

MAYER, BROWN, ROWE & MAW LLP'S
SUPREME COURT DOCKET REPORT
JUNE 12, 2006

Today the Supreme Court granted certiorari in one case of interest to the business community. Absent extensions, which are likely, amicus briefs in support of the petitioner will be due on July 27, 2006, and amicus briefs in support of the respondent will be due on August 31, 2006. Any questions about the case should be directed to David Gossett (202-263-3384) in our Washington, D.C. office.

Bankruptcy—Conversion between Chapters—Bad faith exception. Bankruptcy Code § 706(a) provides that a Chapter 7 debtor “may convert” a case to Chapter 11, 12, or 13 “at any time.” The Supreme Court granted certiorari in *Marrama v. Citizens Bank of Massachusetts*, No. 05-996, to decide whether a debtor has an “absolute right” to convert between Chapters, or whether a bankruptcy court has discretion to deny conversion under § 706(a) because of the debtor’s “bad faith” concealment of assets.

Seven months before filing for bankruptcy under Chapter 7, Petitioner Marrama transferred real estate with a value of \$85,000 to a revocable spendthrift trust, purportedly with the intent of protecting the property from his creditors’ claims. Marrama’s Chapter 7 statement of financial affairs listed the value of the trust as zero, denied making any property transfers within one year preceding the Chapter 7 filing, and asserted that the IRS owed him no tax refunds (although Marrama was due a refund of over \$11,000). When the Chapter 7 Trustee (Respondent) questioned these representations, Marrama filed notice in the bankruptcy court under § 706(a) to convert the Chapter 7 case to a Chapter 13 debt-restructuring proceeding. The Chapter 7 Trustee opposed conversion based on Marrama’s failure to disclose the real estate transfer or the tax refund as property of the bankruptcy estate, while Marrama contended that any misstatement or omission was inadvertent.

The Bankruptcy Court for the District of Massachusetts refused to permit the conversion to Chapter 13, on the ground that Marrama acted in “bad faith” by attempting to conceal assets from creditors in his Chapter 7 schedules. Marrama appealed to the Bankruptcy Appellate Panel for the First Circuit, which affirmed, noting a split of authority among courts about whether a debtor’s conversion right is absolute or subject to judicial discretion based on the conversion’s circumstances. 313 B.R. 525 (2004). The First Circuit also affirmed. 430 F.3d 474 (2005). In so ruling, the court rejected Marrama’s argument that § 706(a) provides a debtor with an “absolute” right to convert between Chapters of the Bankruptcy Code, noting that while a debtor “may convert” to a different Chapter under § 706(a), a “right to convert is merely presumptive.” *Id.* at 478.

This case is important to both debtors and creditors, in and out of bankruptcy. Honest debtors will be affected because judicial scrutiny of the circumstances surrounding conversion may include not just concealment of assets, but a range of situations that could be deemed “extreme circumstances,” and a variety of activities that could be characterized as “bad faith.” An absolute right to convert could make it easier for dishonest debtors to dissipate funds that would otherwise be available to creditors of all stripes. Furthermore, the Supreme Court’s resolution of

Supreme Court Docket Report

whether the right to convert between Chapters is absolute or qualified affects both individual and corporate debtors (who may desire to convert from Chapter 7 to Chapter 11).

* * * * *

Today the Supreme Court also invited the Solicitor General to file a brief expressing the views of the United States in the following case of interest to the business community:

Hatch v. Cellco Partnership, No. 05-1159. Section 332(c)(3)(A) of the 1934 Communications Act, 47 U.S.C. § 332(c)(3)(A), specifies that “no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.” The question presented is whether a Minnesota statute that requires wireless service providers to notify customers and obtain customer consent before changing terms of existing contracts effectively “regulate[s] * * * the rates charged” by wireless service providers, and thus is preempted by Section 332.

MAYER, BROWN, ROWE & MAW LLP WORLDWIDE

BERLIN
Dorotheenstrasse 35
10117 Berlin
Germany
+49.30.2061.3090

FRANKFURT
Bockenheimer Landstrasse 98-100
D-60323 Frankfurt/Main
Germany
+49.69.79.41.00

PALO ALTO
Two Palo Alto Square
3000 El Camino Square, Suite 300
Palo Alto, California 94306-2112
650.331.2000

BRUSSELS
Square de Meeus 35
B1000 Brussels, Belgium
+322.502.5517

HOUSTON
700 Louisiana Street, Suite 3600
Houston, Texas 77002-2730
713.221.1651

PARIS
41 Avenue Hoche
75008 Paris, France
+33.1.53.53.43.43

CHARLOTTE
214 North Tryon Street, Suite 3800
Charlotte, North Carolina 28202
704.444.3500

LONDON
11 Pilgrim Street
London EC4V 6RW
+44.0.20.7248.4282

WASHINGTON
1909 K Street, N.W.
Washington, D.C. 20006-1101
202.263.3000

CHICAGO
71 S. Wacker Drive
32nd Floor
Chicago, Illinois 60606-4637
312.782.0600

LOS ANGELES
350 South Grand Avenue
25th Floor
Los Angeles, California 90071-1503
213.229.9500

**INDEPENDENT MEXICO CITY
CORRESPONDENT**
Jáuregui, Navarrete y Nader, S.C.
Abogados Torre Arcos
Paseo de los Tamarindos No. 400-B
Floors 7, 8 and 9
Col. Bosques de las Lomas
05120 Mexico, D.F.
+5255.5.267.45.00

COLOGNE
Kaiser-Wilhelm-Ring 27-29
50672 Cologne, Germany
+49.221.577.1100

NEW YORK
1675 Broadway
New York, New York 10019-5820
212.506.2500