Garnishing Joint Bank Accounts

A Maryland appellate court recently clarified the rules regarding garnishment of a bank account held jointly by non-spouses, where the creditor has a judgment against only one account holder.

The court began by presuming that the funds in a bank account are owned by the person whose name is on the account, but explained that this presumption can be rebutted by "clear and convincing" evidence that funds in the account belong to someone else. In the case of a joint account, a judgment creditor can only garnish funds actually owned by its judgment debtor. Therefore, if any co-holder of the account can show that funds in the account do not belong to the judgment debtor, the creditor will not be able to garnish those funds.

The court did not clarify the result where no party offers any evidence regarding ownership of the funds in a joint account. Courts in other states have used an "equal share" approach, presuming that each account holder owns an equal portion of the account, or the "full share" approach, presuming that each co-holder owns the entire account. *Morgan Stanley & Co. v. Andrews*, 225 Md. App. 181 (2015).

Tax Lien Extinguished

Despite the general rule that "liens pass through bankruptcy unaffected," a Chapter 11 plan can extinguish a lien where: (1) the text of the plan does not preserve the lien; (2) the plan is confirmed; (3) the property subject to the lien is "dealt with" in the plan; and (4) the lien holder participates in the bankruptcy proceedings.

A federal appellate court in New York has applied these principles to permit a Chapter 11 debtor to extinguish the real property tax liens on its real estate. The court found that mere filing of a proof of claim by the taxing authority was sufficient participation in the bankruptcy proceedings to extinguish the tax lien where the Chapter 11 plan did not affirmatively preserve that lien.
City of Concord, N. H. v. Northern New England Telephone Operations, 795 F.3d 343 (2d Cir. 2015).

Severance Payment Retained

The corporate board of directors fired its president on less than 24 hours notice, but asked him to publicly resign lest his firing disrupt negotiations for an $80 million loan. Subsequently, the board and former president negotiated a severance package which included $375,000 over 18 months in the form of a noncompete agreement, which prevented him from taking employment with another firm in the same industry.

One year later, the company filed a Chapter 11 petition and the Chapter 11 trustee sued the former president to recover the payments under the noncompete, arguing that the corporation had not received reasonably equivalent value for the payments. The court rejected the trustee's arguments, noting that spending $375,000 to protect an $80 million loan "probably looked like a pretty good trade" to the board. *Weinman v. Walker (In re Adam Aircraft Indus.)*, 805 F.3d 888 (10th Cir. 2015).

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