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Fri Jan 17 16:02:35 2020

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Gary Hammond & Jeffrey Tate, First Circuit Holds That Tying Reaffirmation of Secured Debt to Unsecured Debt is Not a Per Se Violation of the Automatic Stay, The, 73 Okla. B.J. 1473 (2002).

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Hammond, G.; Tate, J. (2002). First circuit holds that tying reaffirmation of secured debt to unsecured debt is not per se violation of the automatic stay, the. Oklahoma Bar Journal, 73(15), 1473-1474.

Chicago 7th ed.

Gary Hammond; Jeffrey Tate, "First Circuit Holds That Tying Reaffirmation of Secured Debt to Unsecured Debt is Not a Per Se Violation of the Automatic Stay, The," Oklahoma Bar Journal 73, no. 15 (May 11, 2002): 1473-1474

McGill Guide 9th ed.

Gary Hammond & Jeffrey Tate, "First Circuit Holds That Tying Reaffirmation of Secured Debt to Unsecured Debt is Not a Per Se Violation of the Automatic Stay, The" (2002) 73:15 Oklahoma B J 1473.

MLA 8th ed.

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OSCOLA 4th ed.

Gary Hammond and Jeffrey Tate, 'First Circuit Holds That Tying Reaffirmation of Secured Debt to Unsecured Debt is Not a Per Se Violation of the Automatic Stay, The' (2002) 73 Okla BJ 1473

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SECTION NOTE

OBA Bankruptcy and Reorganization Section: The First Circuit Holds that Tying Reaffirmation of Secured Debt to Unsecured Debt is Not a *Per Se* Violation of the Automatic Stay

By Gary Hammond and Jeffrey Tate

In a recently published article in the *Oklahoma Bar Journal*,¹ we discussed a new decision of the First Circuit Bankruptcy Appellate Panel (BAP), *In re Jamo*, 262 B.R. 159 (1st Cir. BAP 2001), which held that tying approval of a reaffirmation agreement covering debtors' home to debtors' reaffirmation of unrelated, unsecured debt constituted an unlawful violation of the automatic stay.² On March 26, 2002, the First Circuit Court of Appeals reversed this holding in *In re Jamo*, 283 F.3d 392 (1st Cir. 2002).

In *Jamo*, after filing a Chapter 7 bankruptcy case, the debtors attempted to reaffirm their home mortgage with Katahdin Federal Credit Union (KFCU). KFCU refused to reaffirm the debtors' home mortgage unless they also reaffirmed their outstanding unsecured obligations. Ultimately, the debtors filed various reaffirmation agreements, reaffirming both the secured and unsecured loans with KFCU. Shortly thereafter, the debtors filed an adversary proceeding against KFCU, alleging that conditioning the reaffirmation of their home mortgage to the reaffirmation of other unsecured debt violated the automatic stay. The bankruptcy court and the BAP agreed with the debtors, taking the position that tying reaffirmation of secured debt to unsecured was a *per se* violation of the automatic stay.³

The First Circuit noted that "there is a fine line between hard-nosed negotiations and predatory tactics."⁴ Creditors are not entitled to use abusive or coercive tactics to obtain reaffirmation agreements from debtors.⁵ However, the First Circuit refused to hold that linking reaffirmation of secured debt to reaffirmation of unrelated, unsecured debt is either coercive

or a violation of the automatic stay as a matter of law.⁶

While realizing that secured creditors may well hold great leverage over debtors, the First Circuit stated that, "[b]ankruptcy, as life itself, is a series of tradeoffs."⁷ In essence, debtors who forego their right to restructure debt under Chapter 13, and who instead choose to discharge debt through Chapter 7 liquidation, face the potential loss of secured assets should their lenders refuse to execute reaffirmation agreements. "But a Chapter 7 discharge is not a walk in the park; it is a "benefit that comes with certain costs."⁸

The First Circuit next examined KFCU's actual conduct to determine whether its actions were coercive. The appellate court stated that KFCU's references to foreclosure during the negotiation process were "unarguably benign."⁹ Also, KFCU never actually threatened immediate action against the Debtors. Thus, the First Circuit concluded that KFCU's actions did not violate the automatic stay.¹⁰

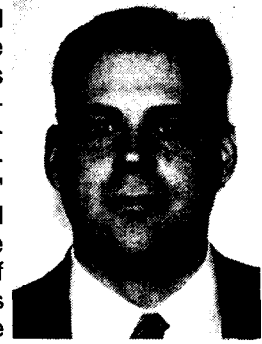
The First Circuit's *Jamo* opinion gives secured creditors latitude to link reaffirmation of secured debt to reaffirmation of unrelated, unsecured debt. However, the First Circuit's decision is not a panacea in regard to reaffirmation negotiations. Under the *Jamo* rationale, accusations of stay violation during the reaffirmation process will be examined on a case by case basis, leaving much to the discretion of bankruptcy courts. Thus, secured creditors should be highly sensitive to the language placed in letters to debtors or to their counsel if represented, and to the tone of negotiations in general. All parties must also remember that the First Circuit is the only circuit level court to



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squarely address the linking issue. As the Tenth Circuit has not addressed this matter, courts within this Circuit are free to disregard the First Circuit's conclusions.

1. "Improper Tying: Not Just an Anti-Trust Issue Anymore," *The Oklahoma Bar Journal*, Vol. 73, No. 11, 4/6/2002.
2. *In re Jamo*, 262 B.R. at 165.
3. *In re Jamo*, 283 F.3d at 400.

4. *In re Jamo*, 283 F.3d at 399.
5. *Id.*
6. *In re Jamo*, 283 F.3d at 400.
7. *Id.*
8. *Id.* (Citing *Bank of Boston v. Burr (In re Burr)*, 160 F.3d 843, 848 (1st Cir. 1998))
9. *In re Jamo*, 283 F.3d at 402.
10. *In re Jamo*, 283 F.3d at 403.

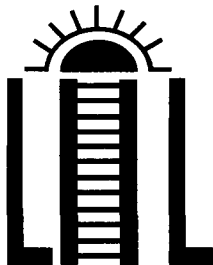


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