

Fraudulent Transfer Issues in Bankruptcy

April 30, 2014

Speakers:

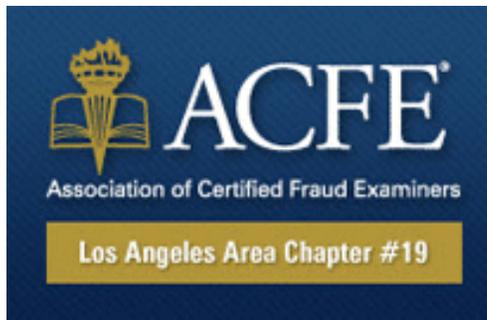
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Victor Sahn, Partner, SulmeyerKupetz, specializes in representing Chapter 11 debtors and creditors' committees, as well as secured creditors, equity committees and individual unsecured creditors in bankruptcy cases. He has frequently worked with asset purchasers in Chapter 11 and Chapter 7 cases as well as plan proponents in Chapter 11 cases.

Mr. Sahn has been involved in some of the most significant regional and national cases, including Meruelo Maddux Properties, Inc., DS Ventures and Related Entities, Dr. Randy Rosen, R2D2, LLC and Thinkfilm, LLC, County of Orange Chapter 9 proceeding; MCI/Worldcom, Inc.; Williams Communications; KMart Corporation; Capitol Metals, Inc.; Baldwin Builders, Inc.; Country Home Bakers, Inc.; Adesta Communications, Inc.; Friedman Bag Company, Inc.; Wareforce Communications, Inc.; Hoffman Brothers Foods; and Beverly Hills Development Corporation and related entities.

Mr. Sahn is a graduate of Syracuse University and the University of San Diego School of Law. While at USD, he served as an extern to the Honorable Herbert Katz, U.S. Bankruptcy Judge for the Southern District of California.

Following law school graduation, Mr. Sahn was law clerk to the Honorable Peter M. Elliott, U.S. Bankruptcy Judge for the Central District of California, Santa Ana Division. He is admitted to practice in the State of California and before the U.S. District Courts for the Central and Southern Districts of California as well as the Ninth Circuit Court of Appeals. Mr. Sahn frequently lectures on bankruptcy topics before local and regional groups.



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Michael D. Good is owner and manager of South the Bay Law Firm. For more than 14 years, Mr. Good has represented a wide variety of corporate debtors, creditors' committees, individual creditors, and other parties across a broad range of industries. He has extensive experience with numerous complex reorganization and liquidation proceedings under the United States Bankruptcy Code, as well as with out-of-court restructurings.

After obtaining his J.D. from Pepperdine University in 1994, Mr. Good completed a judicial clerkship for the Hon. Mitchel R. Goldberg in the U.S. Bankruptcy Court for the Central District of California (Riverside Division).

Mr. Good has lectured and has authored educational materials and articles on various aspects of domestic and international bankruptcy law. He currently serves as a U.S.-based country correspondent for *International Corporate Rescue*.

In 2004, Mr. Good was named in the "Rising Stars" edition of *Super Lawyers*, a publication that ranks California practitioners under age 40 based upon peer voting and an independent analysis of credentials, practice, and market reputation.

Mr. Good is a graduate of the University of Pennsylvania, with a B.A. from the University's College of Arts and Sciences and minors in Marketing and Entrepreneurial Management from the Wharton Business School.

Fraudulent Transfer Issues in Bankruptcy

“Virtually any way a debtor can think to put part of his valuable property beyond the reach of his creditors will constitute a transfer, conveyance, or other disposition or assumption of an obligation sufficient to implicate [a fraudulent transfer].”

Peter A. Alces, *Law of Fraudulent Transactions* at § 5:2

Fraudulent Transfer Issues in Bankruptcy

Applicable Statutes

- 11 U.S.C. § 548 (Federal)
- Cal.Civ.Code § 3439.04 (California)

Fraudulent Transfer Issues in Bankruptcy

Actual Fraudulent Transfers

“The Debtor Transferred An Interest In Property Or Incurred A Debt

...

