

## Domino-Like Bankruptcies Offer Lessons

By Martin C. Daks - 9/17/2007

### DEAL

The fallout from the 2006 arrest of Solomon Dwek—a former real estate mogul from Deal charged in an alleged bank fraud scheme after he bounced a \$25 million check—continues as another Dwek company, Belmont Properties in Oakhurst, filed for bankruptcy in the Trenton court last week.

It was the latest in a string of his enterprises to fall from grace, with at least eight other Dwek-owned companies filing for Chapter 11 bankruptcy reorganization since the last week of August. All told, about 20 Dwek-controlled companies have declared bankruptcy, says Timothy Neumann, a partner with the Manasquan law firm Broege, Neumann, Fischer & Shaver LLC. He represents Dwek—who is currently free on \$10 million bail—and his companies in the Chapter 11 proceedings. Court documents show at least 91 creditors are owed more than \$340 million.

For small and large businesses alike, the Dwek case almost demands an answer to a question that's central to the concept of commerce: how can an enterprise balance the need to grow by taking on more business with the risk of not getting paid?

Experts say there is a number of ways to keep up with a client's financial situation or to actively limit a company's accounts receivable exposure, but each one has its costs.

"Theoretically, the safest way is to do everything on a cash-on-delivery basis," says Samuel S. Fisher who heads the New Brunswick accounting firm Samuel S. Fisher Certified Public Accounts LLC. "But it might be tough to find many customers who'll agree to that condition."

Among other issues, customers may be worried about paying cash up front and then getting stiffed themselves.

"Companies can also try to mitigate their risk by pulling a D&B or other credit report, but there are fees involved with that process and if it's a small job then it just may not be cost-effective," says Fisher. "One alternative is to keep a close watch on your invoicing and collections. If an invoice is past due, then no work should get done until the account is brought up date."

That's easy to say, but actually putting your foot down isn't always that simple, admits Fisher. In fact, Fisher recently got burned by a longtime client who fed him some lines while the invoices kept piling up.

"You like to think there's some bond between you and a client that you've worked with over the years," he says. "But in my case, the client kept saying that he couldn't complete a project and get paid—and then pay me the significant amount he owed—until I finished certain projects for him. Eventually, he said that he didn't get the money after all and therefore couldn't pay me. It's a trap that's very easy to fall into."

Unlike a Chapter 7 liquidation, an 11 bankruptcy filing holds out the hope that creditors may get something back. But for unsecured creditors, who have no land or other collateral from the borrower, the return may amount to only a few cents on each dollar of debt. Neumann says it's "premature" to try to estimate how much Dwek's unsecured creditors may be able to realize.

Timothy Duggan, chair of the Bankruptcy & Creditor's Rights group at Stark & Stark PC in Lawrenceville, represents some of the banks, condominium associations, trade creditors and commercial landlords who have claims against Dwek. Duggan says not getting paid isn't the only thing creditors have to fear. Sometimes, he notes, a business can get sued simply for being diligent about its collections.

"When Congress first created the federal bankruptcy laws, there was some concern that a debtor, knowing he was in trouble, might decide to pay off some favored creditors while leaving others hanging," says Duggan. "So the lawmakers placed restrictions on so-called preferential transfers. Basically, any monies received by a creditor within 90 days prior to the debtor's bankruptcy filing may be challenged in court unless they were paid and incurred in the ordinary course of business."

Take the case of a creditor who sends out a flurry of collection notices or uses similar methods to recover past-due amounts. Any resulting collections could be deemed not "in the ordinary course of business," and the creditor could be forced to return the cash to a court if the debtor later files for bankruptcy.

"It's even more reason not to let a customer string out their payments," says Duggan. "Otherwise you're not only at risk for what you don't collect, but you may be at risk for what you do collect."

He also admits maintaining that kind of diligence can be difficult, especially when there are no obvious red flags, which is what apparently happened with Dwek.

"Some of my clients worked with Dwek for years without any problems," Duggan says. "We're still trying to find out just what happened, but it doesn't look like a typical case."

The domino effect has been painful for Dwek's creditors, with court documents detailing at least 21 banks and 70 individuals and companies that are together owed more than \$340 million. The amounts vary widely, from \$49.6 million owed to Amboy National Bank to \$1,050 due to Thomas Planning Associates, a Brielle firm that specializes in land-use, zoning and other consulting services.

Saul Ewing LLP, which counseled Dwek on land-use issues for about two years, has filed a claim for \$25,939 with the bankruptcy court.

"In hindsight we should have realized that something was going wrong," says Henry Kent-Smith, a real estate partner in Saul Ewing's Princeton office. "Towards the end we saw a geometric increase in the volume of work we were asked to do, but we did not see a similar increase in [Dwek's] sales and disposition of assets."

But on a day-to-day basis, nothing seemed amiss, Kent-Smith says.

"We billed Dwek on a monthly basis and until the end, he had always paid quickly," says Kent-Smith, adding the outstanding receivable represents about a month's worth of work on behalf of Dwek and won't put a dent in the earnings of the 275-attorney law firm. "On a going-forward basis, we're being much more sensitive to the relationship between the volume of work we do for a client and the client's situation."

Monitoring accounts receivable and pulling credit reports can certainly help to protect a company from getting burned by a debtor, but a simple gut feeling can sometimes work just as well, as a Toms River restaurant owner discovered.

"In mid-2005, Solomon Dwek approached me about buying my restaurant," says Theodore Karagias, the 54-year-old second-generation owner of Nick the Greek's Bay Bridge Inn. Dwek had previously bought about four acres surrounding Karagias' establishment by the Barnegat Bay, and wanted to close the gap so he could build a marina, according to Karagias. Karagias declines to disclose Dwek's offer but says it was significant.

"Over a few months we hashed out a contract and everyone was happy with the terms," recalls Karagias. "Finally my pen was in my hand and I was looking forward to taking an early retirement."

But when they sat down to sign, he says Dwek "started to squeak" about the money, and tried to alter the terms.

"I thought to myself, 'This guy's got no money,' and I called off the deal," says Karagias, who notes he's now ready to close with a new buyer. "My lawyer thought I was nuts, but after everything else [about Dwek] broke, he said he's glad I followed my gut. Otherwise I'd be in court trying to get my money back or to get my restaurant back."

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