

BY CALEB CHAPLAIN AND VINCENT J. ROLDAN

A “Cringeworthy,” Cautionary Tale

How the NRA Missed Its Shot at Chapter 11

When the National Rifle Association of America (NRA) filed a chapter 11 petition, many (including members of its own board of directors) were surprised to hear the news. Having presided over a trial of “cringeworthy facts,”¹ the bankruptcy court rejected various arguments that had surface-level appeal. Ultimately the bankruptcy court was persuaded, in part due to direct testimony from the individual who authorized the NRA to file for bankruptcy, that the NRA had filed primarily to avoid dissolution by New York Attorney General Letitia James. As it turns out, “avoid[ing] the death penalty”² imposed by a regulatory scheme was not “a valid bankruptcy purpose” for the New York nonprofit, thus the gun group was determined to have filed in bad faith. Accordingly, the bankruptcy court dismissed the case and denied the NRA an attempt to reorganize under chapter 11.

Although the case was short-lived, its message might be long remembered. The outcome underscores the importance of exercising one’s authority to file a petition for bankruptcy relief for “a valid bankruptcy purpose.” More appreciably, the result stresses the need for debtors (and their counsel) to carefully evaluate options internally, discuss these options with various stakeholders, and properly communicate a valid bankruptcy purpose to satisfy the good-faith requirement for seeking protection in bankruptcy.

New York and the NRA

In November 1871, New York state granted the NRA a charter.³ Formed by Union veterans Col. William C. Church and Gen. George Wingate to “promote and encourage rifle shooting on a scientific basis,”⁴ it currently boasts 5 million members and approximately \$300 million in annual revenue.⁵ Today, the NRA is known not simply for its firearms education but more notably for its political activity, particularly for the promotion and protection of Second Amendment rights.

Almost 150 years after its founding and following a 15-month investigation, James concluded

that there was “widespread misuse of assets by the NRA’s executive vice president and his circle of insiders for their personal benefit.”⁶ On Aug. 6, 2020, James filed a complaint in New York state court against the NRA and four individual defendants, seeking, among other relief, the NRA’s dissolution.

James charged the nonprofit, charitable corporation with “a culture of self-dealing, mismanagement, and negligent oversight ... that was illegal, oppressive, and fraudulent.”⁷ Most notable of the individual defendants was Wayne LaPierre, who has acted as the NRA’s executive vice president for nearly three decades. LaPierre, according to the state court complaint, “exploited the organization for his and his family’s financial benefit, and the benefit of a close circle of NRA staff, board members, and vendors,” packing positions of senior staff with individuals loyal to LaPierre, even though those selected “fail[ed] to meet the necessary skills or experience for their respective roles and responsibilities.”⁸ Although the full details of the complaint are beyond the scope of this article, the 163-page complaint evidences no love lost between the NRA and New York.

Bankruptcy in Its Sights

Sensing trouble in New York, the NRA engaged bankruptcy counsel and formed Sea Girt LLC “as a transition vehicle to facilitate the NRA’s relocation to Texas.”⁹ During its Jan. 7, 2021, meeting, the NRA’s board of directors approved an employment agreement for LaPierre, which provided that he could “exercise corporate authority in furtherance of the mission and interests of the NRA, including without limitation to reorganize or restructure the affairs of the Association for the purposes of cost-minimization, regulatory compliance or otherwise.”¹⁰

No mention or discussion of bankruptcy was made during this meeting,¹¹ thus it came



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1 The bankruptcy court in its opinion dismissing the NRA case commented that “there were cringeworthy facts during this trial.” *In re Nat’l. Rifle Ass’n of Am.*, Case No. 21-30085 (HDH), 2021 WL 1970738, at *17 (Bankr. N.D. Tex. May 11, 2021).

2 During the opening statement at trial, counsel for the NRA remarked that the first of the “three goals in mind” in filing the bankruptcy case was to “avoid the death penalty. Avoid dissolution.” *Id.* at *9.

3 “A Brief History of the NRA,” Nat’l Rifle Ass’n, available at home.nra.org/about-the-nra (unless otherwise specified, all links in this article were last visited on June 28, 2021).

4 *Id.*

5 *In re Nat’l Rifle Ass’n of Am.*, 2021 WL 1970738, at *1.

6 *Id.*

7 “Attorney General James Files Lawsuit to Dissolve NRA,” N.Y. State Office of the Attorney General (Aug. 6, 2020), available at ag.ny.gov/press-release/2020/attorney-general-james-files-lawsuit-dissolve-nra.

8 *Id.*

9 *In re Nat’l Rifle Ass’n of Am.*, 2021 WL 1970738, at *4.

