Fraud Without Misrepresentation

Among the debts not discharged in bankruptcy are those "for money, property, services… to the extent obtained by… false pretenses, a false representation, or actual fraud." The Supreme Court recently determined that "actual fraud" does not require a misrepresentation to the creditor.

Husky sold electronic components to a company controlled by Daniel Ritz. In order to defeat creditor collection efforts, Mr. Ritz transferred large sums of the company's money to other entities he controlled. Husky sued Mr. Ritz under a law making an officer who strips the company liable for its debts. Mr. Ritz filed a bankruptcy petition, and Husky objected to the discharge of its debt. Mr. Ritz argued that he made no misrepresentation to Husky in order to "obtain" the goods.

The Court rejected this argument, explaining that a misrepresentation was not necessary where, as here, conduct fits the traditional definition of "actual fraud".
Husky International Electronics v. Ritz, 136 S.Ct. 1581 (2016).

Entireties Property Not Exempt

Under Maryland law applicable in bankruptcy cases, property owned jointly by a married couple (called "entireties property") is exempt from liquidation and distribution to pay claims of creditors of only one spouse. Thus, a creditor of a husband only may not reach the funds in a joint bank account to satisfy the debt.

A Maryland bankruptcy judge has ruled that a criminal judgment against one spouse, requiring payment of restitution, may be collected from entireties property. Under a federal statute, Congress intended that criminal restitution collection rights reach every interest that a person might have, including those protected under state law.
In re Conrad, 544 B.R. 568 (Bankr. D.Md. 2016).

Blocking Member Fails

In an attempt to prevent a limited liability company from commencing a bankruptcy, its lender insisted on becoming a member of the LLC solely for the purpose of blocking the unanimous consent required to file a bankruptcy case. Additionally, the LLC's operating agreement provided that the lender member was not subject to normal fiduciary duties "to give any consideration to any interest of or factors affecting the Company or the Members."

The LLC filed a Chapter 11 petition on the eve of the lender's foreclosure, based on the votes of the other members. The lender moved to dismiss the case on the grounds of improper corporate authorization, absent the lender member's vote. An Illinois bankruptcy judge determined the filing to be valid, because the release of the lender from its fiduciary duties was against public policy and the entire blocking member provision in the operating agreement was void.
In re Lake Michigan Beach Pottawattamie Resort, LLC, 547 B.R. 899 (Bankr. N.D. Ill. 2016).

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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", go to www.jamesolsonattorney.com/newsletter.html and click on the link at the word "here".