

## Bankruptcy, Restructuring & Commercial Law Advisory

APRIL 25, 2014

### And the Tie Goes to ... Due Process

BY [KEVIN J. WALSH](#) AND [ERIC R. BLYTHE](#)

Debtors must provide known creditors with actual notice of a claims bar date if they want the bar date to apply to those creditors. Such was the holding in *In re Majorca Isles Master Association, Inc.*, Case No. 12-19056-AJC, Dkt. No. 222 (Bankr. S.D. Fla. March 27, 2014), where the bankruptcy court stated that when both a debtor and a creditor are “guilty in the handling of a claim and the [d]ebtor is aware of the creditor’s claim, then a tie goes to the creditor[.]” and the creditor’s claim will be allowed.

In *Majorca*, a building developer (the “Creditor”), asserting an unsecured claim against the debtor, sought relief from its failure to file a proof of claim prior to the claims bar date. It was undisputed that the Creditor was not listed on the debtor’s schedules, was not included in the mailing matrix, and was not served with notice of the claims bar date. However, it was also clear that the Creditor was aware of the debtor’s bankruptcy case prior to the claims bar date — the Creditor had been involved in pre-litigation mediation with the debtor in which the claims between the parties were discussed.

In its Motion to Deem Late Filed Proof of Claim as Timely Filed, the Creditor relied upon the principles of “excusable neglect” and “due process.” The debtor, on the other hand, argued that the Creditor’s claim should be barred because the Creditor failed to investigate its claim, despite knowledge of the bankruptcy proceeding. Applying the excusable neglect standard enunciated in the Supreme Court’s *Pioneer* case, the bankruptcy court determined that allowing the Creditor’s late-filed claim would not prejudice the debtor, would not adversely impact the efficient administration of the case (there was no reorganization plan before the court), and would not adversely impact other creditors (the debtor had not yet paid any claims). In addition, the court found no indication that the delay in filing the claim was based on the Creditor’s bad faith.

Not resting solely on the *Pioneer* standard however, the court stated that “[t]he [d]ebtor has a duty to determine which creditors should be listed as pre-petition creditors and which creditors should be included on the mailing matrix and given actual notice of a [claims bar date:] ... [a creditor’s k]nowledge of the existence of the bankruptcy case is no excuse for not providing [the creditor] actual notice.” The court explained that when a debtor fails to include a known potential creditor as a claimant on a mailing matrix and fails to give the creditor actual notice of a claims bar date, the creditor is denied due process. Indeed, even constructive notice by publication may be deemed insufficient. In sum, the court held that because known creditors of a debtor are entitled to actual notice of a claims bar date before their claims can be extinguished, the court allowed the Creditor’s late-filed claim.

Despite the favorable decision for the Creditor in *Majorca*, creditors are advised to be more vigilant in determining their rights and deciding how to assert them in a bankruptcy case. Otherwise, creditors may find themselves having to rely on the results of litigation.

If you have any questions about this decision or its implications, please call your principal Mintz Levin attorney or one of the attorneys noted on this advisory.

---

View Mintz Levin's Bankruptcy, Restructuring & Commercial Law attorneys.


---

Boston · London · Los Angeles · New York · San Diego · San Francisco · Stamford · Washington

[www.mintz.com](http://www.mintz.com)

Follow Us



 **Feedback:** Was this mailing helpful?

Copyright © 2014 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

This communication may be considered attorney advertising under the rules of some states. The information and materials contained herein have been provided as a service by the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.; however, the information and materials do not, and are not intended to, constitute legal advice. Neither transmission nor receipt of such information and materials will create an attorney-client relationship between the sender and receiver. The hiring of an attorney is an important decision that should not be based solely upon advertisements or solicitations. Users are advised not to take, or refrain from taking, any action based upon the information and materials contained herein without consulting legal counsel engaged for a particular matter. Furthermore, prior results do not guarantee a similar outcome.

Your e-mail address is never shared with any third parties. For more information, view our [Privacy Statement](#).

[Sign up here](#) to receive periodic e-mails notifying you of new publications, news, and events in your areas of interest.

3923-0414-NAT-BRC