10 *Id.*

11 *Id.*

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as a shock when eight days later both the NRA and Sea Girt LLC filed voluntary chapter 11 petitions in the U.S. Bankruptcy Court for the Northern District of Texas. After filing its petition, the NRA was quickly forced to defend against various motions, including a motion to dismiss filed by James. The relief sought by numerous parties, “each with different interest, perspectives, and goals,” fell into three main categories: (1) dismissal; (2) appointment of a chapter 11 trustee; and (3) appointment of an examiner.¹²

Following a 12-day trial on these motions, which included testimony from 23 witnesses, Hon. **Harlin D. Hale** dismissed the case pursuant to § 1112(b) of the Bankruptcy Code for cause.¹³ Courts in the Fifth Circuit, where the NRA filed, recognize that cause “can include a finding that the debtor’s filing for relief is not in good faith.”¹⁴

The bankruptcy court, after thoroughly considering all evidence and testimony, found that the primary purpose of the bankruptcy filing was to avoid dissolution in New York. Based on this finding, Judge Hale determined there was the requisite cause to dismiss the case as not having been filed in good faith, finding that the petition was filed “to gain an unfair litigation advantage and because it was filed to avoid a state regulatory scheme,”¹⁵ both in relation to James’s complaint against the NRA.

Purported Purposes in Filing

The NRA publicly announced the reasons why it was filing for bankruptcy, to avoid the potential outcome of the New York litigation, which undermined many of the arguments the NRA made in court. On its website, the NRA posted a question-and-answer page about why it had filed a bankruptcy petition, which stated, “This action is necessitated primarily by one thing: the unhinged and political attack against the NRA by the New York Attorney General.”¹⁶ In public statements, the NRA criticized the “toxic political environment” of New York, and LaPierre announced that “an important part of this [bankruptcy] plan is ‘dumping New York.’”¹⁷

Through filings and during the trial, the NRA provided the bankruptcy court “with several — and at times slightly different — reasons” for filing its bankruptcy case.¹⁸ Among other reasons, the NRA asserted that it sought a centralized forum to resolve and pay in full all claims against it, all the while reorganizing into a Texas nonprofit entity.¹⁹ The NRA maintained in its filings that it was not attempting to evade

regulatory oversight. The NRA also argued that it was not unlike any other chapter 11 debtor seeking to avail itself of the benefits and protections provided by the Bankruptcy Code.

The NRA’s True Aim in Filing

The bankruptcy court ultimately found that “[t]he evidence [did] not support a finding that the purpose of the NRA’s bankruptcy filing was to reduce operating costs, to address burdensome executory contracts and unexpired leases, to modernize the NRA’s charter and organization structure, or to obtain a breathing spell.”²⁰ Instead, the court found that the primary purpose was to avoid dissolution.²¹

Since the decision to file was not made by the board of directors but instead by LaPierre, the court found his testimony to be the “most compelling” on the subject of the objective in filing the petition.²² LaPierre testified that the reason for the chapter 11 filing was “because the New York State attorney general [was] seeking dissolution of the NRA and [seizure of] its assets, and we believe it’s not a fair, level playing field.”²³ The bankruptcy court summed up LaPierre’s testimony “that but for the [New York State Attorney General’s] Enforcement Action, it would not have been necessary to file for bankruptcy.”²⁴

After finding the primary purpose of the NRA’s filing, the court examined whether such purpose was “a valid purpose for bankruptcy such that the bankruptcy was filed in good faith.”²⁵ Based on a totality of the circumstances, the bankruptcy court emphatically found that the NRA’s avoidance of dissolution by a regulatory entity was not a valid purpose, concluding that “the Bankruptcy Code does not provide sanctuary from this kind of a threat.”²⁶ Accordingly, the case was dismissed.

Lessons Learned

This case demonstrates that rushing a bankruptcy filing, then attempting to shoehorn traditional reasons for filing that have no evidentiary basis, is not a good chapter 11 strategy. Instead, planning is important. Planning for a bankruptcy filing includes establishing well-defined goals and objectives that the debtor hopes to achieve in its case. Woven throughout Judge Hale’s decision to dismiss the NRA’s case were multiple examples of inappropriate public statements that clearly played a role in the finding of cause to support dismissal.²⁷

In addition, the opinion expresses frustration at the lack of clarity and the contradictory views from witnesses within

¹² *Id.* at *5.

¹³ *Id.* at *6. Section 1112(b) provides the statutory authority for a bankruptcy court to dismiss a chapter 11 case “for cause.” 11 U.S.C. § 1112(b).