With Actual Intent To Hinder, Delay, Or Defraud” A Present Or
Future Creditor

Fraudulent Transfer Issues in Bankruptcy

“The Debtor *Transferred* An Interest In Property Or Incurred A Debt”

- Lien creation

- Retention of title as a security interest

- Foreclosure

- “[E]ach mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with (i) property; or (ii) an interest in property” (Bankruptcy Code)

Fraudulent Transfer Issues in Bankruptcy

“The Debtor ***Transferred*** An Interest In Property Or Incurred A Debt”

Examples:

- Debtor's withdrawal of funds from a bank account.
- Redemption of stock by an insolvent corporation.
- Debtor's secret sale of corporate shares to former girlfriend for no consideration in the shadow of a creditor's lawsuit.
- Corporate Debtor's revocation of a Subchapter “S” election.
- A forfeited down-payment for the purchase of real property? *In re McConnell*, 934 F2d 662, 664 (5th Cir. 1991) (yes); *but see Matter of Wey*, 854 F2d 196, 199–200 (7th Cir. 1988) (no).

Fraudulent Transfer Issues in Bankruptcy

“The Debtor Transferred *An Interest In Property* Or Incurred A Debt”

Property: “[A]n aggregate of rights; ‘the right to dispose of a thing in every legal way, to possess it, to use it, and to exclude everyone else from interfering with it.’”

Debtor’s Interest: “Generally, property belongs to the debtor . . . if its transfer will deprive the bankruptcy estate of something which could otherwise be used to satisfy the claims of creditors.”

In re Bakersfield Westar, Inc., 226 B.R. 227, 233 (B.A.P. 9th Cir. 1998)

Fraudulent Transfer Issues in Bankruptcy

“The Debtor Transferred An Interest In Property *Or Incurred A Debt*”

•*Ex.:* Debtor’s payment on promissory notes for loans used by shareholders to purchase a majority interest in debtor. “The Defendants’ loans were used to accomplish something like a leveraged buyout, or ‘LBO.’” *In re Peet Packing Co.*, 231 B.R. 42, 44 (Bankr. E.D. Mich. 1999).

•*Ex.:* Debtor’s secret, unrecorded trust deed conveyed to third party to facilitate third party’s “guaranty” of debtor’s obligations, was fraudulent and void as to creditors. *Jeggle v. Mansur*, 1927, 17 F.2d 729, *certiorari denied* 47 S.Ct. 768, 274 U.S. 758, 71 L.Ed. 1337.

Fraudulent Transfer Issues in Bankruptcy

“With Actual Intent To Hinder, Delay, Or Defraud” A Present Or Future Creditor

• ***What did the debtor subjectively want to accomplish with the transfer?***

• Establishing subjective intent is nearly always dependent on circumstantial evidence.

• The Debtor’s insolvency can be helpful . . . but not necessary.

Fraudulent Transfer Issues in Bankruptcy

“With Actual Intent To Hinder, Delay, Or Defraud” A Present Or Future Creditor

•Circumstantial Evidence: “Badges of Fraud” – Common fact patterns which are recognized as indicative of fraudulent intent.

<ul style="list-style-type: none">• actual or threatened litigation against the debtor	<ul style="list-style-type: none">• a purported transfer of all or substantially all of the debtor's property
<ul style="list-style-type: none">• insolvency or other unmanageable indebtedness on the part of the debtor	<ul style="list-style-type: none">• a special relationship between the debtor and the transferee; and, after the transfer
<ul style="list-style-type: none">• retention by the debtor of the property involved in the putative transfer	

Fraudulent Transfer Issues in Bankruptcy

“With Actual Intent To Hinder, Delay, Or Defraud” A Present Or Future Creditor

• “Badges of Fraud” – More examples:

<ul style="list-style-type: none">• <i>Guilty plea in criminal proceedings</i>	<ul style="list-style-type: none">• <i>Distributions to controlling shareholders or related entities</i>
<ul style="list-style-type: none">• <i>Hasty or unusual transactions</i>	<ul style="list-style-type: none">• <i>Transfers to family members or family-controlled entities</i>

Fraudulent Transfer Issues in Bankruptcy

“With Actual Intent To Hinder, Delay, Or Defraud” A Present Or Future Creditor

•*How many “Badges of Fraud” are necessary to show fraudulent intent?*

Under the totality of the facts, can the debtor or the recipient of an alleged fraudulent transfer provide a credible, legitimate explanation for the “badge(s)” identified?

