

PUBLICATIONS

Court of Appeals Vacates DIP Financing Order for Lender's Lack of Good Faith

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The Bankruptcy Code encourages lenders to make debtor-in-possession (“DIP”) loans to Chapter 11 debtors. Because of Bankruptcy Code § 364(e), an appeal from a financing order will ordinarily be moot when the lender acted “in good faith” unless the appellant obtains a stay pending appeal. It is hence noteworthy when appellate courts overturn DIP financing orders that were not stayed pending the appeal. In this article, SRZ partner Michael L. Cook discusses a recent Fifth Circuit decision that vacated five bankruptcy court and district court DIP financing orders due to (1) the lender’s lack of good faith in relying on a third party’s shares of stock as collateral; and (2) the bankruptcy court’s lack of subject matter jurisdiction to authorize a lien on third party collateral subject to disputed ownership claims. *In re TMT Procurement Corp.*, 2014 WL 4364894 (5th Cir. Sept. 3, 2014). On Oct. 23, 2014, the Fifth Circuit denied the petition for panel rehearing.

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