

Why Are Adversary Proceedings Necessary? by Carmen Dellutri, Southwest Florida Bankruptcy Attorney on January 26, 2010

An Adversary Proceeding is defined as: A lawsuit filed within the Bankruptcy Case. If you are a debtor in bankruptcy, it is possible that you, or your attorney, may sue a creditor or someone else, or you may be sued by a creditor or even the bankruptcy trustee. So, in essence it is a proceeding related to the bankruptcy case.

Should you as the debtor be concerned about an adversary proceeding? Yes, a debtor should always be concerned about an adversary because the adversary may have been filed against you. Likewise, if your attorney sued another party, a creditor, then you should still be concerned because of the potential ramifications a settlement may have on your case.

Normally, it is the creditor who initiates an adversary proceeding against a debtor. My colleague, Karen Oakes, wrote a blog titled: What is an Adversary Proceeding, a while ago. She did a great job explaining the basics. Here, my focus is to give a little insight into the reasoning for having adversary proceedings in the Bankruptcy Code and a few reasons for using them.

As a bankruptcy attorney, I have a duty to protect the rights of my clients. Sometimes I have to file an adversary proceeding to stop wrongful conduct or prevent something bad from happening. Other times I have to defend my client from an adversary proceeding wherein someone alleges that my client has done something very wrong.

Usually creditor will file an adversary proceeding alleging that the debtor has done something wrong. Sometimes the creditor is correct, and they can prove their cases. When that happens, it is usually in the Debtor's best interest to try and settle on favorable terms.

Believe it or not, sometimes creditors will file adversary proceedings without having all of their ducks in a row. When that happens, it is the Debtor's best interest to litigate the case aggressively. Recently, I defended a client who was sued by FIA card. I knew that I was going to win this case, and I spoke about it with local counsel. I explained to him that the lawsuit was frivolous. We recently tried the case, and the Debtor won.

The problem is that the Debtor has now incurred attorney's fees that he wouldn't have had to incur. Although we are asking the Judge to allow us attorney's fees under 11 U.S.C. 523(d), the Judge has not ruled on that issue yet.

It seems that FIA Card is working harder on not paying attorneys fees than it did on preparing and prosecuting the lawsuit.