

Involuntary Bankruptcy as a Collection Tool

April 20, 2011



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Is It Possible For a Creditor to Force a Business Debtor Into Bankruptcy?

The short answer to this question is yes, with some caveats. In order for involuntary bankruptcy proceedings to be initiated against a business, the following conditions must exist:

- If there are twelve or more petitioning creditors, there must be three among them whose claims total at least \$ 13,475.
- If there are fewer than twelve petitioning creditors, then one creditor with a claim of at least \$ 13,475 may file.
- Any claim included in the above calculation must be noncontingent, undisputed, liquidated, and unsecured.
- Either the business must not be paying debts as they come due or a receiver has been appointed within the past 120 days.

As one can imagine, facts meeting these requirements are both quite rare and fairly difficult to prove. For these reasons and others listed below, involuntary bankruptcies are uncommon

What Are the Advantages of Filing an Involuntary Bankruptcy?

Circumstances warranting the filing of an involuntary bankruptcy petition are rare. Creditors who initiate an involuntary bankruptcy are not entitled to any higher priority of payment than they would otherwise be under the bankruptcy system. However, one scenario in which such a filing might make sense is if another creditor is either about to or has just obtained a judgment against the business and the threat of levy is at hand. Filing the bankruptcy case would level the playing field and give the filer at least some chance at receiving a payout. In fact, even if a levy has already occurred, the laws regarding preferences may allow the trustee to draw those assets back into the bankruptcy estate.

What Are the Risks of Filing an Involuntary Bankruptcy?

Filing of an involuntary bankruptcy petition should be considered very carefully and thoroughly. If the bankruptcy is dismissed or denied, the petitioning creditor may be liable to the business debtor for its attorney's fees and consequential damages for injury to its reputation.

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