

## Legal Alert

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**QUESTION: DOES A U. S. BANKRUPTCY COURT HAVE JURISDICTION OVER A *BEIS DIN*, OR JEWISH RELIGIOUS COURT?**

**ANSWER: AT LEAST IN THIS *VELT*, THE BANKRUPTCY COURT HAS ASSERTED ITS JURISDICTION OVER A *BEIS DIN* RELIGIOUS COURT.**

***Would a Bankruptcy Judge really have the chutzpah to enjoin a Jewish Rabbinical Court and issue sanctions against it?***

Congregation Birchos Yosef filed a Chapter 11 reorganization bankruptcy. *In re: Congregation Birchos Yosef*, Case No. 15-22254 (Bankr. S.D.N.Y.). After filing the Chapter 11 petition, Congregation Birchos Yosef filed an adversary lawsuit in bankruptcy court against Bais Chinuch L'Bonois, Inc. ("Bais Chinuch") and others alleging claims for fraud, breach of fiduciary duty and "looting" of assets of Congregation Birchos Yosef.

Bais Chinuch and the individuals involved with it retaliated with creative "forum-shopping." They invoked a *beis din* Jewish religious court called Beis Din Mecho L'Hora'ah. Beis Din Mecho L'Hora'ah issued a *hazmana* to the primary participants in Congregation Birchos Yosef "inviting" them to participate in a *beis din* proceeding about the dispute already before the bankruptcy court. Beis Din Mecho L'Hora'ah also issued an *ekul* enjoining the individuals with Congregation Birchos Yosef from continuing the litigation in bankruptcy court against Bais Chinuch *et al.* The *hazmana* warned the individuals that if they did not engage in the *beis din* proceedings they might be subject to a *sirov*. A *sirov* would mean the individuals would be shunned by their religious community and potentially shunned by all Orthodox Jews.

The lawyer for Congregation Birchos Yosef told those who started the *beis din* proceedings that they violated the automatic stay of the bankruptcy code. He demanded that they stop the *beis din* proceedings. He also took the position that the *ekul* was void as a violation of the automatic stay.

Bais Chinuch and the individuals continued seeking relief through the *beis din* and caused the *beis din* to issue a second *hazmana* threatening the principals of Congregation Birchos Yosef with the *sirov* of communal shunning or worse.

The bankruptcy court took a dim view of this interference with the bankruptcy proceedings noting that "the mere threat of the issuance of a *sirov*, and, in fact, the commencement of the *beis din* proceeding itself, has already adversely affected the Debtor, through its principals, and made it more difficult to conduct this case by

asserting significant pressure to cease pursuing the Debtor's claims against those who invoked the *beis din*." The bankruptcy court further noted:

The *beis din* proceeding and the threat of the *sirov* have already affected not only their standing in the community but also their children, who have been harassed and threatened with expulsion from school. There is no question that those who invoked the *beis din* foresaw the consequences of their actions on the Debtor and this case and that they are engaging in considerable hypocrisy in arguing to the contrary.

The Bankruptcy Judge sensed he was dealing with a *tsaddik in pelts* or two.

### ***Invoking the beis din violated the bankruptcy automatic stay.***

The automatic stay under 11 U.S.C. § 362(a) enjoins all activity against the debtor and the debtor's estate including beginning "a judicial, administrative, or other action or proceeding against the debtor...." The bankruptcy court noted "the purpose of commencing the *beis din* proceeding and seeking *ekul* relief was to control the adversary proceeding, an estate asset, in contravention of 11 U.S.C. § 362(a)(3)." The Court found a clear violation of the automatic stay and indicated a further hearing would be held on actual damages and punitive damages.

The judge "imposed coercive sanctions on Bais Chinuch" and the individuals involved with it by telling them to cease the *beis din* and vacate the *ekul*. "The coercive sanction for each one of them was \$10,000 per day...."

### ***First Amendment considerations?***

The defendants argued that enforcing the automatic stay in this case would violate the Free Exercise or Establishment Clauses of the First Amendment. The "Church Autonomy Doctrine" did not apply because: "The Debtor's adversary proceeding claiming fraud, breach of fiduciary duty and looting involves no issue of religious doctrine, nor is it an interchurch dispute." Where "third parties would be harmed" the civil courts do not defer to claims that conduct is religious exercise. (The First Amendment analysis in the case is lengthy and interesting, but for this article I have only summarized the conclusions.)

### ***Conclusion***

Don't take actions against bankruptcy debtors or bankruptcy estates after the filing of the bankruptcy petition even in Rabbinical Courts!

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