N O T E S O N

DEBTOR/CREDITOR

R E L A T I O N S

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Inherited IRA Not Exempt

A bankruptcy trustee must liquidate a debtor's assets. However, the bankruptcy statute exempts from the reach of the trustee "retirement funds" in an IRA account. Tax law permits IRAs to be inherited on the death of the original owner. Is an inherited IRA also exempt from the reach of a trustee?

The Supreme Court recently held that a trustee could obtain funds in an inherited IRA. The court noted three factors which distinguish an inherited IRA: (1) the holder of an inherited IRA may never contribute additional money to the account; (2) the holder of an inherited IRA must withdraw money from the account, even many years from retirement; and (3) and the holder of an inherited IRA may withdraw the entire balance of the account at any time and for any reason without penalty. These differences meant that an inherited IRA had lost the status of "retirement funds" protected by the bankruptcy statute.

Clark v. Rameker, 189 L. Ed.2d 157 (2014).

Administrative Rent

A debtor/tenant in a Chapter 11 case is required to assume or reject a commercial real property lease within 60 days after commencement of the case. Failure to do so results in automatic rejection of the lease. Until the lease is rejected, the statute requires the debtor/tenant to perform all post-petition obligations under the lease. If the debtor continues to occupy the premises after rejection, the debtor only has to pay for the benefit received from the premises. These payment obligations have administrative expense priority and must be paid before claims of general creditors.

A Massachusetts bankruptcy judge applied these principles to a debtor who remained in the premises after the automatic rejection. During the time period before rejection, the debtor was required to pay the landlord late charges and reimbursement for "unreasonable" snow removal charges. After the rejection, the debtor was not required to pay late fees and was only required to reimburse the reasonable cost of the snow removal.

In re Davenport Beverage Corp., 505 B.R. 374 (Bankr. D. Mass. 2014).

Discharge of Imputed Fraud

An individual is liable for debts incurred through the fraud of her agent, often a business partner. Generally, debts incurred as a result of fraud are not discharged in bankruptcy. Can the non-fraudulent partner discharge the debt?

The courts have taken three approaches to this question: (1) discharge is always denied; (2) discharge is denied where a non-fraudulent partner benefited from the fraud; and (3) discharge is denied where the debtor knew or should have known of the fraud. A bankruptcy appellate panel in California recently adopted the third position. The Maryland bankruptcy courts have not yet explicitly taken a position on this issue.

Sachan v. Huh (In re Huh), 506 B.R. 257 (Bankr. 9th Cir. 2014).

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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. Congress has required bankruptcy attorneys to state: "I am a debt relief agency. I help people file for bankruptcy relief under the Bankruptcy Code." 11 U.S.C. § 528. If you wish to receive "Notes on Debtor/Creditor Relations" by email, go to www.jamesolsonattorney.com/newsletter.html and click on the link at the word "here".

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