case is Toibb v. Radloff, and the majority opinion was authored by Justice Harry Blackmun.

The debtor was an investor with two other entrepreneurs in a company that was to construct small hydroelectric power plants. In the belief that his co-investors had abandoned the company, the debtor had filed a Chapter 7 Petition listing his stock in the company as his only important asset. When he later learned that the other investors had indeed obtained contracts for the construction of several plants and were attempting to purchase his stock in the company from the debtor's Chapter 7 trustee, he converted his case to a Chapter 11 in order to stop the sale to ensure that he could regain control of his interest in the investment. The Bankruptcy Court, however, dismissed the debtor's Chapter 11 case after his filing of a Plan, upon its finding that persons not engaged in business could not seek Chapter 7 relief. Upon appeal by the debtor, both the District Court and the U.S. Court of Appeals for the 8th Circuit affirmed the bankruptcy judge's decision to dismiss.

Unconvinced by three prior rulings, the debtor then appealed to the U.S. Supreme Court, which reversed in holding for the debtor. The Supreme Court said that since 11 U.S.C. §109 states that any person eligible for Chapter 7 relief is eligible for Chapter 11, without excluding individuals not engaged in business, it is clear that Chapter 11 is available to nonbusiness individual debtors. As Justice Blackmun concluded, "The plain language of the Bankruptcy Code disposes of the question before us."

Justice John Paul Stevens, dissented, however, claiming that repeated references in Chapter 11 to "business" manifest congressional intent to restrict the use of Chapter 11 to debtors engaged in business. He went on to argue in his dissenting opinion that Chapter 11 would not have included the possibility of involuntary petitions as it now does, had Congress intended it to be applied to individual debtors not engaged in business. Congress, after all, has prohibited involuntary Chapter 13 cases.

Readers of The Arrow may be puzzled that what Justice Blackmun found so clear should be questioned by his brother, Justice Stevens. Could it be that Congress simply erred, or possibly that it so shaped the language of the Code as to make its intent ambiguous? Do Supreme Court Justices ever entertain such doubts? It really doesn't matter now, because Justice Blackmun's majority opinion is the law- -at least until Congressional tinkering with the Code begins anew. ❑

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