

**The United States Bankruptcy Court for the District of Maryland dismissed the chapter 11 debtor's bankruptcy case, finding that both objective futility and subjective bad faith were present.**

***In re Ronald Cohen Management Company*, No. 14-23399(TJC), 2015 Bankr. LEXIS 384 (Bankr. D. Md. Feb. 5, 2015).**

Summary by Kristen M. Siracusa, Miles & Stockbridge PC

In *In re Ronald Cohen Management Company* (the “Debtor”), the Honorable Thomas Catliota of the U.S. Bankruptcy Court for the District of Maryland granted certain Judgment Creditors’<sup>1</sup> motion to dismiss the Debtor’s bankruptcy case for “cause,” consistent with the standards for dismissal established by the Fourth Circuit Court of Appeals in *Carolin Corp. v. Miller*, 886 F.2d 693 (4th Cir. 1989).

Judge Catliota determined that the case was filed with subjective bad faith, relying heavily on the detailed findings of Circuit Court Judge Ronald B. Rubin, who found that the Debtor and its 100% owner “took steps to render the Debtor judgment proof in anticipation of the judgment obtained by the Judgment Creditors” in the breach of contract action brought in the Circuit Court for Montgomery County, Maryland. *Id.* at \*11. The Bankruptcy Court found that the case fit precisely into the Fourth Circuit’s definition of subjective bad faith, as the Debtor sought, among other things, to invoke the automatic stay in an attempt to protect entities who it conceded were not included in the estate.

As to objective futility, the Bankruptcy Court determined, based upon both the findings of the Circuit Court as well as the filings in the bankruptcy case, that there was no realistic possibility of an effective reorganization, because there was nothing for the Debtor to reorganize. The Debtor had no “operations, income, employees who perform services for it, or assets of any value.” *Id.* at \*17. The Circuit Court found that the Debtor had no assets or operations as a result of its deliberate effort to render itself judgment proof. The Court found that the absence of any assets or operations clearly established that “the petition lacks any ‘relation to the statutory objective of resuscitating a financially troubled [debtor].” *Id.* at \*19 quoting *Carolin*, 886 F.2d at 701. The Court dismissed the case after concluding that the purposes of the Code would not be furthered by permitting the Debtor to proceed.

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<sup>1</sup> The judgment creditors who filed the motion to dismiss were Tower Oaks Boulevard, LLC, TOB, Inc., Oak Plaza, LLC, David T. Buckingham, Richard D. Buckingham, and Susan E. Buckingham (the “Judgment Creditors”).