



GETTING THE BALL TO THE GOAL

Trial Fundamentals in § 362(c) hearings

Susan Tran
Judge David R. Jones

13th Annual Consumer
Bankruptcy Practice
Galveston, Texas
July 20-21, 2017

So you want something. Now what...?

- It all starts with your pleadings. Pleadings are the court's road map to your case.



Make the Pleading *Effective!*

- Short and sweet is usually best.
- Reciting the rights facts is key.
- Have a theory. Consider a summary of the pleading at the beginning.
- Lengthy boilerplate and legalese – RESIST THEM.
- A good pleading tells a story.



You are set for trial ...

- Outline a plan of action.
- Determine what elements you need to prove:
 - What witnesses will you need?
 - What exhibits are probative to each element?
 - How will you get your exhibits into evidence?
- Witnesses – What about proffers?

Using Proffers

- Know your judge's policies and preferences. BE PREPARED to put your witness on the stand.
- If motion is opposed, have a discussion with counsel regarding the use of a proffer.
- Separate statements of counsel from those of your witness.
- 1st person vs. 3rd person delivery.
- From whom do you want the Court to hear the negatives?
- Review proffer with the witness prior to the hearing.
- Again, remember, the goal is to tell your story! Use plain English.

11 U.S.C. § 362(c)(3)

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors, if—

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor

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First appeared as part of the conference materials for the
13th Annual Consumer Bankruptcy Practice session
"The Importance of Evidence"