

## Outside Counsel

# When Reality Television Gets Real: Housewives in Bankruptcy

**B**ankruptcy Court has become a more glamorous destination with the advent of Bravo TV's "Real Housewives" series, which films the lives of socialite women in some of the most exclusive zip codes in the country. On any given day, a not-insignificant number of the show's stars could just as easily be found lurching on some variation of a skinny cocktail or striding on precarious heels into a courtroom.

Despite evidence to the contrary, the Real Housewives are adamant in their contempt for rumors and drama. As such, this article seeks to set the record straight on the bankruptcies of Sonja Tremont-Morgan and Teresa Giudice.

### Fighting to Keep her Home

Divorced in 2008 from John Adams Morgan, the multi-millionaire descendant of investment banker J.P. Morgan and President John Adams, Sonja Tremont-Morgan joined the "Real Housewives of New York City" (RHONY) in 2010 during the show's third season. She had recently appealed a judgment awarded against her for approximately \$7 million. According to Hannibal Pictures, Inc., the plaintiff in the lawsuit, she agreed to finance a movie called "Fast Flash to Bank Time," in which John Travolta was set to star. She backed out of the movie, and was sued by Hannibal.

Subsequently, on Nov. 17, 2010, Tremont-Morgan filed a chapter 11 bankruptcy petition in the Bankruptcy Court for the Southern District of New York. On Jan.



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10, 2011, she placed STAM LLC, a personal holding company she controlled and which owns her New York City townhouse in bankruptcy. On May 1, 2012, she filed bankruptcy for another company she owned, whose primary asset was a French villa located in Ramatuelle, France. The three debtors' estates were substantively consolidated, and a chapter 11 trustee was appointed over them.

Tremont-Morgan's primary objective in filing for bankruptcy was to protect her Manhattan townhouse in the event that the \$7 million judgment was upheld against her. In her very first RHONY blog, she wrote: "If I ever lose my townhouse I will be crushed. It's our main home and where my daughter feels secure."<sup>1</sup>

Tremont-Morgan's bankruptcy petition reflected \$26,000 in monthly income, which included monthly child support payments, and \$40,406 in monthly expenditures. Those expenditures comprised a whopping \$1,000 per month for clothing, \$2,100 for food, \$2,311 for medical and dental expenses, \$1,790 for transportation (not including car expenses), and \$2,400 per month in child care expenses for her daughter. Those familiar with RHONY will likely not be surprised at the steep expenses, particularly in the medical cat-

egory. Tremont-Morgan often emphasized on the show and in her blog the importance of alternative health treatments, stressing that "[w]orkouts, facials, vitamin routine, my chocolate banana sesame shake (LOL), green juices, yoga retreats, appointments with Dr. Eric Braverman (my life longevity guru) all take a prominent position in my calendar,"<sup>2</sup> not to mention "poop pills" and facials.<sup>3</sup>

Tremont-Morgan also listed three different real properties in her bankruptcy petition in which she had an interest: her Manhattan townhouse with no mortgage; a heavily mortgaged Telluride, Colo., vacation house; and the French villa. (As Tremont-Morgan's bankruptcy case progressed, she ultimately sold the French property on May 31, 2014, netting proceeds of \$4.52 million. She also agreed in her proposed plan of reorganization to either sell the Colorado property and distribute certain proceeds to the lender, or to convey the property back to the lender with an additional cash payment.) The personal property listed by Tremont-Morgan in her petition amounted to \$5.4 million, including bank accounts with almost \$2 million, \$17,000 in jewelry and furs, a Mercedes, a BMW, an entitlement to over \$3 million in unpaid alimony, and malpractice claims against her former lawyers.

On May 11, 2011, the U.S. Court of Appeals for the Ninth Circuit upheld the \$7 million judgment against Tremont-Morgan. Just a few weeks later, after a spat with a fellow housewife, she reiterated her resolve to keep her townhouse on her blog:

I am just trying to keep my daughter in her childhood home (that's always

been mine) and fight to get my cash out of the marital homes that I invested in.<sup>4</sup>

Tremont-Morgan continues to fight hard to keep her townhouse. Hannibal Pictures tried repeatedly to convert her bankruptcy case to a chapter 7 case or to dismiss it altogether, citing her excessive expenditures and supposedly improper basis for filing bankruptcy. Hannibal also objected to the multiple versions of the plans of reorganization and disclosure statements disseminated by Tremont-Morgan, arguing that unless her creditors were all paid in full, she could not keep her townhouse.

In her latest chapter 11 plan proposal, Tremont-Morgan proposes two options. If she can close on a mortgage commitment in the amount of at least \$3.16 million within 45 days of the Dec. 18, 2014, confirmation hearing, she can keep her townhouse. Under that scenario, unsecured creditors will receive a cash payment in a mutually agreed discounted amount. If no agreement is reached, unsecured creditors will be paid 100 percent of their claims over a period of five years. The immediate cash payments will be made from existing cash reserves plus the net proceeds of the mortgage financing.

If Tremont-Morgan cannot close on the mortgage commitment, the chapter 11 trustee is entitled to sell her townhouse in order to pay creditors. Hannibal has agreed to this arrangement.

