Tucker Ellis LLP

Insolvency & Workout

Overview

Our Insolvency & Workout Group is composed of Tucker Ellis attorneys with decades of experience working with financially distressed companies and their creditors to maneuver complicated insolvency proceedings and negotiate out-of-court debt restructurings, workouts, and the most beneficial collections processes.

Our multidisciplinary team approach delivers valuable expertise in all of the relevant areas of law, including commercial finance, tax, real estate, construction, oil and gas, securities, and financial services. To every matter, we bring practical, expert analysis and significant experience to identify creative strategies to best position our clients for success.

When distressed businesses do not file for bankruptcy, or before they file for bankruptcy, creditors may rely on a wide range of state law actions and remedies in order to exercise their rights and hold their customers accountable. In non-bankruptcy commercial debt collection matters, we have unraveled fraudulent transfers, prevented dissipation of assets, and pierced corporate veils to mitigate losses and collect on amounts owed to our clients.

We are well-versed in all causes of action and remedies available to creditors, and we have a strong grasp of how to simultaneously exercise multiple remedies in order to assert more leverage over the defaulting entity, including but not limited to actions such as:

- Charging orders
- Cognovit judgments
- Creditors' bills
- Execution against property, including seizure of personal property
- Foreclosures
- Garnishment of personal earnings or funds held by third parties like trusts and financial institutions
- Judgment debtor exams and Rule 69 depositions
- Replevin (recovering collateral before judgment)
- Receivership

A critical component of our successful outcomes is knowing our clients and their businesses. Our firm's close involvement with and representation of the National Association of Credit Management provides us with up-to-date insights on businesses' goals and helps us better understand the myriad issues unique to different segments of the economy.

Areas of Emphasis

- Residential and commercial foreclosures
- Asset liquidation and loss mitigation
- Using Private Selling Officers in public sales
- Pursuit of personal guarantors
- Executing on money judgments against both individuals and entities
- Creditor remedies
- Asserting claims and obtaining relief in receivership and bankruptcy forums
- Lien priority disputes in residential and commercial real property

Experience

- In representing a bank in a matter involving a small chain of convenience stores, foreclosed liens on six properties in three counties in a single foreclosure action where borrowers defaulted; properties were sold via Private Selling Officer (PSO) in one of the first PSO sales in Ohio under a new law
- In a case in which a contractor missed payments on goods provided on credit by the client, negotiated a personal guaranty from the contractor's principal for all invoices over 90 days old on a rolling basis until contractor closed its doors; negotiated to reduce the client's exposure from more than $400,000 to about $280,000, of which approximately $150,000 was guarantor-guaranteed; filed suit against the contractor and settled for a substantial lump sum payment and continuing monthly payments from the guarantor's personal assets
- During an engagement to collect on an unsecured judgment arising from an arbitration against a Florida pharmacy and its guarantors, discovered that the client had a mortgage of record on Florida property worth more than $350,000 and encumbered by a senior mortgage; foreclosed the client's mortgage and sold the property at public sale, receiving approximately $85,000 from the proceeds
- Filed a single foreclosure action in Franklin County, which attached jurisdiction to that parcel of real property and three others outside of the county, enabling the client to file a single action rather than multiple lawsuits in multiple counties
- In a dispute to the client's lien priority based on the borrower's fraudulent loan application, bifurcated the dispute from the sale of the properties, allowing a faster sale to prevent the accrual of property taxes pending resolution
- In a foreclosure suit involving a chain of tobacco stores, obtained relief from stay to proceed filed in one county with jurisdiction extended over the real properties in two other counties
- In representing a client who was appointed receiver for a $50 million Class A office building in Columbus, Ohio, negotiated delinquencies with commercial tenants and resolved disputes over the scope of the receivership and turnover of information necessary to continue operations, resulting in a collection of nearly a $500,000 to assist in stabilizing the

building and funding the receivership