Fraudulent Transfer Issues in Bankruptcy

“With Actual Intent To Hinder, Delay, Or Defraud” A Present Or Future Creditor

- “Badges of Fraud”: What They *Aren't*

Converting nonexempt property into exempt property on eve of bankruptcy

Favoring one creditor over another

Repaying fully-secured obligation

Fraudulent Transfer Issues in Bankruptcy

Constructive Fraudulent Transfers

Certain pre-petition transfers may be avoided as “constructively fraudulent” regardless of any subjective intent of the parties.

Fraudulent Transfer Issues in Bankruptcy

What Makes A “Constructively Fraudulent” Transfer?

- [Less Than] “Reasonably Equivalent Value In Exchange For Such Transfer Or Obligation” (11 U.S.C. § 548(a)(1)(B)(i); Cal. Civ. Code § 3439.04(a)(2))
- **And –**
- Present Or Resulting Insolvency (11 U.S.C. § 548(1)(B)(ii)(I)); **or**
- Present Or Prospective Engagement In Business Or Transactions With Unreasonably Small Remaining Capital (11 U.S.C. § 548(a)(1)(B)(i)(II); Cal. Civ. Code § 3439.04(a)(2)(A)); **or**
- Debt Beyond Debtor’s Ability To Pay (11 U.S.C. § 548(a)(1)(B)(ii)(III); Cal. Civ. Code § 3439.04(a)(2)(B)); **or**
- Transfers For Insiders’ Benefit . . . Under An Employment Contract And Not In The Ordinary Course Of Business (11 U.S.C. § 548(a)(1)(B)(i)(IV)).

Fraudulent Transfer Issues in Bankruptcy

What Makes A “Constructively Fraudulent” Transfer?

[Less Than] “Reasonably Equivalent Value In Exchange For Such Transfer Or Obligation”

•“Value”

- *Bankruptcy Code*: “[P]roperty, or satisfaction or securing of a present or antecedent debt of the debtor, but does not include an unperformed promise to furnish support to the debtor or to a relative of the debtor.” 11 U.S.C. §548(d)(2).
- *California Law*: “Courts may consider the fair market value or what would be the fairly equivalent value of the property, taking into consideration all of the specific circumstances of each case affecting the value of the asset.” *In re JTS Corp.*, 617 F.3d 1102, 1109 (9th Cir. 2010).

Fraudulent Transfer Issues in Bankruptcy

What Makes A “Constructively Fraudulent” Transfer?

[Less Than] “Reasonably Equivalent Value In Exchange For Such Transfer Or Obligation”

•“Reasonably Equivalent”

- *Fair market value is the most important consideration.*
- Timing: *FMV as of the time of transfer.*
- Can include services or other “non-tangible” value.
- Isn’t always strictly objective (e.g., commitment fees, payments made for prospective business opportunity, payments made to preserve value of an option to purchase property)
- “In the case of an individual debtor, it may be legitimate to say that entertainment, or even the gratification of idiosyncratic tastes, may constitute reasonably equivalent value.”
- Payments made to third parties not usually “reasonably equivalent” unless debtor can show lack of impact to net worth, or indirect (quantifiable) benefit.

Fraudulent Transfer Issues in Bankruptcy

What Makes A “Constructively Fraudulent” Transfer?

Present Or Resulting Insolvency (11 U.S.C. § 548(1)(B)(ii)(I))

- Except for municipalities, where a cash flow test is used, “insolvent” for purposes of this analysis means that the fair value of the debtor's assets must have been less than the debtor's total liabilities. 11 U.S.C. § 101(32).

Fraudulent Transfer Issues in Bankruptcy

What Makes A “Constructively Fraudulent” Transfer?

Present Or Prospective Engagement In Business Or Transactions With Unreasonably Small Remaining Capital (11 U.S.C. § 548(a)(1)(B)(i)(II); Cal. Civ. Code § 3439.04(a)(2)(A))

- “Equitable insolvency” – inability to pay debts as they become due
- Analyzed on a case-by-case basis
- “[T]he correct inquiry is whether [at the time of the transfer] the debtor's probable stream of income would be sufficient to meet its foreseeable obligations.”
- Reasonable forward-looking projections, viewed from the time of the transfer.

Fraudulent Transfer Issues in Bankruptcy

What Makes A “Constructively Fraudulent” Transfer?

