

Message From Chris....

At some point along the way, we've all signed personal guaranties and, likewise, we have also asked others to sign them for us. **Why?** It's time to clear the air on what is accomplished when a personal guaranty is secured in a business transaction (whether it's a loan, a lease or some other form of contract) and, conversely, how bankruptcy laws enter into the picture with their own set of mandates. This is good stuff for everyone to know... (and don't forget to click on my Facebook, Linked In or YouTube links below to also see my short video on this material).

Big Picture on Personal Guaranties and Bankruptcy Laws

Personal guaranties ensure that, regardless of whether the person with whom we're dealing uses an incorporated entity (e.g., a corporation or an LLC) to conduct their business with us, we can always go find that person (referred to as a "natural person" under the eyes of the law) to collect our money. In other words, if the natural person later on: **a)** defaults on their contractual obligations, **b)** dissolves their incorporated entity, and **c)** then goes down the street, and resumes their business operations under the name of a newly formed, incorporated entity, we can always go find the natural person and collect the debt. Having a personal guaranty of a debt is a very good thing to help you collect your debt and is strongly encouraged....

Against this backdrop are the bankruptcy laws which, among other things, declare that any payments received by a creditor from a debtor within ninety (90) days of such debtor personally filing a petition for bankruptcy may be avoidable by a bankruptcy trustee for the benefit of other creditors. *What this means is that if the debtor works out a payment arrangement (or a settlement arrangement) with you and starts making payments, then, if within ninety (90) days later, they personally file a petition for bankruptcy, then the payments made to you during the ninety (90) day period are likely avoidable in a bankruptcy. However, the golden rule still is to always take the money now and worry about preference liability in a bankruptcy later.*

Accordingly, if you've got a personal guaranty and go get cash from the debtor, that's great.... However, keep your "eyes open" as to whether your debtor later files bankruptcy within 90 days of your receiving the money. **In certain situations, you may be better off to avoid all trouble by taking a lump sum settlement early on before the debtor's financial picture further deteriorates and decides to personally file for bankruptcy.**

The information presented within this article is of a general nature and is not intended to be relied upon as legal advice in any particular matter without first consulting qualified counsel.

What My Clients Are Saying

“Chris is a competent, hardworking attorney. Chris is always there when you need him and you don’t have to wait a day to get a returned phone call. He does what he says he is going to do in a timely manner. He has the expertise to make problems simpler which makes them easier to solve. He is honest, consistent and reliable. He loves what he does and is active in the community.”

David Ostrowe / Owner, O & M Restaurant Group, Inc. / Oklahoma City, Oklahoma

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