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Ninth Circuit Holds Bank Liable for Preference, Applying Hypothetical Liquidation Analysis

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“Courts may account for hypothetical preference actions within a hypothetical Chapter 7 liquidation” to hold a defendant bank (“Bank”) liable for a payment it received within 90 days of a debtor’s bankruptcy, held the U.S. Court of Appeals for the Ninth Circuit on March 7, 2017. According to the court, the hypothetical “inquiry must be factually warranted, be supported by appropriate evidence, and ... not contravene an independent statutory provision.” In this article, of counsel Michael Cook and partner Lawrence Gelber discuss the Ninth Circuit’s decision.

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