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Eleventh Circuit Strengthens Creditor's Defense to Preference Claim

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A defendant creditor in a preference suit may offset 1) the amount of later “new value” (i.e., additional goods) it sold to the Chapter 11 debtor against 2) the debtor’s earlier preferential payment to the creditor, the U.S. Court of Appeals for the Eleventh Circuit recently held. Even when the creditor was paid for the new goods, stressed the court, Bankruptcy Code “§547(c)(4) does not require new value to remain unpaid.” Rejecting the bankruptcy trustee’s “policy” argument, the court said its holding “promotes one of the ‘principal policy objectives underlying the [Code’s] preference provisions —’ encouraging creditors to continue extending credit to financially troubled debtors.” In this article, of counsel Michael Cook discusses the relevance of the Eleventh Circuit’s decision in *In re BFW Liquidation LLC* regarding the circuit courts’ current split on the extent of the new value defense.

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