Q&A With Seyfarth's Jason DeJonker

Law360, New York (April 10, 2013, 2:50 PM ET) -- Jason J. DeJonker is a partner in Seyfarth Shaw LLP's litigation department in Chicago and co-chairman of the firm's bankruptcy, workouts and business reorganization practice group. He concentrates his practice on bankruptcy cases, pre-bankruptcy workout negotiations and corporate finance on behalf of financial institutions and other lenders, troubled borrower restructuring and forbearance, and general mergers and acquisitions and commercial litigation. He has represented secured and unsecured creditors, indenture trustees and financial guaranty insurers, debtor and insurers in Chapter 7 and Chapter 11 proceedings and in-court and out-of-court workout and foreclosure matters.

Q: What is the most challenging case or deal you have worked on and what made it challenging?

A: In re River West Plaza-Chicago LLC. In that case (a single asset real estate case involving a Class A property located in Chicago, Ill.), we faced not one but two contested confirmation hearings because the debtor submitted two consecutive plans of reorganization seeking a cramdown. Ultimately, we prevailed after we submitted our own plan of liquidation (on behalf of our bank client), which forced the debtor to come back to the negotiating table to negotiate a consensual resolution involving an agreed sale process. As a result of the sale process, the bank increased its expected return and recovery on the underlying real estate by several million dollars.

Even though the bankruptcy court approved our joint plan with the debtor, we still had to overcome an appeal of the sale and confirmation orders from an allegedly disenfranchised owner of the debtor. This appellate process advanced to the Seventh Circuit — see In re River West Plaza-Chicago LLC, 664 F.3d 668 (2011) — at which point the Seventh Circuit dismissed the appeal as moot. In the end, prevailing on an objection to cramdown, or challenging a “new value” plan, can be a difficult challenge for a secured creditor, as it goes against the nature of the bankruptcy court and the bankruptcy process — i.e., providing a “fresh start” to a debtor.

Q: What aspects of your practice area are in need of reform and why?

A: Perhaps the biggest issue facing the corporate bankruptcy bar today is venue reform. Currently, most if not all major corporate bankruptcy filings occur in two jurisdictions — the District of Delaware and the Southern District of New York. Debtors seek bankruptcy relief in these venues based on either (a) state of incorporation (i.e., Delaware) or (b) situs of a portion of their business (i.e., New York). Debtors file for relief in these venues even though much of their business and/or their corporate headquarters might be located in another state or even another major city. For example, even though the Tribune Co. is headquartered in Chicago (home of the Northern District of Illinois) — because of the venue statute and the debtors’ incorporation in Delaware — the Tribune Co. filed for relief in the District of Delaware.

Critics argue that the bankruptcy venue statutes disenfranchise interested parties because the cost of participating in a bankruptcy case can be prohibitive, particularly if it occurs in a far-away venue. A part of this problem results from the inconsistent application of the Bankruptcy Code across jurisdictions and a perception on the part of some litigants as to strength of the Delaware and New York bankruptcy judiciary (and perhaps a perceived weakness of the bankruptcy judiciary in other jurisdictions). Normalizing the application of the Bankruptcy Code, strengthening the corporate bankruptcy judiciary across all venues, and amending the venue

provisions of the U.S. Code will all be issues we practitioners face in the upcoming years.

Q: What is an important issue relevant to your practice area and why?

A: Stern v. Marshall continues to impact bankruptcy litigation across the United States. I won't comment ad nauseum about the decision, but will only mention that it continues to affect decisions we make in bankruptcy cases on a daily basis. What makes Stern v. Marshall different from other important Supreme Court bankruptcy decisions is the breadth of issues that it affects — not just in Chapter 11 matters (where we spend most of our time), but also in Chapter 7 matters and post-bankruptcy recovery litigation. The decision's affect is far-reaching from not just a choice of venue perspective, but also from a cost perspective on the plaintiff and defense side. Going forward (and until Congress amends the jurisdictional statute), every debtor, creditor and bankruptcy-related litigant will need to give Stern v. Marshall some thought as they prepare to file for, pursue litigation in, support of proof of claim in, or defend against a lawsuit in bankruptcy.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Kevin Lantry of Sidley Austin. Kevin is a skilled bankruptcy attorney, knowledgeable with respect to both hardcore Chapter 11 (like plan confirmation), bankruptcy litigation (like complex fraudulent transfers), and bankruptcy transactional issues. In today's day and age, finding someone who is not overly "specialized" from a bankruptcy perspective can be a difficult task. And for that reason, Kevin deserves credit. What has impressed me most about Kevin, however, has been his ability to advocate in a gentlemanly fashion even in the more contentious situations. For both his legal acumen and personality, Kevin is someone who has impressed me over the years.

Q: What is a mistake you made early in your career and what did you learn from it?

A: Early in my career, I was researching the duties of an indenture trustee in an insolvency situation. In the course of the research, I completely missed an exception to the Trust Indenture Act of 1939 that made it inapplicable to municipal securities. Unfortunately, I still submitted, to the partner in charge of the case, a memorandum discussing the applicability of the TIA to the issues facing our client (the indenture trustee) with respect to municipal bonds. Of course, he immediately noticed my oversight and called me on it (as he well should have).

As a young attorney, I sometimes failed to adequately manage my own docket — agreeing to work on any case because of an ill-advised desire to be involved with ever major bankruptcy matter at the firm. This oversight with respect to the TIA on my part helped me to realize that I did not need to be involved in every case, and that stretching myself thin would result in mistakes. It is a lesson I preach to our junior attorneys on a consistent basis.

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