¹⁴ *In re Nat’l Rifle Ass’n of Am.*, 2021 WL 1970738, at *6 (citing *Little Creek Dev. Co. v. Commonwealth Mortg. Corp.* (In re *Little Creek Dev. Co.*), 779 F.2d 1068, 1072-73 (5th Cir. 1986); *Humble Place Joint Venture v. Fory* (In re *Humble Place Joint Venture*), 936 F.2d 814, 816-17 (5th Cir. 1991)).

¹⁵ *Id.* at *11.

¹⁶ *Id.* at *11.

¹⁷ Dennis Romero, “NRA Seeks Bankruptcy Protection, Plans Move from New York to Texas,” NBC News (Jan. 15, 2021), available at [nbcnews.com/news/us-news/nra-seeks-bankruptcy-protection-plans-move-new-york-texas-n1254466](https://www.nbcnews.com/news/us-news/nra-seeks-bankruptcy-protection-plans-move-new-york-texas-n1254466).

¹⁸ *In re Nat’l Rifle Ass’n of Am.*, 2021 WL 1970738, at *7.

¹⁹ *Id.*

²⁰ *Id.* at *12.

²¹ *Id.* at *13.

²² *Id.* at *9.

²³ *Id.* at *12.

²⁴ *Id.*

²⁵ *Id.* at *14.

²⁶ *Id.* at *14-16. However, the bankruptcy court highlighted that it did “not announce ... a *per se* rule that a pending dissolution action renders an entity ineligible for bankruptcy.” *Id.* at *16.

²⁷ “Bankruptcy experts say these statements doomed any hope the organization had of achieving that goal by laying bare its true motivations, which were inconsistent with the Bankruptcy Code.” Vince Sullivan, “NRA’s Unforced Errors Ensured Its Ch. 11 Ouster, Experts Say,” *Law360* (May 19, 2021), available at [law360.com/articles/1386458](https://www.law360.com/articles/1386458) (subscription required to view article).

the NRA on what exactly its purpose was in filing for bankruptcy protection. It is difficult to argue that a debtor filed for bankruptcy to reorganize when the former chief financial officer (CFO) testifies that “there was no financial reason for the NRA to file bankruptcy.”²⁸ It is also difficult to argue that a chapter 11 is caused by the “disruption and expense” of litigation when the current CFO testifies that the company “has sufficient funds to prosecute and defend its current litigation,” and when the general counsel testifies that no one conducted an analysis of the cost of litigating outside of bankruptcy versus the cost of litigation in bankruptcy.²⁹

The credibility of these witnesses was also severely undermined when it became clear that there was no board vote and that the decision to file for bankruptcy was made by only one person. When LaPierre testified that solvency and litigation are not issues that would require bankruptcy,³⁰ the likelihood of dismissal as a bad-faith filing became apparent.

A debtor should focus on the end game and articulate a coherent strategy and goals in seeking relief under the Bankruptcy Code. Carefully crafting and clearly communicating the purpose of the chapter 11 case to all interested parties

will enhance the debtor’s reorganization efforts and avoid a premature dismissal. An affirmative vote from the board of directors after discussion about the decision to file a chapter 11 petition will aid in establishing a solid front. Fostering consensus among key decision-makers establishes a clearer, more trustworthy message to the court and to other parties-in-interest regarding the purposes of a bankruptcy filing.

After the case is filed, corporate counsel should use the NRA case to understand what not to do. Poor planning and cringeworthy failures of communication (both internally and publicly) may expose a chapter 11 filing to attack. The NRA’s actions led to hotly contested matters in the bankruptcy court from parties both outside of and within the organization. Traditional arguments that had surface-level appeal collapsed when contradicted by public statements.

If a petition cannot be filed in good faith,³¹ a debtor may need to first attempt to resolve its issues through nonbankruptcy avenues. If the filing is geared toward obtaining an unfair litigation advantage, for example, the case might be dismissed and only result in increased costs of both time and money for the debtor. **abi**

²⁸ *In re Nat’l Rifle Ass’n of Am.*, 2021 WL 1970738 at *10.

²⁹ *Id.*

³⁰ *Id.* at *12 (witness responding “That’s correct” to a question posed on cross-examination).

³¹ Certain jurisdictions might be more forgiving of a debtor in the good-faith filing analysis. It is important to consider the available venues as part of the filing strategy. See Sean O’Neal, Luke Barefoot, & Laya Maheshwari, “Bankruptcy Court’s NRA Ruling Illustrates Ch. 11 Filing Pitfalls,” *Law360* (May 19, 2021), available at [law360.com/bankruptcy/articles/1386398](https://www.law360.com/bankruptcy/articles/1386398) (subscription required to view article).