

What Do You Do If a Debtor Defaults on Its Confirmed Bankruptcy Plan?

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A recent opinion from the Michigan Court of Appeals explained that when a debtor defaults under a confirmed chapter 11 bankruptcy plan, a creditor can enforce its rights in state court, and perhaps also in the bankruptcy court.

In *City of Southfield v Shefa, LLC*,^[1] a debtor that owned a hotel filed for bankruptcy under chapter 11 of the Bankruptcy Code in 2015. The bankruptcy court confirmed the debtor's plan in 2016. The plan imposed a number of obligations on the debtor. Among these was a requirement that the debtor execute a mortgage in favor of the City of Southfield to secure the debtor's obligation to make certain physical improvements to its property. The mortgage also required the debtor to stay current on taxes and allowed for the appointment of a receiver on default.

In 2019, the City sued the debtor in Oakland County Circuit Court, asserting that the debtor had violated the terms of the mortgage. The City sought appointment of a receiver and foreclosure of the mortgage. The Circuit Court dismissed the case, holding that only the bankruptcy court could hear the dispute (i.e., had jurisdiction over the matter).

In a well-reasoned opinion, the Michigan Court of Appeals reversed, explaining that, although the bankruptcy court had exclusive jurisdiction over certain aspects of the bankruptcy proceeding, and may well have had jurisdiction over the City's lawsuit, its jurisdiction over the City's lawsuit was not exclusive. The Circuit Court had concurrent jurisdiction with the bankruptcy court over the City's lawsuit, meaning that it could also hear that dispute and thus should not have dismissed the suit.

The *Shefa* case is a reminder that a confirmed bankruptcy plan often imposes obligations on debtors as well as creditors. If a debtor defaults on its plan, a state court often has the ability to enforce the plan's obligations, especially those based in state law. This may be good news for creditors uncomfortable litigating in bankruptcy court, a venue which may feel unfamiliar to them.

[1] No. 350885, 2022 WL 413923 (Mich. Ct. App. Feb. 10, 2022).

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