

TD THE STANDARD

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In This Issue:

- When Immigration and Bankruptcy Intersect 2
- TD in the News 3
- Trenk and DiPasquale Named Top Lawyers 4
- Condo Association Has Standing to Assert
Claims Arising Prior to Association's Existence 4
- The Gavel Has Sounded: Third Circuit Ends More
Than a Decade of Debate in Chapter 13 Case 5

TD MOVES TO NEW OFFICE

In October 2007, TD moved to a newly refurbished and modernized office, located on 347 Mt. Pleasant Avenue, in West Orange, NJ, overlooking the Essex County Country Club. **TD**



When Immigration and Bankruptcy Intersect

“Nothing bars an immigrant from filing for bankruptcy.”

By Meaghan Tuohey-Kay

As more and more immigrants integrate into American society, they take on the financial burdens common among citizens - including overextended credit. Thus, questions often arise about bankruptcy as it relates to immigration.

For example, can immigrants, particularly undocumented immigrants, qualify for bankruptcy protection? Nothing in the Bankruptcy Code limits the availability of bankruptcy protection to citizens, or even legal residents of the United States. Therefore, it would appear that nothing bars an immigrant from filing for bankruptcy. Further, at least one court has held that a failure to provide a social security number, “where none exists and especially when it is impossible to obtain the number,” is not fatal to a bankruptcy petition filing. *In re Merlo*, 265 B.R. 502 (Bankr. S.D. Fla. 2001). Therefore, individuals who cannot legally obtain a social security number can still apply for bankruptcy.

Also, can an Affidavit of Support obligation be discharged? As a matter of background, when a family member sponsors an immigrant relative for an immigration benefit, the sponsor is required to complete an Affidavit of Support, form I-864, pledging to provide “whatever support is necessary to maintain the sponsored immigrant(s) at an income that is at least 125 percent of the Federal poverty guideline.” If the sponsor is unable to prove adequate resources, an unrelated joint-sponsor may also sign the Affidavit. The purpose of the Affidavit is to prevent the immigrant from becoming a public charge. The support obligation continues until the death of the sponsor, the death or deportation of the immigrant, the naturalization of the immigrant, or the crediting of 10 years to the immigrant. Debtors’ attorneys should inquire if a client seeking bankruptcy protection has ever signed an Affidavit of Support, and if so, include it on the petition. Whether the obligation can be discharged, however, remains an open issue. **TD**

TD in the News

November 28, 2007

Richard D. Trenk served as a panelist on a seminar entitled “The Bankruptcy Card and How to Play It: A Guide For Non-Bankruptcy Judges and Practitioners” at the New Jersey Law Center in New Brunswick, NJ. The Honorable Rosemary Gambardella of the United States Bankruptcy Court for the District of New Jersey and the Honorable Nancy Sivilli, J.S.C. of the Superior Court of New Jersey, Law Division, Criminal Part, Essex County also served on the panel.

November 2007

Meaghan Tuohey-Kay serves as counsel for Joseph and Cathy Collar, the adoptive parents of a seven (7) year old daughter from Guatemala who faces deportation. Ms. Tuohey-Kay was featured in an article on the story in the November 4, 2007 issue of the *New York Daily News* and on WCBS-TV News on November 2, 2007.

An article entitled “A Primer on Creating a Homeowner’s Association Budget,” written by **Gina R. Orosz**, appeared in the November 2007 issue of *Community Trends*, the monthly publication of the New Jersey Chapter of Community Associations.



Gina R. Orosz

TD received the Corporation of the Year Award from New Shoes International, a non-profit organization engaged in the distribution of new pairs of shoes to underprivileged children in the Newark and Essex County area.

October 23, 2007

Meaghan Tuohey-Kay was honored as a “Star Maker for Community Leadership” at the Apostles’ House First Annual Star Maker Award Celebration at the Newark Club in Newark, NJ. The Apostles’ House provides comprehensive social services to homeless and at risk families.

October 21, 2007

TD, led by **Michele M. Dudas**, **Gina R. Orosz**, and **Mark Y. Moon**, served as a sponsor of and participated in the Making Strides Against Breast Cancer Walk in Parsippany, NJ.

October 7, 2007

TD, led by **Michele M. Dudas** and **Jodi Luciani**, served as a sponsor of and participated in the Seventh Annual Miracle Walk, benefiting the Saint Barnabas Medical Center Neonatal Intensive Care Unit, at Verona Park in Verona, NJ.



