

ALERTS

Ninth Circuit Treats Corporate Insider Fairly in Fraudulent Transfer Case

January 25, 2011

The U.S. Court of Appeals for the Ninth Circuit, on Aug. 10, 2010, reversed a district court's adverse \$6.7 million fraudulent transfer judgment against a corporate insider, a director of the debtor, in a remarkably sensible opinion. *Decker v. Tramiel (In re JTS Corp.)*, 617 F.3d 1102 (9th Cir. 2010). The director had bought eight parcels of the debtor's real estate for \$10 million in good faith two years prior to bankruptcy. Holding that the director had "no liability to the [plaintiff bankruptcy] trustee for" a constructive fraudulent transfer, the court found that the director was "a good faith transferee ... entitled to an offset for the value he paid for the property," and that he was "entitled to [an additional] settlement credit" for "the amount that his codefendants paid in a settlement agreement." 617 F.3d at 1106, 1120. For corporate insiders — private equity funds, controlling shareholders, officers and directors — the case shows that insider status alone is not enough to impose liability, particular when the insider participates in a good faith attempt to rehabilitate a financially troubled debtor.

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