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Eighth Circuit Rejects Ponzi Scheme Presumption To Protect Legitimate Loan Repayments

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“... Ponzi scheme payments to satisfy legitimate antecedent debts to defendant banks could not be avoided” by a bankruptcy trustee “absent transaction-specific proof of actual intent to defraud or the statutory elements of constructive fraud – transfer by an insolvent debtor who did not receive reasonably equivalent value in exchange,” held the U.S. Court of Appeals for the Eighth Circuit on Nov. 20, 2018. The Eighth Circuit affirmed the lower courts’ dismissal of a bankruptcy trustee’s \$250-million fraudulent transfer suit against two banks, rejecting the so-called “Ponzi scheme presumption” that “allows a creditor to by-pass the proof requirements of a fraudulent-transfer claim by showing that the debtor operated a Ponzi scheme and transferred assets ‘in furtherance of the scheme.’” In this article, of counsel Michael Cook discusses the Eighth Circuit’s decision to reject the Ponzi scheme presumption in *Stoebner v. Opportunity Finance LLC*.

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