PUBLICATIONS

Fifth Circuit Applies New York Fraudulent Transfer Law to Suit Against Lenders for Receipt of Downstream Guaranty Payment Despite Debtor's Payment to All Other Creditors

July/August 2012

The United States Court of Appeals for the Fifth Circuit reversed a district court's dismissal of a fraudulent transfer complaint against lenders for their receipt of pre-bankruptcy guaranty payments from a corporate debtor. The debtor had previously guaranteed its subsidiary's obligations to the defendant lenders. According to the court, the "district court erroneously applied Georgia rather New York State law to the avoidance claim." Unlike the applicable Georgia law, New York law "treats certain guarantees as transfers under its fraudulent transfer law." Equally important, the court affirmed the district court's holding that the plaintiff litigation trust had standing to bring the fraudulent transfer claim against the lenders despite the debtor's full payment of all other creditors' claims under a confirmed reorganization plan.

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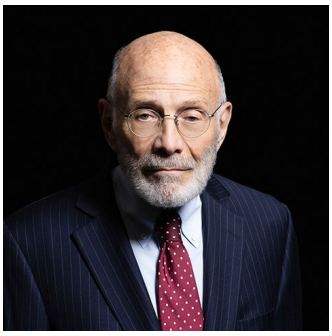

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