### Heading to Prison

Real Housewives of New Jersey's (RHONJ) Teresa Giudice is faring much worse than Tremont-Morgan. The infamous table-flipper was an original cast member of the RHONJ when the show first aired in 2009. In her first blog, Giudice asked viewers to weigh in on whether she should get new "bubbies."<sup>5</sup> Just a few months later, Giudice and her husband Joe Giudice filed a joint chapter 7 bankruptcy petition in the Bankruptcy Court for the District of New Jersey in order to halt various litigation filed against them and their companies and to prevent those companies from being placed into foreclosure. Teresa Giudice subsequently explained the reason for their bankruptcy filing in her blog:

As you know, Joe and I filed for bankruptcy protection back in October

2009 primarily because of real estate deals gone bad in a bad economy. We didn't spend millions of dollars on gold toilets or private planes. We bought buildings, fixed them up, and tried to help other people start their own businesses or be able to afford an apartment. The economy crash trickled down to everyone. ...Of course you can't sit in your bed and just cry all day, so we moved forward, got new jobs, and are working hard once again. The point is to get a fresh start so you can move forward.<sup>6</sup>

The respective bankruptcies reflect one of the most important distinctions between chapter 7 and 11: control by the debtor.

The Giudices listed values for their personal property which were surprisingly low, given Teresa Giudice's demonstrated penchant for spending on the show. The value of the entire family's clothing was listed at only \$3,000, and their jewelry was valued at only \$2,150. Viewers who remember Teresa Giudice paying for household furniture with wads of cash would be shocked to note that the Giudices also indicated in their petition that they had no cash on hand. The Giudices also claimed that their combined income for the previous year totaled \$575,000, and that their combined current income averaged \$16,583 per month.

At first, the Giudices' bankruptcy filing did not factor extensively into the RHONJ. At the beginning of Season 2, Teresa Giudice announced on her blog that she had given birth to her fourth baby girl, and that she had also written a cookbook called "Skinny Italian."<sup>7</sup> Just one month later, the chapter 7 trustee appointed in the Giudices' bankruptcy case filed an adversary proceeding objecting to their discharge. The chapter 7 trustee alleged that the Giudices concealed their interests in multiple businesses, including a pizza parlor and laundromat, as well as Teresa Giudice's company, TG Fabulicious LLC. The chapter 7 trustee also alleged that Teresa Giudice had failed to disclose

her interest in a published book written prior to the filing of the petition, a.k.a., "Skinny Italian."

Nonetheless, Teresa Giudice continued to flaunt a lavish lifestyle on the show by throwing an extravagant baby christening for her newest daughter, complete with a Marie Antoinette look-alike serving sushi off her dress. She defended the party on her blog:

Of course it was over the top—it's a once in a lifetime event! But before any of the haters jump on me about it, realize it was filmed by Bravo at the Brownstone and planned by Dina. They obviously all took great care of me.<sup>8</sup>

In the same blog, Teresa Giudice also defended herself against the rumors circulating about her house being taken away: "Let's say it again, all together: 'My house is not, nor ever was, in foreclosure.'" In reality, the chapter 7 trustee ultimately caused the Giudices' home, valued at approximately \$1.65 million to be abandoned.

The U.S. Trustee, which acts as a representative of the U.S. Department of Justice in overseeing bankruptcy cases, also commenced an adversary proceeding on Sept. 2, 2010 objecting to the Giudices' discharge. The U.S. Trustee scrutinized the Giudices' bankruptcy filings even more closely than the chapter 7 trustee's complaint, pointing out that they had undervalued their income (Teresa Giudice claimed to earn less than half of what Bravo was actually paying her) and debts, and failed to disclose even more business interests, bank accounts and vehicles. Ultimately, in September 2011, the Giudices agreed to waive their bankruptcy discharges and terminate their bankruptcy case so that the U.S. Trustee would stop its investigation. Teresa Giudice put a different spin on the terminated bankruptcy case:

The economy was really tough two years ago, especially if you were in construction and owned buildings like Joe and I did. ...We filed for bankruptcy, and the amount was huge because it included the full mortgage on several buildings. Of course, good news isn't reported as often as bad news, but here's our good news: the banks were able to sell our buildings, which was most of our debt, so we withdrew our bankruptcy petition

and are working on paying off the rest of our debt ourselves!<sup>9</sup>

The Giudices' troubles were far from over. The U.S. Department of Justice commenced its own investigation and found wrongdoings by the Giudices that preceded their bankruptcy filing. Teresa and Joe Giudice were both arrested on July 30, 2013, after a federal grand jury returned a 39-count indictment charging them with conspiracy to commit mail, wire, bank, loan application, and bankruptcy fraud. Joe was also charged with willful failure to file tax returns.

The indictment charged the Giudices with submitting fraudulent mortgage and other loan applications to financial institutions in order to obtain loans. The couple misrepresented their employment and income on the applications, and created fake tax returns, W-2 forms, and pay stubs to submit to the lenders. After the Giudices accrued a large amount of debts this way, they then engaged in bankruptcy fraud to try and discharge their debts.

