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# Recent Cases

## The United States Supreme Court Holds That Consumer Debtors May Reorganize Under Chapter 11

In *Toibb v. Radloff*, 111 S.Ct. 2197 (1991), the United States Supreme Court held that a consumer debtor not engaged in an ongoing business falls within Section 109 of the Bankruptcy Code and is therefore eligible for reorganization under Chapter 11, 11 U.S.C. 1101 *et seq.* Although Chapter 11 was intended to be used primarily by business debtors, the Court did not impose an ongoing business requirement because it found no underlying policy consideration or congressional intent for such a requirement, and the plain language of the Bankruptcy Code permitted individual debtors to file under Chapter 11.

### Background

Sheldon Baruch Toibb ("Toibb") worked as a consultant to the Independence Electric Corporation ("IEC") from March, 1983 until April, 1985. After being terminated from IEC, Toibb failed to find employment as a consultant in the energy field. On November 18, 1986, Toibb filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. 701 *et seq.* in the United States Bankruptcy Court for the Eastern District of Missouri.

Toibb had no secured debts but had unsecured debts and a disputed federal tax priority claim. His nonexempt assets included 24 percent of IEC's shares and a possible claim against his former IEC business associates. When Toibb learned that his IEC shares were worth \$25,000 to the company's board of directors, he decided to avoid liquidation under Chapter 7 by bringing his case under the reorganization provision of Chapter 11.

Toibb's plan for reorganization

included paying his unsecured creditors approximately 11 cents on the dollar plus, for six years, paying 50 percent of either IEC dividends or proceeds from the sale of IEC stock, up to the full amount of the debt. The Bankruptcy Court dismissed Toibb's petition on the grounds that he was not engaged in an ongoing business and therefore not entitled to Chapter 11 protection.

The decision was affirmed on appeal to the United States District Court for the Eastern District of Missouri. Both lower courts relied on a prior decision by the Court of Appeals for the Eighth Circuit that Chapter 11 relief was unavailable to persons not engaged in business.

The United States Court of Appeals for the Eighth Circuit affirmed. The Eighth Circuit found that the Bankruptcy Court had the authority to dismiss the petition on its own motion. In addition, the Eighth Circuit found its prior decision controlling. The United States Supreme Court granted certiorari because of a conflict between the circuits as to whether a nonbusiness debtor may reorganize under Chapter 11.

### The Code's Plain Language is Dispositive

The Supreme Court found that the plain language of the Bankruptcy Code answered the question of whether reorganization under Chapter 11 was available to Toibb. In Section 109 of the Code, Congress specifically stated, "Only a person that may be a debtor under Chapter 7 of this title, except a stockbroker or a commodity broker, and a railroad may be a debtor under Chapter 11 of this title." 11 U.S.C. 109. Congress specifically excluded stockbrokers, commodity brokers, and railroads but not non-business individual debtors.

The Court then looked to Section 109(b) to determine whether Toibb was a debtor under Chapter 7. "A person may be a debtor under Chapter 7 of this title only if such person is not 1) a railroad, 2) a

domestic insurance company, bank, . . . or 3) a foreign insurance company, bank, . . . engaged in such business in the United States." Therefore, Toibb qualified as a debtor under Chapter 11 because he met the statutory requirement of Chapter 7, and Chapter 11 does not specifically exclude individual debtors who lack ongoing businesses.

### Congress Did Not Intend to Exclude Consumer Debtors

In determining Congress's intent, the Supreme Court examined the statutory language first. Since the language of Section 109 was clear, there was no reason to consider the legislative history of the statute. Although the Court believed there was an understanding that Chapter 11 would be used primarily by business debtors, it found legislative history and intent did not clearly indicate individual consumer debtors were excluded from reorganization under Chapter 11. Accordingly, the Court disposed of the argument posed in the amicus curiae brief that the legislative history supported the theory that Chapter 11 was intended only for business debtors.

The Court, instead, agreed with Toibb's argument that Congress, acting through Chapter 11, did not have the single goal of protecting business debtors; Congress also sought to maximize the value of bankruptcy estates. Chapter 11 protects an estate's value because a debtor's reorganization plan would not be confirmed unless either all creditors accepted the debtor's plan or all creditors are guaranteed to receive at least the same amount they would receive under Chapter 7 liquidation. Therefore, there can be no contention that creditors would be in a worse position if the debtor reorganized under Chapter 11 rather than liquidated under Chapter 7. Absent a showing of harm to the creditors, the Court found nothing in Chapter 11 to support the inference that Congress intended to exclude consum-

er debtors from Chapter 11 coverage.

