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ROBERT B. KAPLAN AND THE Art of Heavy Lifting

The bankruptcy lawyer shepherds big clients through tough times

BY RON RUSSELL
PHOTOGRAPHY BY GREGORY COWLEY

IT WAS 2008, AND DOZENS OF LAWYERS had descended on the former Navy town of Vallejo. Located 25 miles north of San Francisco, it had just become the largest California city to declare bankruptcy. Vallejo was pitted against the unions representing its police, fire and other city employees, who wanted the town of 115,000 to stick to its labor contracts with them.

The pitched battle attracted a great deal of media attention.

Then there were the less publicized efforts by Vallejo's creditors to get the money owed them. As the point person for Vallejo's largest secured creditor, Union Bank of California (now Union Bank), Robert B. Kaplan's role was relatively under the radar.

"You learn pretty quickly that it's best to be seen and not heard when you do what I do," says the attorney, who sports a moustache and a smile, tieless and relaxed in blue jeans on a casual Friday in his firm's Embarcadero Center offices. Despite the personable demeanor, the soft-spoken Kaplan, 61, is all business when it comes to, well, business.

In the Vallejo case, Kaplan's task didn't start in earnest until the much-publicized bickering between the city and the labor unions was over, a battle that left the unions badly bruised and angry over concessions. Then he got down to the task of restructuring \$46 million worth of debt owed by the beleaguered city on its tangible assets, from firehouses to libraries to

City Hall. After months of negotiations that assured the bank and many constituencies would get their principal—albeit at much lower interest rates and with a payback stretched out over time—a judge signed off on Vallejo's debt plan in July 2011, three years after the original filing.

Kaplan, a co-managing partner at Jeffer Mangels Butler & Mitchell in San Francisco, has made a career of such heavy lifting, representing banks and other institutional creditors in large debt workouts. His efforts are away from the glare of publicity in high-stakes, and sometimes high-profile cases, owing to his clients' understandable penchant for discretion with huge assets at stake.

His counter-cyclical practice area is booming. Since the onset of the Great Recession in 2008, when Vallejo went belly up, demand for debt restructurings has boomed, with the weak economy and slumping housing market producing a deluge of bankruptcies, especially in hard-hit California.

Commercial rents that were dragged down during the recession have swept property values down with them, leaving owners of troubled office, hotel and condominium properties in a precarious spot. Now that once-soaring property values have plummeted, banks are less willing to grant extensions to borrowers that they heavily courted just a few years ago.

