

BKBM'S Surety Group Obtains Substantial Preliminary Injunction

In the case of United States Surety Co. v. Mabus Brothers Construction Co., Inc., CAFN 1:13-cv-00153, United States District Court, Southern District of Georgia, BKBM attorney, Greg Veal, obtained a preliminary injunction requiring indemnitors of the disputed obligation to post over \$500,000 in collateral despite allegations of bad faith and inflated demand.

BKBM's Litigation Group Obtains Defense Jury Verdict

In the case of Redi-Floors, Inc. v. Jasmine at Holcomb Bridge, LLC, et al., CAFN 12C01746-4, State Court of Gwinnett County, BKBM attorneys, Steve Kyle and Jared Heald, received a defense verdict in favor of their client at the conclusion of a weeklong trial. The dispute between the parties centered on whether BKBM's client, an apartment management company, was the party responsible for payment of a vendor's past-due account or if, instead, the debt was owed by the apartment complex owner who had previously filed for bankruptcy. The jury agreed with BKBM's asserted position that it was the apartment complex owner and not BKBM's client that was responsible denying the plaintiff's contract based claims as well as claims for fraud and other alternative grounds upon which plaintiff attempted to hold BKBM's client liable for the debt.

BKBM Attorney, Charles Medlin, Obtains Successful Jury Verdict in Major Trial

In the case of Auto-Owners Insurance Company v. Dean & Moore Insurance, Inc., Douglas Terry Dean, Distinct Advantage Premium Finance, Inc., and Express Premium Finance, Inc., CAFN 09CV-2800FM, Superior Court of Cherokee County, Attorney Charles Medlin's client, Auto-Owners, suffered from a rogue insurance agent in Georgia, Terry Dean, who stole from premium finance companies over a 12 month period, creating a complex Ponzi scheme that defrauded the companies. The opposing parties argued Auto-Owners knew or should have known of the activities and that Auto-Owners was responsible for all the damages caused by one of its agents. Auto-Owners asked for \$285,000.00 and the opposing parties asked for a combined 6.1 million dollars. After the case had been going on for over three and a half years, it went to jury trial August 30, 2013 in Cherokee County Superior Court.

The jury deliberated and had to issue two verdicts. The first verdict was a question that was designed to assign responsibility for Terry Dean's wrongdoing in an agent / principal relationship. The jury was out less than an hour; they found that Terry Dean was the agent for the premium finance company when he completed the premium finance application. The jury also took less than an hour on the second verdict form, and they found for Auto-Owners on our claims. The jury awarded Auto-Owners the full \$285,000.00 it requested, and found for Auto-Owners on both of the opposing parties' claims, awarding them zero. They found zero fault on Auto-Owners, and found all of the fault on the side of both premium finance companies.

BKBM Attorneys Obtain Summary Judgment For Client in Trademark Infringement Lawsuit

United States District Court Judge Thomas Thrash recently granted motions for summary judgment for BKBM clients sued by Brown Bark II, L.P., an investment group that had purchased certain trademarks and had claimed infringement. *Brown Bark II, L.P. v. Dixie Mills, LLC*, Civil Action No.

1:08-CV-1303-TWT, 2010 U.S. Dist. Lexis 79867 (N.D.GA), Decided August 6, 2010.

BKBM clients, Ted A. Adams, Adams Foods, Inc. and Adams Milling, Inc. ("Adams") had sold food products, including cornmeal, flour and southern breading under the Adams mark until 1999, at which time the Adams mark was sold to Southern Specialty Brands, Inc. ("SSB"). SSB gave a note to Adams secured by the trademark and its goodwill. In 2006, SSB defaulted on the note and Adams obtained a judgment against SSB giving it back full rights to the Adams mark.

In 2006, SSB defaulted on its unrelated debt to Regions Bank. In 2007, Regions sold the non-performing SSB loan to Brown Bark II, L.P. ("Brown Bark"). Brown Bark attempted to foreclose on SSB and believed that it had properly obtained title to the collateral securing the Regions Bank debt, which included the Adams mark.

