

DEBTOR/CREDITOR

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No Tax Relief for Developer

A federal appeals court in Richmond recently restricted the scope of a tax relief statute for Chapter 11 debtors. The bankruptcy statute excuses a Chapter 11 debtor from paying "a stamp tax or similar tax" on any "transfer under a plan." A number of courts had previously held that the statute covers transfers made during the Chapter 11 bankruptcy case prior to confirmation of a Chapter 11 plan, if the plan so provides.

In case before the court, NVR Homes sought in its plan to exempt from real estate transfer taxes 5,571 sales of real property (which generated more than \$8,000,000 in transfer and recordation taxes) that occurred between the filing of the Chapter 11 petition and confirmation of NVR's plan. The court held that the language of the statute did not allow a Chapter 11 debtor to shield from taxation transfers which occurred prior to confirmation of a plan. However, the statute's tax relief remains available for transfers occurring after confirmation of a plan.

NVR Homes, Inc. v. Anne Arundel County (In re NVR, LP), 1999 U.S. App. LEXIS 15499 (4th Cir. July 12, 1999).

A Lien without a Loan

A borrower negotiated with a lender, but the parties never reached an agreement. However, lender's form application granted lender a security interest to cover a non-refundable application fee of \$6,500.00 plus reimbursement of expenses in connection with the loan application. Lender obtained financing statements with the application and properly recorded them.

In its subsequent bankruptcy case, borrower challenged the claimed security interest, because lender did not give value to borrower by making the loan. The court found that lender gave value by considering the

application, which was sufficient to support the security interest.

In re Kline Engineering, 232 B.R. 579 (Bankr. E.D.N.Y. 1999).

Partnership Law Trumps Bankruptcy

A New York bankruptcy court recently decided that a trustee could not transfer a debtor's limited partnership interest over the objection of another partner.

The bankruptcy statute generally permits a trustee to transfer contract rights, such as a partnership agreement, even though the contract itself prohibits or conditions the transfer. However, the statute creates an exception to this ability to override contractual restrictions under certain conditions. The courts are divided regarding the scope of this exception.

The New York court determined that the provisions of the Uniform Limited Partnership Act, which allows a partnership agreement to prohibit the admission of a new limited partner without consent of the general partner, is sufficient to fall within the bankruptcy exception. Thus, the debtor's trustee could sell only the right to receive the limited partner's partnership distributions, but could not make the purchaser an actual limited partner over the objection of the general partner.

In re Schick, 235 B.R. 318 (Bankr. S.D.N.Y. 1999).

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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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