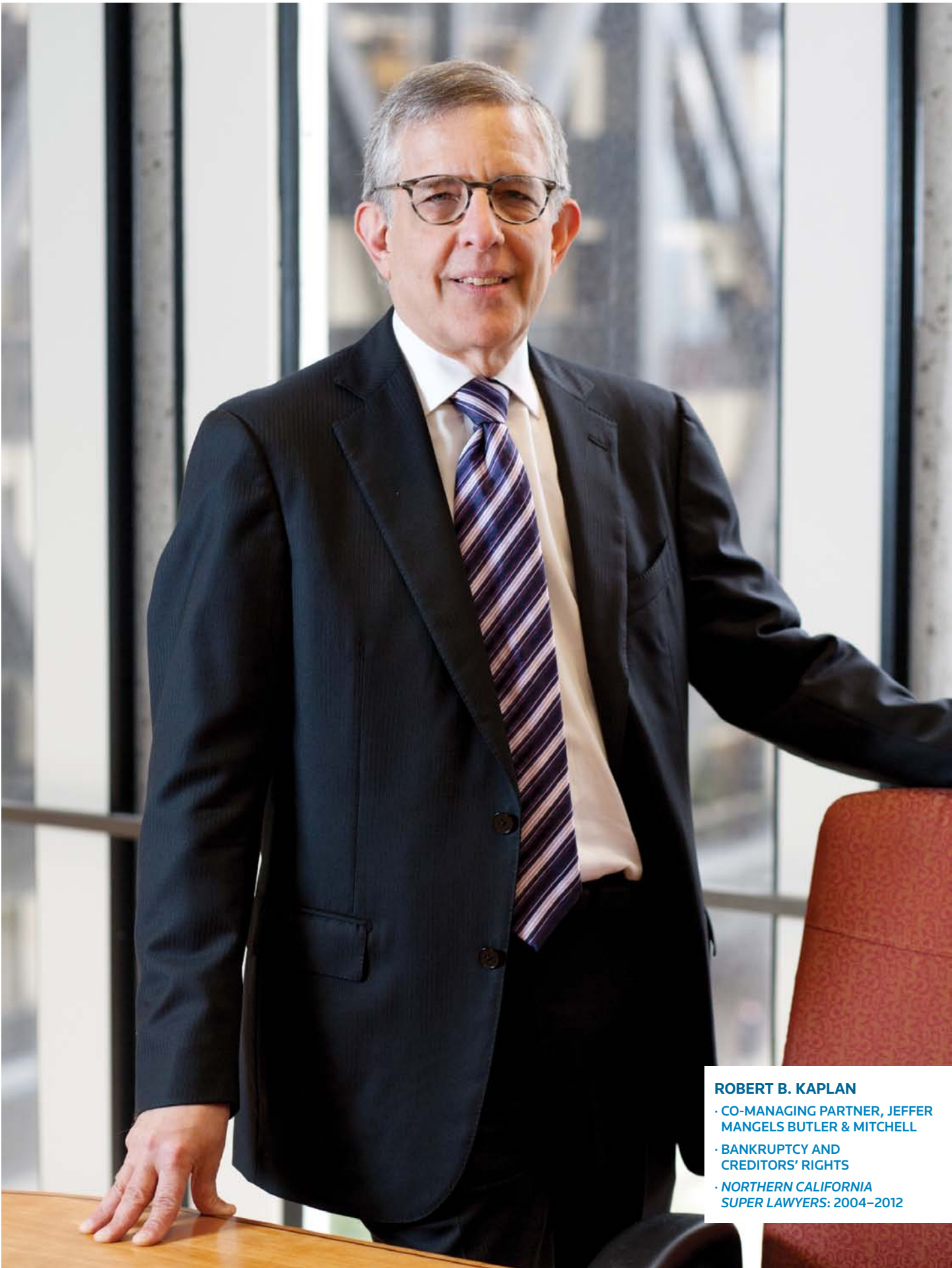
After 30-plus years practicing bankruptcy

law, Kaplan sees a familiar cycle, except for the magnitude of the troubled debt this time around. In a healthy economy, borrowers pay their loans and payments get made to bondholders. But when loans don't get paid, lenders have several options: work with borrowers to help them restructure, seek a court-appointed receiver to push them out of the way, or negotiate through a bankruptcy process that can often get ugly. Kaplan helps with it all, depending on the circumstances.

"Bob is someone who's consistently performed outstanding work for us for a number of years. He's passionate about what he does," says Teryl Murabayashi, senior vice president and associate general counsel at Union Bank, Kaplan's client in the Vallejo case. Some of Kaplan's legal adversaries express similar sentiments.

"We've been through some battles, but I have a lot of respect for the way he goes about his business," says Donald W. Fitzgerald of Felderstein Fitzgerald Willoughby & Pascuzzi in Sacramento, whose trustee clients are often on the other side of the table from Kaplan. "He's always well-prepared, but at the same time he's practical about reaching solutions."

What keeps Kaplan riveted by his corner of the law is the rapid pace. "In other areas of law things tend to happen very slowly. When you're dealing with creditor actions, you're operating under great time pressure where a client often needs you to move on something



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“In physics, you learn principles and apply them to complicated situations. Law is the same thing.

The factual situation is unique in every case, but you still apply basic principles.” – KAPLAN

within 24 hours. For me, that’s a big part of the allure: the adrenaline rush.”

He acknowledges difficulty with flipping off the switch, even when pursuing one of his favorite pastimes—traveling the globe with Carolyn, his wife of 25 years. “I did discover that my BlackBerry works at the top of Machu Picchu,” he says with a chuckle.

His self-disciplined, detail-oriented approach carries over in other areas.

A runner who puts in 12 miles per week, Kaplan keeps five years’ worth of his running times stored for self-comparison. “It’s sort of in the nature of who I am,” he says. “My wife’s very mellow. She says I do enough worrying for both of us.”

When the couple’s son, Spencer, was born on the night of the Loma Prieta earthquake in 1989, some colleagues ribbed him about causing the quake just so he wouldn’t lose any time at the office. Still, with his easygoing manner, Kaplan isn’t exactly Central Casting’s version of a creditor’s attorney. In fact, he acknowledges that he didn’t have a burning desire to be a workout lawyer while in law school at San Francisco’s Golden Gate University, where he finished at the top of his class in 1977. For that matter, he never took a bankruptcy law course his entire time there.