Debt Beyond Debtor’s Ability To Pay (11 U.S.C. § 548(a)(1)(B)(ii) (III); Cal. Civ. Code § 3439.04(a)(2)(B))

- Transfer made in the shadow of unserviceable debt (e.g., Ponzi schemes)
- Once again, the analysis must focus on the time of the transfer and on what the debtor's intentions or anticipations were then, not at some subsequent time

Fraudulent Transfer Issues in Bankruptcy

What Makes A “Constructively Fraudulent” Transfer?

Transfers For Insiders’ Benefit . . . Under An Employment Contract And Not In The Ordinary Course Of Business (11 U.S.C. § 548(a)(1)(B)(i)(IV))

- Enacted by Congress in 2005
- Designed to deal with “excessive” executive bonuses, severance packages, etc.
- “The statute is unique in that it makes a transaction avoidable as constructively fraudulent without any reference whatsoever to the financial condition of the debtor”

Fraudulent Transfer Issues in Bankruptcy

Time Limits

- Section 548: Transfer made or debt incurred within two years prior to the petition date.
 - For purposes of § 548, a transfer is “made” when it becomes valid against a subsequent bona fide purchaser pursuant to applicable state law. 11 U.S.C. § 548(d)(1)
- Section 3439.04:
 - Actual Fraud: Within four years of the transfer or debt (or one year after actual or reasonable likelihood of discovery – up to seven years after the transfer)
 - Constructive Fraud: Within four years of the transfer or debt

Fraudulent Transfer Issues in Bankruptcy

Defenses

- “Good faith transferee” defense (548(c)): Transferee protected to the extent he or she acted in “good faith” and gave value to the debtor.
- 3439.04: No imputation of fraud for
 - “retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification.”
 - secured creditor’s ability to use, commingle, or dispose of personal property collateral or to account for its proceeds.

Fraudulent Transfer Issues in Bankruptcy

ACTION BY THE TRUSTEE ON BEHALF OF CREDITORS TO RECOVER DIVIDENDS OR SHARE REPURCHASE TRANSACTIONS ISSUED IN FAVOR OF CORPORATE SHAREHOLDERS

Shareholders of a corporation may be held liable to the corporation for knowingly receiving illegal dividends or share repurchase distributions. (Corp.C. 506(a).) The liability may be enforced by an action in the corporation's name brought by nonconsenting creditors whose claims antedate the distributions (if the illegality arose from an insufficiency of earnings or assets under Corp.C 500, 501), or by shareholders whose dividend or liquidation preferences were infringed by a violation of Corp.C.502 or 503. (Corp.C.506(b).)

Fraudulent Transfer Issues in Bankruptcy

ACTION BY THE TRUSTEE ON BEHALF OF CREDITORS TO RECOVER DIVIDENDS OR SHARE REPURCHASE TRANSACTIONS ISSUED IN FAVOR OF CORPORATE SHAREHOLDERS

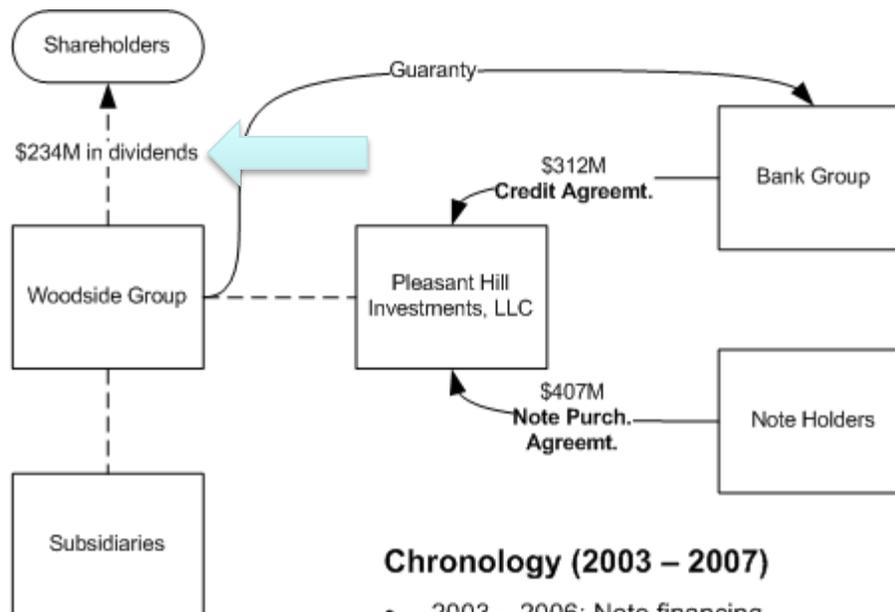
Liability is for the fair market value of the property *at the time of the illegal distribution*, plus interest and reasonable appraisal costs.

