

**PUBLICATIONS**

## DIP Financing and Liens On Avoidance Actions

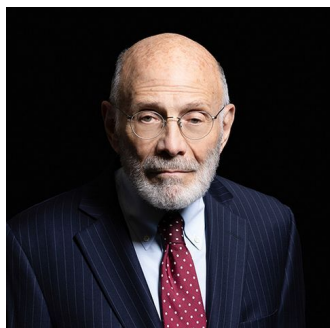
**The Bankruptcy Strategist**

**October 6, 2023**

In his latest article for *The Bankruptcy Strategist*, titled “DIP Financing and Liens On Avoidance Actions,” Schulte Roth & Zabel of counsel Michael L. Cook discusses the Eighth Circuit’s recent decision in *In re Simply Essentials, LLC*.

The Eighth Circuit held that “avoidance actions [*e.g.*, preferences, fraudulent transfers] can be sold as property of the [Chapter 7 debtor’s] estate.” *In re Simply Essentials, LLC*, 2023 WL 5341506, \*1 (8th Cir. Aug. 21, 2023). On a direct appeal from the bankruptcy court, the court affirmed the bankruptcy court’s granting of the trustee’s motions to compromise and sell property under Bankruptcy Code §363(f). A creditor had objected, arguing unsuccessfully that “avoidance actions... are not part of the bankruptcy estate ....” *Id.* As shown below, the Eighth Circuit’s holding and reasoning are consistent with the reasoning of other circuits in the asset sale context. More important, the decision has practical significance for Chapter 11 debtor in possession (DIP) lenders. U.S. Trustees and unsecured creditors regularly object to the granting of liens on avoidance actions, but *Simply Essentials* and other appellate rulings should now eliminate the purported legal obstacle.

## Related People



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