

## DEBTOR/CREDITOR

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*Chapter 11 Lien Stripping*

The federal bankruptcy statute permits a Chapter 11 debtor to confirm a plan of reorganization that removes liens from property of the debtor. A federal appeals court recently limited this ability.

The debtor disputed Finance Company's lien on its principal asset. Finance Company received notice of the bankruptcy case, but did not file a claim or otherwise participate. The bankruptcy court confirmed the debtor's plan, which "stripped off" the lien.

After plan confirmation, Finance Company sought a declaratory judgment that its lien survived plan confirmation unaffected. The bankruptcy court denied Finance Company's request. The appellate court reversed, deciding that Finance Company's mere receipt of notice did not constitute sufficient participation in the bankruptcy case to permit the removal of its lien.

*Acceptance Loan Company v. S. White Transportation, Inc.* (In re *S. White Transportation, Inc.*), 725 F.3d 494 (5<sup>th</sup> Cir. 2013).

*Proceeds of Collateral*

A bank loaned money to a doctor for purchase of a nuclear stress test camera. In connection with the loan, the bank obtained a security interest in the camera, together with the "proceeds of collateral". In the doctor's subsequent bankruptcy case, the bank claimed that the accounts receivable were subject to its security interest as proceeds of the camera, because they arose from use of the camera.

The Ohio bankruptcy judge rejected the bank's argument. The court reasoned that "proceeds", as defined by the Uniform Commercial Code, must arise directly from the camera itself, rather than from its use.

*Swope v. Commercial Sav. Bank* (In re *Gamma Center, Inc.*), 489 B.R. 688 (Bankr. N.D. Ohio 2013).

*Tracing Trust Funds*

Construction trust fund statutes require a contractor who receives payment for work performed to hold the funds in trust for subcontractors. When trust funds are paid to a subcontractor, the trust funds cannot be recovered as a preference in the contractor's subsequent bankruptcy case.

Where (1) the trust funds are deposited into the contractor's general bank account, (2) the balance in that account drops below the amount owed to the subcontractor, (3) additional non-trust funds are deposited into the account, and (4) the subcontractor is paid in full, only the lowest balance in the account between deposit of the trust funds and payment to the subcontractor will be deemed trust funds and will be protected from recovery as a preference. A Texas bankruptcy court decided recently that multiple subcontractors may claim the same lowest intermediate balance as trust funds to defend against preference actions brought by the contractor's bankruptcy trustee.

*Lain v. Universal Drywall, LLC* (In re *Erickson Retirement Communities*), 497 B.R. 504 (Bankr. N.D. Tex. 2013).

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