The Court disagreed with the lower court's opinion that allowing consumer debtors to proceed under Chapter 11 would flood the bankruptcy courts with reorganization plans. First, the cost and complexity of filing under Chapter 11 acts as a deterrent. Second, bankruptcy courts have the discretion to dismiss Chapter 11 cases if debtors do not have workable reorganization plans.

The Court also refused to adopt the argument that extending Chapter 11 to consumer debtors would run contrary to Congress's intent to prevent involuntary bankruptcy proceedings under Chapter 13. Congress's concern regarding Chapter 13 was that forcing a debtor, whose future wages were not exempt from the bankruptcy estate, into bankruptcy proceedings would violate the Thirteenth Amendment's protection against involuntary servitude. However, because Chapter 11 has no provision requiring a debtor to pay future wages to a creditor, the Court found the involuntary servitude concern irrelevant to Chapter 11 proceedings.

#### The Dissenting Opinion

Justice Stevens' dissent stated that a complete reading of the statute revealed no congressional intent to allow individual consumer debtors to reorganize under Chapter 11. The dissent relied on repeated references to business in both Chapter 11 language and the legislative history and also the difference between the chapter titles (Chapter 11 entitled "Reorganization" contrasted with Chapter 13 entitled "Adjustment of Debts of an Individual with Regular Income").

Further, the dissent noted that just because the statute states only a person eligible as a debtor under Chapter 7 may be a debtor under Chapter 11, it cannot be inferred that every person eligible under Chapter 7 is eligible under Chapter 11.

Finally, the dissent stated that individual consumer debtors could be forced into bankruptcy by creditors, since involuntary proceedings

could be instituted under Chapters 7 and 11. If an individual consumer debtor filed under Chapter 11, as allowed by the majority opinion, a creditor could begin involuntary proceedings against the debtor. The dissent found such proceedings inconsistent with Congress's protection of the same class of creditors under Chapter 13.

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## The United States Supreme Court Enforces A Non-Negotiated Forum Selection Clause On A Cruise Ship Ticket

In *Carnival Cruise Lines v. Shute*, 111 S. Ct. 1522 (1991), the United States Supreme Court held that a non-negotiated forum selection clause, located on the back of a cruise ticket, was enforceable. The Court also held that this clause did not take away the passengers' right to a trial by a court of competent jurisdiction as required by The Limitation of Vessel Owners Liability Act, 46 U.S.C. App. 183c.

#### Background

Mr. and Mrs. Shute ("Shutes") were residents of Washington state. They purchased tickets for a cruise on a ship owned by petitioners, Carnival Cruise Lines ("Carnival"), headquartered in Miami, Florida. The reverse side of the tickets contained a forum selection clause typed in fine print. This clause provided that all disputes with Carnival were to be litigated in a Florida court. Additionally, it stated that by accepting the ticket, the purchaser was deemed to have agreed to all of its terms and conditions.

While on the cruise, Mrs. Shute was injured when she slipped on a deck mat. This accident occurred when the ship was located in international waters off the coast of Mexico. The Shutes filed suit against Carnival in the United States District Court for the Western District of Washington, alleg-

ing that Mrs. Shute's injuries were the result of negligence on the part of Carnival and its employees.

Carnival responded by contending that the forum selection clause on the Shutes' tickets dictated that the suit should have been filed in a Florida court. Alternatively, Carnival asserted that the district court lacked personal jurisdiction over the cruise line because its contacts with the State of Washington were insubstantial. The district court granted Carnival's summary judgment motion, holding that the cruise line's contacts with Washington were constitutionally insufficient to support the exercise of personal jurisdiction.

#### The Ninth Circuit's Decision

The Court of Appeals for the Ninth Circuit reversed the district court's ruling for two reasons. First, the Ninth Circuit determined that the cruise line's solicitation of business in Washington was sufficient contact to justify the district court's exercise of personal jurisdiction. Second, the court, relying on *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972) ("*The Bremen*"), agreed with the Shutes' argument that the forum selection clause was unenforceable because it was not freely bargained for. Additionally, the Ninth Circuit refused to enforce the clause based on evidence that the Shutes were physically and financially incapable of pursuing the litigation in Florida. Thus, the enforcement of the clause would deprive them of their day in court and contravene the Supreme Court's holding in *The Bremen*.

Carnival appealed to the United States Supreme Court.

#### The Supreme Court's Decision

The Supreme Court examined the Ninth Circuit's analysis of *The Bremen*, since both parties relied on that case as support for their arguments.

In *The Bremen*, the Supreme Court addressed the enforceability of a forum selection clause in a contract between two business corporations. The case discussed a number of factors that made enforcement of such a clause reason-

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