

## TIP OF THE MONTH

August 2009

All practitioners in the area of small business bankruptcies should be aware of the issues raised and the disposition of those issues in two recent cases issued by Judge Meyers. Those cases are *In Re Aldape Telford Glazier, Inc.*, Case No. 09-00834-TLM, hereinafter *Aldape*, and *In Re David Victor Young and Tauna Marie Young*, Case No. 09-00174-TLM, hereinafter *Young*.

Both cases involve situations in which the owners of a corporate entity assume ownership of the assets of those corporate entities and file bankruptcies as if they were the owners of those assets, instead of the owners of an interest in the corporate entity.

In *Young*, the individual debtors filed a Chapter 11. They were the sole owners of a corporation, EquipRent Inc., which rented tools and equipment to businesses and individuals primarily in the construction business. With the downturn in the economy the business faltered. The individual owners filed articles of dissolution for the corporation and also filed a Certificate of Assumed Business Name indicating that they, the individuals, would be doing business under the name EquipRent. Thereafter they began to use the assets of the corporation in their new proprietorship business. In their Schedule B, they listed the ownership of stock in EquipRent Inc., valued at \$0.00, and they also listed the assets of the corporation which they were using in their proprietorship business.

In *Aldape*, the corporation, Aldape Telford Glazier, Inc., was owned equally by the individuals. In turn, that corporation was the sole and managing member of two LLC's, The Fence & Deck Store, LLC, and M&W Fence Company, LLC. ATG had no assets other than the membership interests in the two LLC's.

Prior to the filing of ATG's bankruptcy petition, each LLC filed articles of dissolution which asserted that all assets reverted to sole member ATG. In its schedules ATG listed the assets of the two LLC's as its assets and did not list its ownership interest in the two LLC's.

In both cases, the debtors took the position that upon dissolution the assets of the corporate entities reverted to the owners of that entity. The court determined that upon dissolution the assets of the corporation did not revert to the owners. The assets remained the assets of that corporate entity. Dissolution does not terminate the corporate existence. The

corporation continues its corporate existence, but may not carry on any business except that appropriate to wind up and liquidate its business affairs. The court in each case set out the statutory requirements of winding up the affairs of a corporate entity, including how the corporate assets shall be distributed upon the winding up. Creditors come first and owners come last.

In both cases, the court granted the U.S. Trustee's motion to dismiss. In *Young*, the court dismissed for cause based on the scheduling and use of the corporation's assets by the debtors in their personal reorganization case following dissolution of the corporation. In *Aldape*, the court granted the U.S. Trustee's motion finding that the filing was an attempt to combine the liquidation of multiple entities into a single Chapter 7 case, which is not allowed.