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Options for Small Businesses in Large Bankruptcies

Evening Bulletin
"Ask the Attorney"
by:
Robert M. Bovarnick

With the economy in a tailspin, more and more large retailers are filing for bankruptcy. In response, small business owners are asking "is there anything I can do, or am I stuck at the end of the line, where I will likely receive nothing?" Unfortunately, for the most part, the small business owner has little recourse, other than to file a claim and hope that one day payment arrives.

However, there is an exception called "reclamation", which may allow a supplier to recoup at least some of the losses. Just like the word sounds, reclamation permits a vendor to "reclaim" some of its goods. There are two situations to look at: before and after a customer files for bankruptcy.

If the customer has not filed for bankruptcy, a vendor's reclamation rights are governed by the Uniform Commercial Code (the "UCC"). This law provides a seller with the right to reclaim goods that a customer received on credit "while insolvent". Under the UCC a seller has ten days from the date the customer received the goods to make a demand. This means that, absent a bankruptcy, a vendor's reclamation right will be limited to reclaiming only those goods received by the customer in the ten days prior to the demand.

The supplier's demand needs to be in writing, directed to the customer, identify which goods are being reclaimed to the extent that information is available, include a general statement reclaiming all goods received by the customer from the vendor during the applicable time period, and demand that the goods be segregated.

Some of the language in a demand is very specific. Therefore, it is better practice for a vendor to hire a lawyer to make the demand. Additionally, to ensure proof of receipt, the demand letter should be sent by certified mail.

If the customer has filed for bankruptcy the provisions of the Bankruptcy Code come into play. Once a bankruptcy is filed a vendor can assert a reclamation demand for goods received within 45 days of the bankruptcy filing. It is important to note the following

- 1) the goods must have been sold in the "ordinary course" of the vendor's business; and
- 2) the debtor must have received the goods while insolvent.

If you meet those two requirements, the reclamation demand must be in writing and made within 45 days of the receipt of the goods by the customer. If the 45-day period expires after the bankruptcy case is filed the vendor must make the reclamation demand within 20 days after the bankruptcy filing.

The demand should identify the goods being reclaimed; include a general statement reclaiming all goods received by the debtor from the vendor during the 45-day period, and demand that the goods be segregated. Vendors may also want to file a notice of reclamation with the bankruptcy court.

If you are a creditor of the company in bankruptcy, you should receive a notice of the case relatively soon as the case has been filed. This notice will have information regarding the location of the bankruptcy court. It is important for you to act quickly to protect your rights.

Note that the right to reclamation only applies to goods still in possession of the debtor. There is no right to reclaim goods that have been sold by the debtor.

Even if a vendor fails to make a reclamation demand, all may not be lost. A new Bankruptcy Code section gives vendors an administrative priority claim for the value of any goods received by the debtor within 20 days prior to the bankruptcy filing if the goods were sold in the ordinary course of the debtor's business.

A quick example:

Let's say you supplied tires to U.S. Air. As soon as you hear of the bankruptcy, review your invoices to see when you last provided the airline with tires. If you supplied them within the reclamation period, get on the phone with your lawyer immediately. Tell him or her that you need to file a reclamation claim. If they do not know what you are talking about, look for a bankruptcy lawyer who does business bankruptcies. That person will be familiar with the process and will most likely have a form letter already in their computer.

The World of Minor League Baseball

by:

Marc Kramer

A 1984 graduate from Drexel with his BS in accounting, a Certified Financial Planner, a CPA and partner at Resnick, Amsterdam and Leshner, Gary Loenwenstern is one of the nation's leading experts on buying, owning, and running minor league baseball teams.

Gary, why did you develop a practice focusing on Minor League Baseball?

Several reasons. First, it is a way to earn money in a sport that I have loved my whole life. Second, franchise values were beginning to exceed \$1 million in 1987 when we began representing owners of minor league baseball franchises. As a result, sophisticated businessmen replaced the typical "mom and pop" franchise owner. These new owners were ideal clients for the firm, people who understood the value of engaging professionals like us. Being successful in other businesses like real estate, law, retail, etc., owning a minor league team gave them the opportunity to operate a business in an industry they also loved. The work was challenging and rewarding. And, where else could you be paid to work in the ball park?!

How many teams do you handle?

We currently represent 15 affiliated minor league baseball teams, one minor league hockey team, and one minor league soccer team. Over the past 22 years, we have represented more than 40 minor league baseball teams. During this time, our services have grown well beyond those of traditional accounting, such as auditing and preparation of tax returns. We have served as expert witnesses in litigation, as well as negotiating stadium leases on behalf of municipalities and the teams. We are currently the most experienced business valuation firm for the industry.

How difficult is it to develop a profitable minor league team?

It is very difficult. Like running any other business, running a minor league baseball operation requires hard work, long hours, good employees and a never-ending dedication to customer service. Even with all of these principles in place, it is a daily grind. In fact, according to the industry, most of the minor league baseball teams lose money, regardless of whether they are affiliated with a major league team or are independent. We are proud to say that all but one of our 15 clients is currently profitable. We are very fortunate.

Are there a minimum number of fans that need to attend a game?

Yes, and it differs from market to market. As a general rule of thumb, a team needs to have a seasonal average of 2,500 paying fans per game. For obvious reasons, the teams draw more fans on Friday and Saturday night than Monday or Tuesday night. Thus, there is a great need for enticing the fans to come out during the week with giveaways, such as bobble head dolls or baseball bats, as well as providing entertainment with fireworks.

Who pays the players' salaries?

This is the primary difference between affiliated and independent minor league baseball teams. The players of affiliated teams are paid by the major league team. For example, the players on the AAA Lehigh Valley Iron-Pigs are employees of the Philadelphia Phillies. All of the employee costs such as salary, worker's compensation insurance, and health insurance is paid by the major league team. Costs borne by the minor league team include travel and some of the equipment. In contrast, independent teams are not affiliated with any major league team and must bear the entire costs of the payers, which is approximately \$500,000 per year.

Do minor league teams make money other than ticket sales?

Yes, other sources of revenue include stadium advertising on the outfield fences, scoreboards, dugouts, concourses, food and beverage sales, and souvenirs.

I enjoy being able to share with everyone the Firm's continuous growth and development. Whenever you get the chance, pick up the phone or send me an email and let me know how you are as well.

Sincerely,
Rob

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