(Corp.C. 506(a).) Shareholders sued may compel contribution from other liable shareholders. (Corp.C. 506 (c).) Corp.C. 506 does not affect any shareholder liability under C.C. 3439 et seq., the Uniform Fraudulent Transfer Act.

Again, valuation will be a key component as well as the ability of the corporation to pay the claims of the creditors adversely affected by the wrongful transfers.

Fraudulent Transfer Issues in Bankruptcy

Anatomy of Two Fraudulent Transfers – Woodside Group

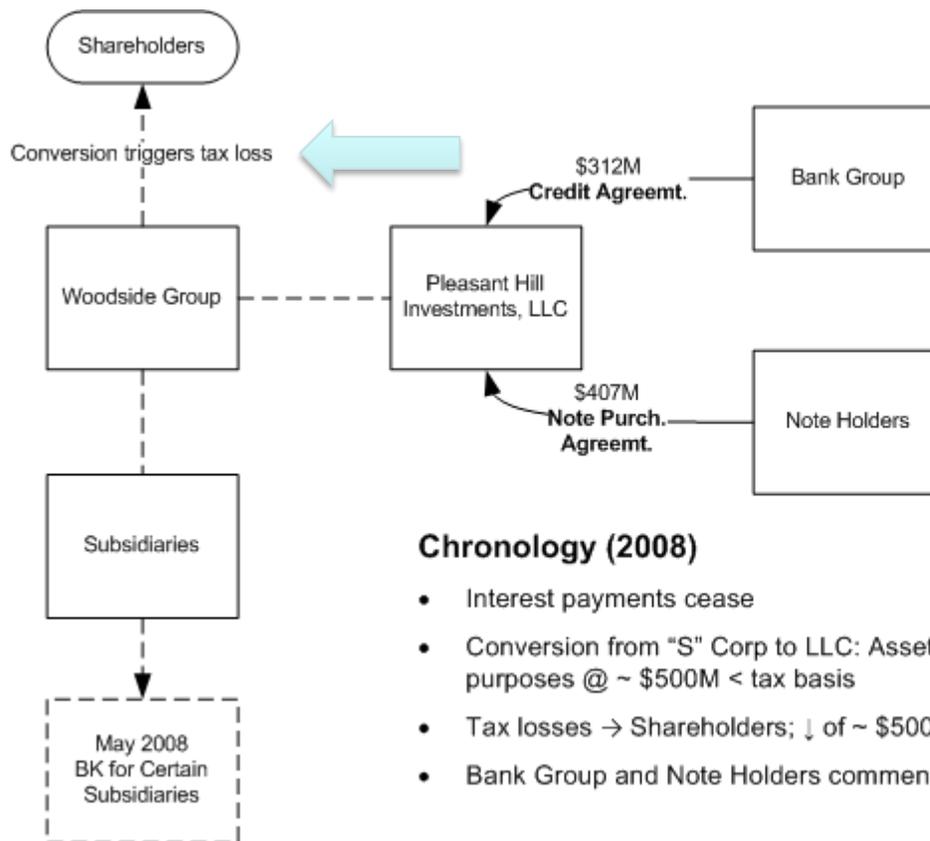


Chronology (2003 – 2007)

- 2003 – 2006: Note financing
- 2006: Credit Agreement
- 2006 – 2007: \$234M in dividends
- 2007: Credit Agreement covenant breach

