



Michelle McMahon and Amanda Tersigni Obtained a Decision Discharging an \$830,000 Judgment Under the New Jersey Consumer Fraud Act in Client's Bankruptcy

December 17, 2021

Michelle McMahon and Amanda Tersigni, attorneys in the firm's Bankruptcy and Creditors' Rights Department, successfully defended the firm's client in an adversary proceeding claiming that a judgment in an amount in excess of \$830,000 under the New Jersey Consumer Fraud Act ("NJCFA") was not dischargeable in the client's bankruptcy.

The plaintiff obtained a judgment finding breach of contract, violations of the NJCFA and unjust enrichment against the firm's client resulting from a disputed real estate transaction ("Judgment"). Subsequently, the firm's client sought bankruptcy protection to address the Judgment and other debts. The plaintiff filed a complaint commencing an adversary proceeding against the firm's client. The plaintiff alleged that pursuant to 11 U.S.C. §523(a)(2)(A) its Judgment could not be discharged by the client's bankruptcy because the claim was the result of the client's false pretenses, false representations, and/or actual fraud. Cullen and Dykman successfully argued that a finding under the NJCFA alone was insufficient to prove false pretenses, false representations, and/or actual fraud and proved at trial that the plaintiff's claim was not the result of false pretenses, false representations, and/or actual fraud. Associate Amanda Tersigni played a significant role in the litigation, including examining the firm's client and lead witness and defeating an objection to a key piece of evidence. The Court agreed with the firm's position, ruling that the findings of the Judgment and the plaintiff's evidence at trial were insufficient to establish that the Judgment was exempt from the client's discharge in bankruptcy. The Judgment has been discharged and the adversary proceeding was dismissed.

About Cullen and Dykman's Bankruptcy and Creditors' Rights Practice

Cullen and Dykman's Bankruptcy and Creditors' Rights practice offers clients a unique perspective into the issues involved in complex bankruptcy proceedings in a wide range of industries. We have represented secured creditors, debtors, unsecured creditors' committees, and individual unsecured creditors in Chapter 11 cases filed throughout the country, and we are skilled in resolving issues among various constituencies in complex Chapter 11 proceedings. We also have significant experience in out-of-court workouts, restructurings and bankruptcy litigation, and we have secured favorable results for our clients in complex bankruptcy cases throughout the

country.

About Cullen and Dykman

Cullen and Dykman (www.cullenllp.com) has been providing legal services to institutional clients since 1850. The firm represents a wide range of clients, including banks and other financial institutions, energy, telecommunications and water companies, construction companies, insurers, educational institutions, religious organizations, and not-for-profits. With over 190 attorneys in seven offices located throughout the Northeast and MidAtlantic regions, Cullen and Dykman is strategically positioned to meet the changing needs and demands of our clients.

Practices

- Bankruptcy and Creditors' Rights

Attorneys

- Michelle McMahon