The Giudices signed plea agreements on March 4, 2014, and sentencing was scheduled for Oct. 2, 2014. On Sept. 23, 2014, Teresa Giudice made the following announcement on her blog:

Wow. I really have so much to say. I will share, but I'm getting ready for the biggest day of our lives. I will be sharing when I can.

But now is the time when I need to focus on the next ten days and not comment on the episodes.<sup>10</sup>

The District Court for the District of New Jersey sentenced Teresa Giudice to 15 months in prison. Her sentence begins on Jan. 5, 2015. When her term is complete, Joe Giudice will enter prison for 41 months.

### Differences in Bankruptcies

The respective bankruptcies of Sonja Tremont-Morgan and Teresa Giudice reflect one of the most important distinctions between a bankruptcy filed under chapter 7 and 11: control by the debtor. A chapter 7 bankruptcy filing dictates that the debtor's assets will be sold off to pay creditors. A debtor in chapter 11 can negotiate with creditors to alter the terms of repayment without necessarily having to liquidate assets.

From the outset of Teresa Giudice's chapter 7 case, she had little choice but to reveal and turn over her non-exempt

assets. Her failure to do so culminated in the investigation against her and ultimately, her prison sentence. On the contrary, even with the appointment of a chapter 11 trustee, Tremont-Morgan was able to enjoy the major benefit of chapter 11 for individuals, which is the ability to keep assets beyond just the statutory exemptions available under chapter 7. Tremont-Morgan was also able to take advantage of the reality that chapter 11 individual cases are relatively infrequent, and so the law applied to chapter 11 consumer cases has been largely unsettled. One example of unsettled law is whether bankruptcy's absolute priority rule still applies in individual chapter 11 cases after the enactment of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA).

Ultimately, in September 2011, the Giudices agreed to waive their bankruptcy discharges and terminate their bankruptcy case so that the U.S. Trustee would stop its investigation.

BAPCPA added the following language to 11 U.S.C. §1129(b)(2)(B)(ii), which includes the requirements that must be met in order for a plan of reorganization to be fair and equitable:

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

11 U.S.C. §1129(b)(ii)(B)(2) (2014).

Section 1115(a)(1) and (2), another addition by BAPCPA, deals with property of estate where the debtor is an individual, and refers only to "all property of the kind specified in section 541 that the debtor acquires *after* the commencement of the case but before the case is closed, dismissed, or converted," and "earnings from services performed by the debtor *after* the commencement of

the case but before the case is closed, dismissed, or converted." 11 U.S.C. §1115(a)(1) and (2) (2014) (emphasis added).

The Bankruptcy Court for the District of Connecticut was the first court in the U.S. Court of Appeals for the Second Circuit to address this issue in the recent opinion of *In re Lucarelli*, Case Nos. 13-30350, 13-30443, 2014 WL 4388250 (Bankr. D. Conn. Sept. 4, 2014). The court concluded that BAPCPA modified, but did not eliminate, the absolute priority rule in individual chapter 11 cases. Therefore, an individual chapter 11 debtor whose plan does not propose to pay a class of rejecting unsecured claimants in full may retain only post-petition property and earnings, and nothing more.

Hannibal objected to the multiple plans of reorganization disseminated by Tremont-Morgan, arguing that unless her creditors were paid in full, she could not keep her townhouse and still satisfy the absolute priority rule. Tremont-Morgan responded that the absolute priority rule does not apply in individual chapter 11 cases. The scarcity of case law on this topic may have been the reason Hannibal was ultimately willing to agree to a plan proposal under which Tremont-Morgan was given an opportunity to refinance the mortgage on her townhouse. Whether or not Tremont-Morgan is ultimately successful in keeping her townhouse is too soon to tell, but her attempts to do so are largely due to the control she was able to maintain as a chapter 11 debtor.

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1. <http://www.bravotv.com/the-real-housewives-of-new-york-city/blogs/sonja-morgan/confidence-is-sexy>.

2. <http://www.bravotv.com/the-real-housewives-of-new-york-city/season-5/blogs/sonja-morgan/part-of-the-team?page=0.3>.

3. <http://www.bravotv.com/the-real-housewives-of-new-york-city/season-6/blogs/sonja-morgan/sonjas-glad-aviva-threw-her-leg?page=0.1>.

4. <http://www.bravotv.com/the-real-housewives-of-new-york-city/season-4/blogs/sonja-morgan/im-real?page=0.1>.

5. <http://www.bravotv.com/the-real-housewives-of-new-jersey/blogs/teresa-giudice/to-bubbie-or-not-to-bubbie>.

6. <http://www.bravotv.com/the-real-housewives-of-new-jersey/blogs/teresa-giudice/a-fresh-start?page=0.0>.

7. <http://www.bravotv.com/the-real-housewives-of-new-jersey/blogs/teresa-giudice/come-back-from-the-crazy>.

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10. <http://www.bravotv.com/the-real-housewives-of-new-jersey/season-6/blogs/teresa-giudice/teresa-i-love-the-show-i-love-my-fan>.