PUBLICATIONS

Second Circuit Affirms Dismissal of Debtor's Attempted Subordination of Former Corporate Parent's Claim

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The U.S. Court of Appeals for the Second Circuit recently dismissed a corporate debtor's attempt to subordinate its former corporate parent's contract damage claim on the ground that it was a securities fraud claim. When dismissing the debtor's subordination complaint, the bankruptcy court had found that the former parent's claim was not, as the debtor had asserted, a securities fraud claim falling under Bankruptcy Code ("Code") § 510(b) ("for damages arising from the purchase or sale" of the debtor's securities). The court of appeals essentially agreed with the bankruptcy court that the former parent's tax sharing agreement with the debtor was not "an equity interest," but "rather a creditor claim." In sum, reasoned the court, the former parent never assumed the risks of a shareholder.

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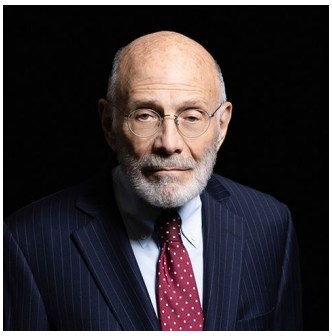

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