NOTES ON

DEBTOR/CREDITOR

RELATIONS

February 1997

Assets Freed from Pension Liability

Certain federal statutes create successor liability for the purchaser of the assets of a business already liable. For example, pension plan funding liabilities under ERISA often pass to a purchaser of the assets of a business.

A federal appeals court in Richmond recently decided that the assets of a business may be sold in a bankruptcy free and clear of liability under the Coal Industry Retiree Health Benefit Act. The court determined that the power under bankruptcy law to sell assets "free and clear of any interest in such property" covered not only traditional liens and similar claims, but also included successor liability created by another federal statute. The court's reasoning should be equally applicable to other types of non-traditional claims and interests which attach to assets purchased.

United Mine Workers v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.), 99 F.3d 573 (4th Cir. 1996).

Guarantor Pays First

A common lending scenario involves a secured loan to a business borrower together with a secured guaranty from its principal. In a reversal of the usual situation, a bankruptcy court in Wisconsin required the lender to satisfy itself from the guarantor before seeking payment from the borrower.

In this case, the bank held a security interest in approximately $130,000 of cash held by the borrower's Chapter 7 trustee as proceeds from the sale of the bank's collateral. The bank also held mortgages on real property owned by the guarantor. The real property was worth more than the $160,000 loan.

The bank wished to collect from the cash proceeds held by the borrower's trustee. However, the bankruptcy court required the bank first to satisfy itself from the property of the guarantor in order to leave monies in the borrower's bankruptcy estate for payment to unsecured creditors. This raises the intriguing possibility that creditors might be able to use a similar theory to require a taxing authority first to seek payment from principals who are liable for trust fund taxes before recovering payment from the business itself.

In re Wm. Pietsch Co., 200 B.R. 207 (Bankr. E.D. Wis. 1996).

Court Stops Abuse

A California homeowner concocted the following scheme to delay foreclosure of his $250,000 home. The homeowner/borrower transferred a joint fee interest in his house to three unrelated parties. One of those three filed a Chapter 7 bankruptcy case, thereby staying the foreclosure. The other two would file bankruptcy when necessary to create further delay.

The bank moved for relief from the stay and also obtained an order from the bankruptcy court granting stay relief prospectively in any case which might be filed by a future owner. The court created an "equitable servitude" on the property to prevent future bankruptcy interference with the bank's foreclosure.

Great Western Bank v. Snow (In re Snow), 201 B.R. 968 (Bankr. C.D. Cal. 1996).

This newsletter is intended to inform its readers of developments in the area of debtor/creditor relations. It is not legal advice or a legal opinion regarding any specific matter. You should consult a lawyer regarding any questions relating to your particular situation.

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