His early focus was on contracts law. That changed after he took his first job in Los Angeles with a creditors’ rights firm. He’s been at JMBM, a general civil practice firm based in LA, since 1999, and has come to relish the caseload diversity.

“Many of the cases we work on, you might think it’s just a foreclosure, but it’s much more than that,” he says. “We have environmental issues, zoning issues, easements, properties that have underground plumes that come over from other properties, you name it. No matter what issue comes up, you can walk down the hall here and talk to someone who’s familiar with it.”

It’s also an area whose caseload sometimes leads in unusual directions. Over the years, he’s helped orchestrate bankruptcy and receivership actions against all manner of enterprises, from coastal resort hotels to San Joaquin Valley wine producers. A few years ago, he was involved in a foreclosure action against a San Francisco

food importer who filed for Chapter 11 after an overseas shipment infested his entire pasta supply with parasites. He refers to that one as the “bug-in-the-pasta” case.

A self-described liberal Democrat, Kaplan grew up in New York City in a family with a father who taught developmentally disabled children and a mother who was a homemaker. He went away to State University of New York at Stony Brook (where he graduated summa cum laude in physics) wanting to be a physicist, an ambition fueled after taking a freshman class taught by Nobel laureate C.N. Yang. Although Kaplan still loves science, he decided that a physics career would be “too isolating.” He continues, “I didn’t want to spend my time alone in a laboratory.”

He says it wasn’t much of a leap from physics to law: “In physics, you learn principles and apply them to complicated situations. Law is the same thing. The factual situation is unique in every case, but you still apply basic principles.”

Having obtained a first-class radio operator’s license while helping build the student radio station at Stony Brook, Kaplan put that knowledge to use upon arriving in the Bay Area in the early 1970s. Before deciding to go to law school, he did volunteer work as a sound engineer at KPFA, the Pacifica Radio station in Berkeley, for a couple of years while working a day job as a carpenter.

He acknowledges that few lawyers who represent big banks in creditor actions have left-leaning radio stations on their job resumes, but he doesn’t see an inconsistency. “I wouldn’t want to do consumer work, because I feel for a lot of the people who really got nailed in the sub-prime crisis. ... I wouldn’t want to be foreclosing on people’s houses or repossessing cars.” But, he says, in the rarefied world where he makes his living, “you have major players who are borrowing major amounts of money. And it’s, you know, sort of a game. Lenders have their agenda. Borrowers have theirs.”

He’s quick to note a distinction between consumer bankruptcy and the institutional kind he deals with. Although there’s still a stigma attached to the former, that has largely disappeared on the institutional side, he says.

“It’s more or less just another tool that some businesses use ... a planning strategy.”

Airlines, hotels and retailers resort to bankruptcy without much observable change in their day-to-day operations. Kaplan sees this repeatedly. For example, the Clift Hotel, a boutique luxury hotel in San Francisco, filed for bankruptcy several years ago; Kaplan represented the lender. “I doubt that anyone, including any of the guests, ever had reason to notice,” he says.

Kaplan says misperceptions about bankruptcy and foreclosure persist, especially in the consumer area. Chief among them: the common belief that banks are eager to foreclose on people’s homes. “It’s a super hassle for them,” he says. “There’s maintenance and vandalism to deal with. They’re in the business of making money by lending money, not by flipping ... properties.”

On the institutional side, the dance between borrower and lender has its own ritual. At the outset, when there is a defaulted loan, the parties typically sign a “pre-negotiation agreement,” in which debtors agree to come clean about their problems with the understanding that what’s revealed won’t wind up in court if there’s litigation. This “open-kimono” approach is often a harbinger for how things will go, Kaplan says. When debtors resist such agreements, he adds, “it’s usually a sign that things aren’t going to be very pleasant.”

A worst-case scenario, from a creditor’s perspective, is when debtors spring a Chapter 11 filing without warning while trying to gain a tactical advantage, such as warding off the appointment of a receiver. Although not uncommon, it’s the exception rather than the rule. “In the Bay Area,” Kaplan says, “it’s a pretty small world, and once people learn you’re representing the lender, they’ll pick up the phone and want to have a dialogue.”

In the institutional world that Kaplan inhabits, those dialogues will not be going away anytime soon. “It’s ironic,” he says, “because, cosmetically at least, we have an improving economy, and yet ... we’re staying busy.” 