



OFFSHORE ASSET PROTECTION ALERT*

Lessons Learned from the Case of Michael R. Mastro

The largest individual bankruptcy proceeding in the U.S. Bankruptcy Court for the Western District of Washington has just commenced, and already creditors are taking aim at an offshore asset protection trust established under questionable circumstances. In the case of *In re Michael R. Mastro*, one of the most well-known real estate developers in the State of Washington lists \$249 million of assets against almost \$600 million in debts.

The bankruptcy trustee has focused on a combination of Delaware LLCs, and domestic and offshore trusts, to allege that Mastro has engaged in a complex series of fraudulent transfers. In particular, the trustee claims that Mastro's personal residences, a Rolls Royce automobile, and countless jewelry have been titled into a Delaware series LLC owned entirely by a Belize trust. More alarming is that Mastro's asset protection attorneys are alleged to be the directors of the Belize trust company and instrumental in helping Mastro to place his assets beyond the reach of creditors.

According to the complaint, the bankruptcy trustee alleges that Mastro and his wife engaged in a series of transfers involving no money in June 2008. At that time, the home ended up in the ownership of a Delaware series LLC. Ownership of that LLC was later ceded to a trust and, on May 15, 2009, Mastro and his wife allegedly transferred control of their trust to a Belize trustee.

The bankruptcy trustee has asserted that the Mastros engaged in these transfers shortly after being introduced by their bankruptcy lawyer to, and engaging the services of, a law firm advertising its focus on asset protection planning. The law firm's website promotes the services of a Belize trust company, and its two named partners are also identified in the court proceedings as directors of the Belize trust company.

BAD FACTS MAKE BAD CASE LAW

We can see creditors focusing on three material facts in the Mastros' bankruptcy. First, the Mastros established and funded their asset protection structure inside of the two year fraudulent transfer period under U.S. Bankruptcy Law. Second, it does not help the Mastros that their lawyers appear to run the Belize trust company. Because their lawyers wear two hats (trustee and counsel), we anticipate that the creditors will move to set aside attorney-client privilege and examine the Mastros' lawyers on exactly what transpired in their conversations. Third, perhaps the most vulnerable aspect of the asset protection planning pursued by the Mastros and their lawyers revolves around the use of a Delaware series LLC to hold the Mastros' assets. While ownership of the LLC may be parked with a Belize trust, we find it hard to believe that effective protection has been achieved where the assets remain in the jurisdiction. In fact, one of the Mastros' creditors has already commenced foreclosure proceedings against the real estate in one of the Delaware LLC series. We expect to see the U.S. Bankruptcy Court set aside the transfers into the Delaware LLC and reach the assets for the benefit of the Mastros' creditors.

Critics of offshore planning will point to the Mastro case as a shining example of abusive practice by the attorneys in this case. We cannot disagree with much of the criticism being levied against the Mastros' lawyers. However, we think cases such as this should be judged—and appropriately isolated—on their facts. Had the Mastros visited their lawyers before they found themselves in trouble, and had their lawyers proficiently protected their assets and stayed out of the trustee business, the Mastros would likely be in a far superior position than the one they are in today.



**This article contains excerpts from Offshore Insight - October 2009, with permission from Southpac Group Switzerland, Gmb.*

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Jeffrey M. Verdon Law Group, LLP a boutique trusts and estates law firm with offices in Irvine, CA and Las Vegas, NV. The firm, which has specialized in asset and lifestyle protection planning for over 25 years, is rated "AV" by Martindale Hubbell.

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