New Corporation Liable as Successor

Micrins Surgical, Inc. ceased doing business March 13, 2009, leaving creditors, including the IRS, unpaid. On the same day, Eriem Surgical, Inc. was incorporated and purchased all of Micrins' inventory, took over its office space, hired its employees, used its website and telephone number, and pursued a similar line of business. Mr. Teitz was president and 40% owner of Micrins. Mrs. Teitz was sole owner of Eriem. The IRS proceeded to collect Micrins' taxes from Eriem's bank account. Eriem sued the IRS to recover the funds.

A federal appeals court in Chicago sided with the IRS, concluding that Mrs. Teitz was a proxy for her husband as owner of Eriem, Eriem was a successor to Micrins, and Eriem was liable for Micrins debts.

There is no bright line determining how similar a new company must be in order to incur successor liability. Mr. Teitz lost his bet that a change in ownership and a change in focus from health care instruments to cosmetic surgeons' instruments would be sufficient to protect Eriem. Where a business closes because it cannot pay its creditors, the owner must be very careful if he wishes to continue in the same line of business with a different entity.

Eriem Surgical, Inc. v. United States, 843 F.3d 1160 (7th Cir. 2016).

No Cap on Exempt Assets

The receiver of Stanford International Bank obtained a judgment against Mr. Romero in the amount of $788,655. Mr. Romero responded by filing a Chapter 7 petition and claimed most of his property as exempt from sale by the trustee to pay creditors. That property included: (1) a waterfront home valued at $1,480,000; (2) two investment properties valued at $815,000 and $525,000; (3) IRAs in the amount of $700,000; and (4) his interest in a defined benefit plan valued at $1,500,000.

A Maryland bankruptcy judge denied the receiver's motion to dismiss the bankruptcy case, rejecting the argument that the large amount of exempt assets and the debtor's ability to pay rendered the bankruptcy filing in bad faith.

In re Romero, 557 B.R. 875 (Bankr. D. Md. 2016).

Preference Recovery Voids Release

A borrower and guarantors entered into a settlement agreement in which the borrower paid a loan in full and obtained releases for itself and the guarantors. One week later the borrower filed a bankruptcy petition. The bankruptcy trustee subsequently recovered the payment as a preferential transfer.

The lender sued the guarantors, who defended on the grounds that the borrower had paid and the lender had released them as part of the settlement. A California court rejected the guarantors' argument, explaining that a preferential payment "is deemed by law to be no payment at all."

Coles v. Glaser, 2 Cal. App.5th 384 (1st Dist. 2016).

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