October 2, 2007

Anthony Sodono, III was honored as a 2007 Volunteer Lawyers For Justice Pro Bono Attorney of the Year at the Legal Services Foundation of Essex County 25th Anniversary Gala at The Manor in West Orange, NJ.



Anthony Sodono, III

September 30, 2007

TD, led by **Richard D. Trenk**, served as a sponsor of the West Orange Downtown Classic Race, generating proceeds for the National Ovarian Cancer Coalition - Northern New Jersey.

Dec. 2006 - Sept. 2007

Joseph J. DiPasquale, with the assistance of **Sam Della Fera, Jr.** and **Henry M. Karwowski**, served as special transactional counsel for Kara Homes, Inc., a major residential home builder located in East Brunswick, NJ, and many of its affiliates. The companies filed for chapter 11 bankruptcy in the wake of the housing market decline and the subprime mortgage industry crisis. They reported assets in the approximate amount of \$350 million and liabilities in the approximate amount of \$297 million. On September 12, 2007, the United States Bankruptcy Court for the District of New Jersey confirmed a plan of reorganization enabling many of the companies to emerge from bankruptcy.

September 2007

Elnardo J. Webster II served as counsel for Metrovest Equities of New York City/Essex Orange Urban Renewal Co. LLC in connection with the approval of two (2) major condominium housing proposals in Orange, NJ. Mr. Webster was featured in an article on the story in the September 6, 2007 issue of *The Star Ledger*.

Fall 2007

TD welcomed new associates **Danielle Antoine**, **Mark Y. Moon**, **Scott J. Koplik**, and **Adam D. Wolper**. Ms. Antoine is a graduate of University of Pennsylvania Law School and a former law clerk of the Honorable Donald Goldman, J.S.C., of the Superior Court of New Jersey, Essex County. Mr. Moon is a graduate of Rutgers University School of Law at Newark and a former law clerk of the Honorable Ned M. Rosenberg, J.S.C., of the Superior Court of New Jersey, Essex County. Mr. Koplik is a recent graduate of Rutgers University School of Law at Newark. Mr. Wolper is a recent graduate of Widener University School of Law.

August 25, 2007

Thomas M. Walsh participated in the Livestrong Challenge, a 40 mile bike ride in Philadelphia, PA dedicated to raising money for cancer research. Mr. Walsh raised over \$2,600 in contributions for the cause.

August 7, 2007

Jennifer Carrillo-Perez and Summer Associates **Pricilla Mori** and **Kate Riopel** organized a fundraiser at 27 Mix in Newark, NJ to benefit the Women’s Fund of New Jersey. **Shoshana Schiff**, **Joni Noble McDonnell**, **Meaghan Tuohey-Kay**, **Michele M. Dudas**, and **Jodi Luciani** also attended the event.

August 2007

TD served as a sponsor of the West Orange “Great Light Way” Campaign dedicated to emphasizing the conservation of energy.

July 25, 2007

TD co-sponsored a social event at 27 Mix in Newark, NJ for law students and young lawyers from across New Jersey. Newark Mayor Cory Booker delivered a speech at the event.



Pictured from left to right: Meaghan Tuohey-Kay, Summer Associate Joao Magalhaes, Summer Associate Markis Abraham, Mayor Cory Booker, Summer Associate Pricilla Mori, Summer Associate Kate Riopel, Shoshana Schiff, and Elnardo J. Webster II.

Trenk and DiPasquale Named Top Lawyers



In December 2007, **Richard D. Trenk** was named one of the “New York Area’s Best Lawyers” by *New York Magazine*. His profile appears in the December 2007 issue. Also, in October 2007, Mr. Trenk was named as one of the 2008 *Best Lawyers in America*, in the area of bankruptcy and creditor-debtor rights law, in the 25th anniversary edition of *Best Lawyers in America*, the oldest and most respected peer-review publication in the legal profession.



