

ALERTS

Second Circuit Holds Safe Harbor Defense Bars Creditors' State Law Fraudulent Transfer Claims

March 29, 2016

Creditors of a Chapter 11 debtor asserting “state law, constructive fraudulent [transfer] claims ... are preempted by Bankruptcy Code Section 546(e),” held the U.S. Court of Appeals for the Second Circuit on March 29, 2016. *In re Tribune Company Fraudulent Conveyance Litigation*, 2016 WL ____, at *1 (2d Cir. March 29, 2016), *as corrected*. Section 546(e), the so-called “safe harbor” defense, “shields from avoidance proceedings brought by a bankruptcy trustee transfers by or to financial intermediaries effectuating settlement payments in securities transactions or made in connection with a securities contract, except through an intentional fraudulent [transfer] claim.” *Id.* Affirming the district court’s dismissal of the creditors’ suit, the Second Circuit rejected the district court’s analysis, relying instead on a preemption analysis. In a separate summary unpublished order, the court affirmed another district court decision dismissing a similar suit on preemption grounds “for substantially [the same] reasons.” *Whyte v. Barclays Bank PLC*, No. 13-2653-CV (March 24, 2016).

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