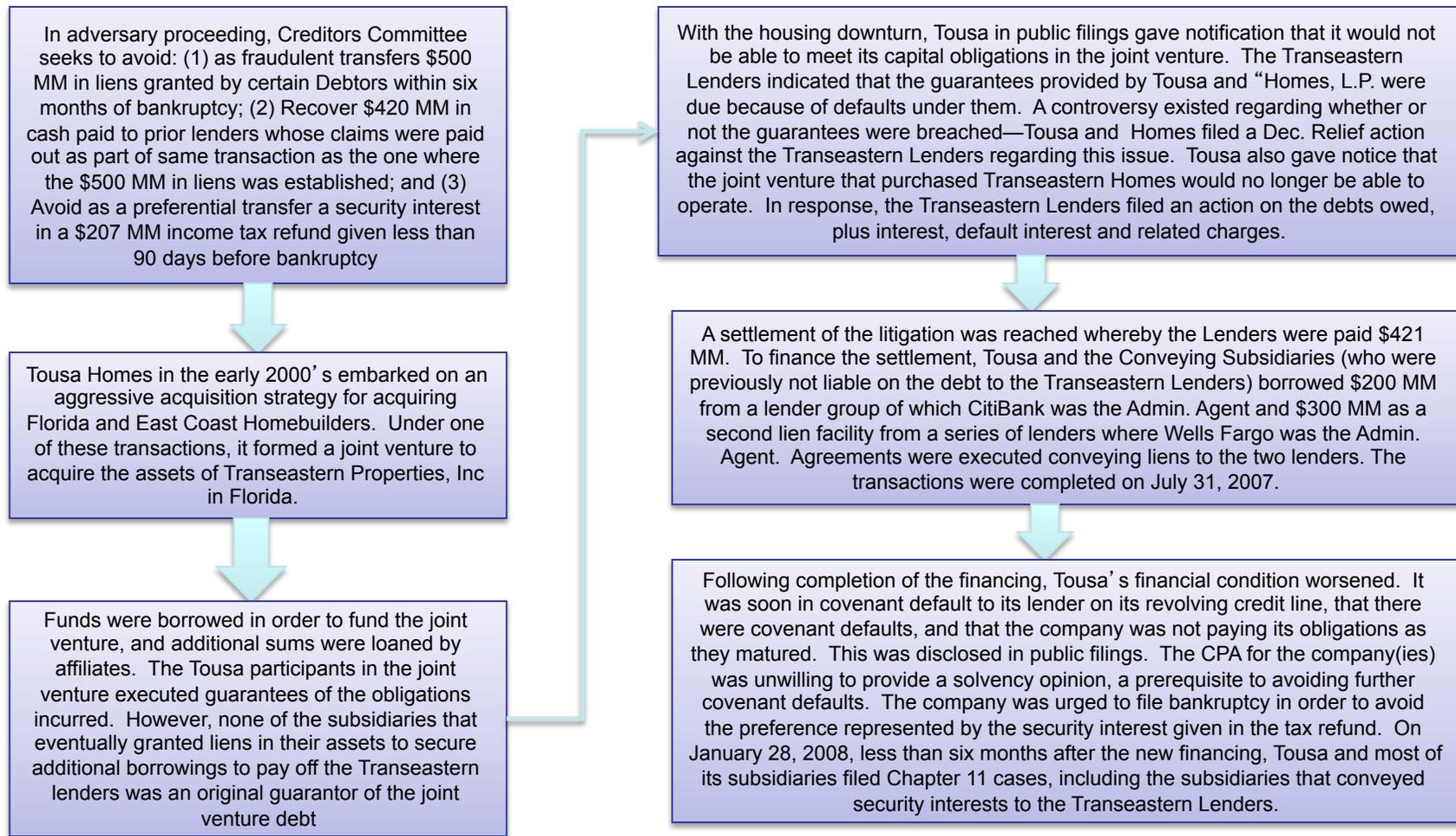
Fraudulent Transfer Issues in Bankruptcy

Anatomy of Two Fraudulent Transfers – Woodside Group



Fraudulent Transfer Issues in Bankruptcy

In re Touse, 422 B.R. 783 (Bankr. S.D. Fla., 2009)



