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Sixth Circuit Holds State Court Tax Foreclosure Subject to Fraudulent Transfer Attack

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A “federal [fraudulent transfer claim under Bankruptcy Code Section 548] is independent of [a] state-court [foreclosure] judgment,” held the U.S. Court of Appeals for the Sixth Circuit on December 27, 2021. Reversing the lower courts’ approval of a Michigan tax foreclosure sale, the Sixth Circuit reasoned in *In re Lowry* that:

[T]he amount paid on foreclosure bore no relation at all to the value of the property, thus precluding the . . . argument that the sale was for “a reasonably equivalent value” under the rule of *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 544–45 (1994) [(reasonably equivalent value is the price actually received for the property at a foreclosure sale, so long as that sale satisfied all the requirements of state foreclosure law)].

Accordingly, the court remanded the case for “consideration of further arguments not fully developed below.”

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