N O T E S O N

DEBTOR/CREDITOR

R E L A T I O N S

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20-Day Priority

The federal bankruptcy statute gives priority of payment to sellers that deliver goods to a debtor within 20 days before the debtor commences a bankruptcy case. Two courts recently interpreted the meaning of this statute.

A Massachusetts bankruptcy judge ruled that the cost of electricity supplied to the debtor during the 20 days prior to bankruptcy was entitled to priority. The issue was whether electricity was a "good" covered by the statute. The court concluded that the electricity itself was a "good"; but, the delivery charge from the public utility was a "service" not entitled to priority.

In re Erving Industries, Inc., 432 B.R. 354 (Bankr. D. Mass. 2010).

A Virginia bankruptcy judge determined when goods sold on consignment were "delivered" to the debtor. Panasonic physically delivered merchandise to Circuit City more than 20 days prior to the latter's Chapter 11 case. However, ownership of each item did not pass from Panasonic to Circuit City until the item was actually sold to a consumer. Panasonic argued that the merchandise was not legally delivered to Circuit City until sale to a consumer, and the cost of all items sold within 20 days before bankruptcy should receive priority. The court disagreed, holding that physical delivery within 20 days, not legal transfer, was required to gain the priority.

In re Circuit City Stores, Inc., 432 B.R. 225 (Bankr. E.D. Va. 2010).

Trust Protects Assets

Under bankruptcy law, property that a bankrupt individual inherits from someone who dies less than 180 days after filing of the bankruptcy petition becomes property of the bankruptcy estate, which may be liquidated by the bankruptcy trustee and distributed to creditors. The result is different, however, where the property passes instead to a properly structured trust from which it is then distributed to the heirs. Thus, a debtor's bankruptcy trustee had no claim to life insurance proceeds generated when the debtor's father died 44 days after the case was commenced, and the policies were held by a trust which contained a spendthrift provision.

In re Ciano, 433 B.R. 431 (Bankr. N.D. Fla. 2010).

Termination Bonus Not Insider Preference

A debtor's payment to a creditor within 90 days prior to bankruptcy may be recovered by the bankruptcy estate as a preference. If the creditor is an insider of the debtor, the look-back period is one year, rather than 90 days.

A Florida bankruptcy court ruled that a termination payment made to the former CEO of NetBank two days after his resignation could not be recovered as a preference, even though it was less than one year prior to the corporation's bankruptcy. Although the ex-CEO was an insider at the time the payment was negotiated, the court determined that he had lost that insider status at the time the payment was received.

Zucker v. Freeman (In re NetBank, Inc.), 424 B.R. 568 (Bankr. M.D. Fla. 2010).

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