In re Touse

Compare the Comments of the Court Regarding the Forensic Experts

Regarding the Plaintiff's Expert: The Committee sought to prove the insolvency of the Conveying Subsidiaries just before the July 31, 2007 transaction through the testimony of Kevin P. Clancy. Clancy is qualified in the fields of financial restructuring, and accounting services. He is a partner in the business investigation services group at the national accounting and consulting firm of J.H. Cohen, LLP and has extensive experience providing advice and litigation-related services in the bankruptcy context, including expert testimony. He is a CPA, a Certified Insolvency and Restructuring Advisor, and a member of the American Bankruptcy Institute. He has been involved with the Touse Bankruptcy case since March, 2008 and has had numerous interactions with TOUSA personnel and TOUSA's accounting systems. Clancy presented adjusted balance sheets reflecting the net worth, on a fair value basis, of the three most significant TOUSA entities—the parent company, TOUSA, Inc. and the two Conveying Subsidiaries that held nearly all of the consolidated enterprise's assets, TOUSA Homes, Inc. and Newmark Homes, L.P.—just before the transaction on July 31, 2007. His starting point for these balance sheets was a trial balance, compiled by the Debtors using the same data they used to operate their business, containing accounting data for the various TOUSA legal entities as of July 31. Clancy adjusted various line items on the trial balance, both up and down, to reflect the fair value of the relevant entities' assets and liabilities. His most significant adjustments were as follows: First, he adjusted the book value of the TOUSA entities' homebuilding inventory assets to reflect the fair market value of those assets as provided by the Committee's real estate expert, Charles Hewlett. Second, because he analyzed each entity individually -- and ultimately determined each entity individually to be insolvent and therefore without value as an investment -- he eliminated certain line items that reflected one entity's ownership of another. The Defendants' expert Stryker performed the same adjustment. Third, because the parent and the Conveying Subsidiaries each were obligated on TOUSA's bond and revolver debt, he allocated the liability for those debts among the various entities according to the amount of the burden they would be expected to shoulder. Because the bond indentures expressly provide a right of contribution in proportion to various entities' relative net worth, Clancy allocated the bond liability in proportion to net worth; because the revolver debt was secured by various entities' assets, he allocated the revolver liability in proportion to asset value. These allocations were rational and reasonable, and were substantially identical to Stryker's allocation for revolver debt. Fourth, he eliminated line items relating to written intercompany notes that formalized certain financial obligations from one Conveying Subsidiary to another, because including these notes would serve only to shift assets (and a proportionate share of the shared liabilities just described) among various Conveying Subsidiaries without having any bottom-line effect on the Conveying Subsidiaries' solvency. **I found Clancy to be credible and his methodology reasonable and rational.**

Fraudulent Transfer Issues in Bankruptcy

Anatomy of an Expert Engagement in Bankruptcy

- Investigation Phase
 - Irregularities.
 - Are there available books and records for the Debtor and what do those records show?
 - Are there available records from any other party such as a lender or insiders?
 - Creation of a timeline very important as the determination of insolvency or unreasonably small capital can be made at particular points in time to the extent you are analyzing a series of transfers and whether those transfers meet one of the specified tests for a fraudulent transfer.

Fraudulent Transfer Issues in Bankruptcy

Anatomy of an Expert Engagement in Bankruptcy

- True up against banking statements
- Non-existent records/significant gaps
- Closing docs if analysis is being made of a sale or other transaction
- Wire transfer subpoena institution
- CPA/other financial professionals: Subpoenas for documents in their possession
- Attorneys, pre-bankruptcy for the company. Their files and information may not be protected by the attorney-client privilege or the privilege may be transferred under law to the Bankruptcy Trustee who is seeking the pertinent information.

Fraudulent Transfer Issues in Bankruptcy

Anatomy of an Expert Engagement in Bankruptcy

- Non-monetary assets + valuation of same.
 - Valuation = retroactive going back to the time of the transfer.
- In Bankruptcy Case, Bankruptcy Rule 2004 examinations of witnesses and document production from institutions, potential target defendants and other third parties with information about the potential fraudulent transfer claims.
- Preparation of Expert Report. Prepared for benefit of attorney so that attorney-client privilege preserved. Report is central document utilized by the Plaintiff and counsel in connection with the pursuit of avoidable transfers on behalf of the bankruptcy estate for whom the forensic accountant is employed.

Fraudulent Transfer Issues in Bankruptcy

Anatomy of an Expert Engagement in Bankruptcy

- Formulation of a legal theory
 - Match the elements of section 548/3439.04 with the facts to demonstrate a fraudulent transfer
 - There is both the availability to seek to set aside fraudulent transfers under State Law or to seek recovery of improper distributions to insiders under Corporations Code (Cal.)
- Draft and file pleading
 - If prosecuting, the expert presumably has done at least some of the work already.
 - If defending, expect to review materials produced through discovery.

Fraudulent Transfer Issues in Bankruptcy

Anatomy of an Expert Engagement in Bankruptcy

- Discovery
 - Depositions.
 - Review/consultation with counsel about other expert's report.
 - Forensic accountant will be present at depositions of opposing experts and will be key to assisting counsel with preparation and review of expert report and in formulating questions at deposition.