In August 2007, **Joseph J. DiPasquale** was named a “Top 40 Under 40” Attorney by the *New Jersey Law Journal*. Also, Mr. DiPasquale was recently awarded an AV rating, recognizing very high to preeminent legal ability and professionalism, by LexisNexis Martindale-Hubbell, the leading directory of legal professionals. Finally, in August 2007, Mr. DiPasquale, and **Henry M. Karwowski**, and **Joshua H. Raymond**, were named New Jersey Rising Stars in the area of Bankruptcy & Debtor/Creditor Rights by *New Jersey Monthly Magazine*. **TD**



Condo Association Has Standing to Assert Claims Arising Prior to Association’s Existence

By Jodi Luciani

The New Jersey Appellate Division recently ruled, in a case of first impression, that a condominium association and homeowners’ association have standing to assert consumer fraud and common law fraud claims against a manufacturer of a product used in the construction of their development, even though the associations did not formally exist until after the misrepresentations or omissions complained of had been made. [Port Liberte Homeowners Ass’n, Inc. v. Sordoni Constr. Co.](#), 393 N.J. Super. 492 (App. Div.), [certif. denied](#), 192 N.J. 479 (2007).

The Appellate Division determined that a condominium association is the intended beneficiary of a developer’s actions. Thus, the court found, any subcontractor or materialman entering into a contract or supplying a product for use in the construction of the common elements of the development, after the developer registers the condominium with the Department of Community Affairs, is on con-

structive notice that representations made to, and omissions withheld from, the developer will be deemed as if they are made to, or withheld from, the association, once the association assumes control of the condominium. The court found that a contrary holding, i.e., that such associations lack standing because the developer, and not the associations, was the party to whom the representations had been made, would produce an unjust result contrary to the legislative scheme permitting a condominium homeowners association to institute suit to recover damages to its development.

In reaching its decision, the court noted that the unique relationship between a condominium association and a developer, created by statute, allows an association to step into a developer’s shoes when control of the development passes to the association. The court noted, further, that in the case at issue, the manufacturer had been on notice that the project involved a condominium, and that the plaintiff associations, the end-users of the product at issue, would ultimately govern the development upon completion of construction. As such, the court held, any misrepresentations made to the developer had essentially been made to the associations. **TD**

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Additional Information

This newsletter provides general information of interest to our clients and friends. It does not constitute legal advice. You should consult with legal counsel to determine how the law may apply to your specific situation.

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An electronic version of this newsletter may be found at www.trenklawfirm.com. To change your mailing address, please contact Diane Perrotta at (973) 243-8600 or dperrotta@trenklawfirm.com.

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TD PRACTICES IN THE
FOLLOWING AREAS:
BANKRUPTCY
DEBTOR/CREDITOR RIGHTS
COMMERCIAL LITIGATION
BUSINESS LAW
FAMILY LAW
GOVERNMENT AFFAIRS
REAL ESTATE AND LEASING
IMMIGRATION



The Gavel Has Sounded: Third Circuit Ends More Than a Decade of Debate in Chapter 13 Cases

By Louis A. Grecco

The United States Court of Appeals for the Third Circuit recently ended more than ten years of division among New Jersey district courts and bankruptcy courts when it held that, under Bankruptcy Code section 1322(c)(1), a chapter 13 debtor does not have the right to cure a default on a mortgage secured by the debtor's principal residence between the time the residence is sold at a foreclosure sale and the time the deed is delivered. In re Connors, 497 F.3d 314 (3d Cir. 2007).

Section 1322(c)(1) provides in relevant part that, in a chapter 13 case, a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law.

In Connors, the Third Circuit adopted the "gavel rule," permitting a chapter 13 debtor to cure a default on a home mortgage under section 1322(c)(1) only until the gavel falls at a foreclosure sale. At the same time, the court rejected the "deed-delivery rule," providing that a residence is not "sold" within the meaning of section 1322(c)(1), and the debtor has the right to cure a default,

until the deed is actually delivered to the winning bidder. In making its determination, the court relied on the plain meaning of section 1322(c)(1). For instance, the court noted that the word "that" in section 1322(c)(1) is a relative pronoun that restricts, and therefore, modifies the preceding term "foreclosure sale." Thus, the court determined, section 1322(c)(1) clearly refers to a foreclosure sale that complies with state law procedures. In addition, the court observed that, outside of cases applying the deed delivery rule, the term "foreclosure sale" is broadly understood to mean the foreclosure auction.

Nevertheless, the court recognized that the gavel rule does not cut off the debtor's state-law post-sale remedies. For example, the right to object to the sale or redeem the property may continue past the date of the foreclosure sale by operation of Bankruptcy Code section 108(a), providing for an extension of a statutory grace period under certain circumstances.

Finally, the court noted that the gavel rule makes sense as a matter of public policy because it not only affords the debtor ample opportunity to protect his or her interest, it also protects purchasers' rights acquired at foreclosure sales and eliminates uncertainty of ownership that may translate to lower bids. **TD**

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Step forward.



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