Shortly thereafter, Adams started selling products under the Adams mark again. Brown Bark sued Adams for trademark and trade dress infringement and other related claims including civil conspiracy.

Relying on the record and authority developed by Adams' BKBM attorneys Charles M. Medlin and Wayne S. Tartline, the District Court found that Adams owned the Adams mark due to the judgment in Alabama, despite that Brown Bark was not a party to the judgment. The Court also ruled that Brown Bark had abandoned its interest in the Adams mark because it had acquired the mark through an "assignment in gross". An assignment in gross results when only the mark is sold, without any related goodwill, such as recipes or formulas for the food products sold under the Adams name. "A sale (assignment) of a trademark apart from its goodwill is characterized as an 'assignment in gross' and passes no rights to the assignee". *In re Impact Distributors, Inc.*, 260 B.R. 48, 53 (Bankr. S.D. Fla. 2001). When a trademark is obtained through an assignment in gross, divorced from the goodwill of the assignor, any subsequent use of the mark by the assignee will necessarily be in connection with a different business, a different goodwill and a different type of product. Use of the mark by the assignee in connection with a different goodwill and different product would result in a fraud on the purchasing public, who reasonably assume that the mark signified the same things, whether used by one person or another. *MoneyStore v. Harriscorp Finance, Inc.*, 689 F.2d 666, 676 (7th Cir. 1982) (quoting McCarthy on Trademarks 18.1 at 607).

After obtaining summary judgment in favor of Adams, BKBM attorneys obtained a judgment for all costs of the action against the Plaintiff. A Motion For Attorneys' Fees is also pending which could result in a judgment for Adams of over \$100,000.00.

BKBM's Family Law Group Achieves Significant Custody Win for Father

Father and Mother with a 1 year old son had decided to divorce. One month after they "discussed" divorce, Mother told Father they were "now" divorced. Father could not understand how they could be divorced when he had never seen a *Complaint for Divorce*, was never served, never signed any documents, and never attended any Court hearings. Father went to his County to retrieve the record and saw that his name had been forged to all divorce pleadings. Father saw that Mother had obtained custody for herself of the minor child, had obtained an Order of child support for Father to pay (which Father did

not even know about) and had obtained an Order in which Father was to pay all marital debt. Father hired attorney Marilyn Kapaun from BKBM Family Law to overturn the divorce and then represent him in a valid divorce action in which Father sought custody of the minor child. BKBM served Mother with a *Motion to Set Aside the Divorce Decree*, and Mother absconded to another state with the minor child. Our firm represented Father at an Emergency Hearing where the Judge ordered the Mother to return the child to the jurisdiction under penalty of incarceration pursuant to our Emergency Order. We represented Father regarding the Set Aside of the original divorce decree. Attorney Kapaun obtained an Order in which Mother was found to have signed Father's name to all pleadings and this was submitted to the local police to pursue Mother criminally for forgery and fraud. The original divorce was set aside. Attorney Kapaun represented Father at two probable cause hearings against the Mother for forgery and fraud, and the Municipal found probable cause to arrest Mother for forgery in the first degree, a felony. Mother was arrested a second time. Attorney Kapaun represented Father in the new divorce action and prevailed in obtaining custody for this Father.

Charles Medlin and Marilyn Kapaun Overturn a Guardian ad Litem Report in Favor of their Client

While it is very difficult to overturn a *Guardian ad Litem's* report in a custody case, Charles Medlin and Marilyn Kapaun did just that! Their client's former spouse filed an action in an attempt to take custody away from their client. A Guardian was appointed who recommended that the opposing party first receive "more" custody and then receive "primary" custody of the parties' children. Marilyn Kapaun argued that a material change in circumstances had not occurred, and thus a change of custody was not warranted. Charles Medlin argued the case in Forsyth County. Our BKBM attorneys prevailed, and Judge Dickinson stated that while the parties could agree on their own to a small change in parenting time, Judge Dickinson agreed with Marilyn and Charles' arguments that no material change in circumstances had occurred since the parties' divorce that warranted the opposing party receiving primary custody. A big win for BKBM Family Law and a significant and personal win for their very happy client

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