Very often the purpose of the deposition is to tie down the testimony of the opposing expert so that there is no ambiguity in the methodology, analysis and conclusions reached in the report. Then, during cross-examination at trial, having tied the witness to a story and version of the facts that they will not be able to contradict without being inconsistent with their deposition testimony.

Fraudulent Transfer Issues in Bankruptcy

Anatomy of an Expert Engagement in Bankruptcy

Remember “A Few Good Men”---

Jessup: Are we clear?!

Kaffee: Crystal. Colonel, I just have one more question before I put Airman O'Malley and Airman Rodriguez on the stand. If you gave an order that Santiago wasn't to be touched, and your orders are always followed, then why would Santiago be in danger? Why would it be necessary to transfer him off the base?

Jessup: Santiago was a substandard marine. He was being transferred...

Kaffee: That's not what you said. You said he was being transferred, because he was in grave danger.

Fraudulent Transfer Issues in Bankruptcy

Anatomy of an Expert Engagement in Bankruptcy

Jessup: That's correct.

Kaffee: You said he was in danger. I said "grave danger"? You said...

Jessup: I recall what I said.

Kaffee: I could have the court reporter read back to you...

Jessup: I know what I said! I don't have to have it read back to me, like I'm...

Fraudulent Transfer Issues in Bankruptcy

Anatomy of an Expert Engagement in Bankruptcy

Kaffee: Then why the two orders? Colonel?

Jessup: Sometimes men take matters into their own hands.

Kaffee: No, sir. You made it clear just a moment ago that your men never take matters into their own hands. Your men follow orders or people die. So Santiago shouldn't have been in any danger at all, should he have, Colonel?

Jessup: You snotty, little bastard.

Ross: Your honor, I'd like to ask for recess.

Fraudulent Transfer Issues in Bankruptcy

Anatomy of an Expert Engagement in Bankruptcy

Kaffee: I'd like an answer to the question, Judge.

Judge: The court will wait for an answer.

Kaffee: If Lt. Kendrick gave an order that Santiago wasn't to be touched, then why did he have to be transferred? Colonel? Lt. Kendrick ordered the Code Red, didn't he? Because that's what you told Lt. Kendrick to do!

Ross: Objection!

Fraudulent Transfer Issues in Bankruptcy

Anatomy of an Expert Engagement in Bankruptcy

- Reminder: Retention by counsel? Or by client?
 - As discussed, above, in order to preserve the attorney client privilege, it is necessary to have the forensic accountant retained by counsel.
 - Carefully examine the retention agreement to be sure that the information that you put together is protected.

Fraudulent Transfer Issues in Bankruptcy

Anatomy of an Expert Engagement in Bankruptcy

- Trial
 - Direct examination
 - During direct examination, you have the opportunity to tell the Court the complete story, on a linear basis. Your counsel should do this slowly and carefully so that your testimony is built, question by question. Do not presume that the Court has read the expert witness report beforehand. Be prepared to cite to the expert report during your testimony in order to illustrate and support your testimony. That permits you to both boost your credibility with the Court and to validate the report that is your work product.

Fraudulent Transfer Issues in Bankruptcy

Anatomy of an Expert Engagement in Bankruptcy

- Trial
 - Cross examination
 - Again, do not be combative or confrontational with opposing counsel. If he or she gives you an opportunity or an opening by asking you a question that permits a narrative answer, then use that opening to advocate your position in a straight-forward and dignified way. Skilled counsel is going to try and limit your answers to his or her questions to 'yes' or 'no'. If counsel does that well, do not go out of your way to fight him or her. Instead, rely upon your client's lawyer to rehabilitate you on re-direct examination. Important to size up the lawyer who is questioning you on cross-examination with respect to his or her skill and competence.

Fraudulent Transfer Issues in Bankruptcy

Anatomy of an Expert Engagement in Bankruptcy

- Testimony
 - Be objective
 - The best witnesses are not those who advocate or fight for their side's position. The Court and opposing counsel expect you to be biased in favor of the party who has hired you.

Fraudulent Transfer Issues in Bankruptcy

Anatomy of an Expert Engagement in Bankruptcy

It is very important for the expert to be and appear to be objective and simply tell the Court or fact-finder the facts and the conclusions reached as something that simply follows from what anyone would conclude when performing the same tasks.