U.S. Collects Disclaimed Inheritance

An individual who inherits money may decline the money by "disclaiming" the inheritance. He might do this to prevent the inheritance from falling into the hands of his creditors. In many states, including Maryland, disclaiming an inheritance is not a fraudulent transfer which may be recovered by creditors of the disclaiming beneficiary.

However, this ability to protect inherited funds by disclaiming them does not apply if the creditor is an agency of the federal government. The Federal Debt Collection Procedures Act allows an agency to void a fraudulent transfer by a debtor owing a debt to the United States. This includes SBA loans. A Federal Appeals Court in San Francisco recently held that the federal statute allowed the SBA to void a guarantor's decision to disclaim his inheritance and to collect the guarantee from the inheritance, even though California law states otherwise.
United States SBA v. Bensal, 853 F.3d 992 (9th Cir. 2017).

Guarantee Not Discharged

A bankruptcy discharge frees a debtor from payment of most debts, including unmatured, unliquidated or contingent debts. However, a discharge does not free a debtor from obligations which arise after the bankruptcy filing.

An individual guaranteed the obligations of her corporation to a supplier. She filed a Chapter 7 case and discharged her debts, while her corporation continued to operate and purchase from the supplier. Her corporation subsequently defaulted on its debts, and the supplier sued her on the guarantee. She defended on the grounds that her guarantee obligation had been discharged in her bankruptcy case. Reversing the bankruptcy judge, a Federal District Court in Maryland ruled that her guarantee obligation to pay for product delivered after her bankruptcy was not discharged, because no debt arose that could be discharged until products were delivered.
Graybar Electric Co. v. Brand (In re Brand), 2017 U.S. Dist. LEXIS 152409 (D. Md. Sept. 19, 2017).

No Priority for Sale to Cooperative

AWI was a cooperative food distributor that provided distribution services to its member retailers. Members ordered goods directly from a manufacturer; the goods were delivered directly to the members; the manufacturer billed AWI; the members paid AWI; and AWI would pay the manufacturer.

When AWI filed its Chapter 11 case, a manufacturer had delivered goods to members just prior to the bankruptcy. The bankruptcy statute provides a priority of payment for the value of goods received by the debtor within 20 days prior to the bankruptcy filing. The manufacturer sought priority status for the value of its deliveries, arguing that delivery to the members was the same as receipt by AWI. A Delaware bankruptcy judge disagreed, concluding that members were not agents of the cooperative when they received the goods.
In re Adi Liquidation, Inc., 572 B.R. 543 (Bankr. D. Del. 2017).

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