The ClawBack Report

A Preference and Fraudulent Conveyance Newsletter

Volume 3 Edition 6

JONES

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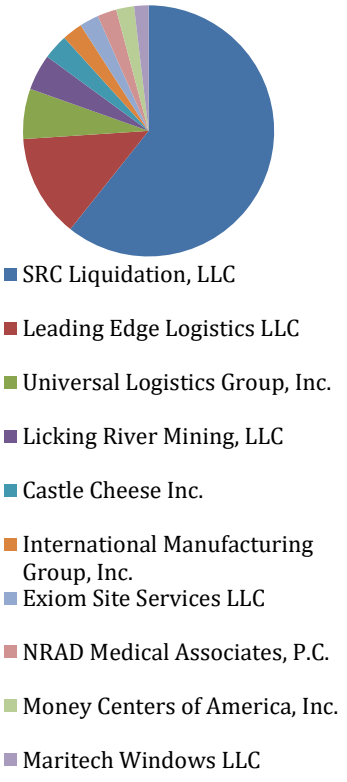
Groups of Adversary Proceedings Filed by the Debtor



INTRODUCTION

Your monthly dispatch from the clawback wars by Roland Gary Jones Esq., "The Preference Guy".

Trustees initiated more than 600 adversary proceedings nationwide during the month of May 2016. Most notable -

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- 394 clawback lawsuits initiated in the bankruptcy cases of **SRC Liquidation, LLC**
- 86 preference actions were commenced in the **Leading Edge Logistics LLC's bankruptcy**

Rulings for May -

- The Third Circuit held that the amounts withheld for the payment of taxes were not avoidable preferences under Sec. 547 (b).

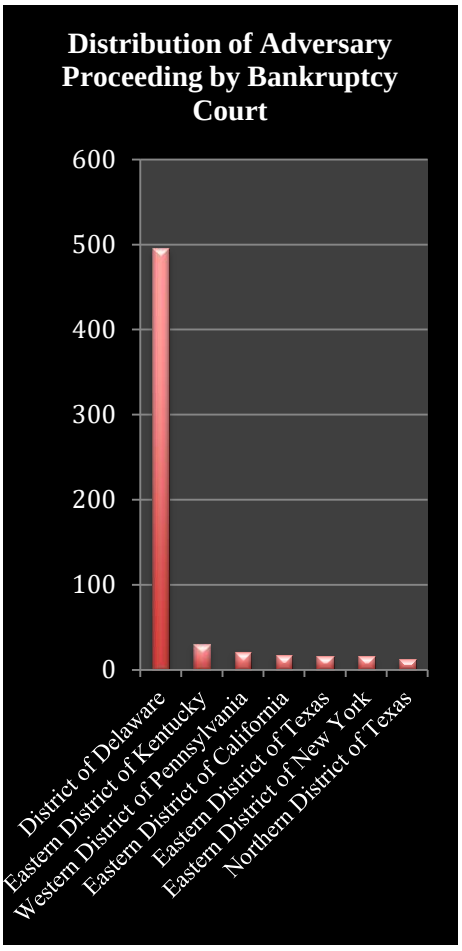
- A Bankruptcy Court concluded that the payments made during the preference period, pursuant to a garnishment or attachment obtained prior to the preference period were transfers, but not avoidable as preferences because they did not enable the creditors to receive more than they would have if the debtor were liquidated in Chapter 7.

Warm Regards,

Roland

News

- Preference Actions Filed in Standard Register Company
- Leading Edge Logistics – Preference Actions Filed
- JPMorgan Wins Dismissal of Madoff investors' U.S. lawsuit
- Judge Bars Sales of Ch. 11 Grocery Stores Due to Fraudulent Claims.
- Trustee in TelexFree Bankruptcy Files a Lawsuit against Gerald Nehra and the Nehra and Waak law firm.
- Charles Bennett, a Former Corporate Lawyer at Skadden, Arps,



Slate, Meagher & Flom, Sentenced to Prison for Running a $5 million Ponzi scheme.

Opinions

- Commissions Received by a Wholesale Insurance Broker are Preferences under Sec. 547(b)
- Amounts Withheld for Payment of Taxes are Not Avoidable as Preferential Transfers
- Payments Pursuant to a Garnishment Lien is Avoidable as a Preferential Transfer
- Genuine Issue of Fact Exist as to Whether Alleged Transfer is Earmarked for Payment of a Pre-Petition Debt
- Tax Upset Sale is Not Avoidable Under Sec. 548(a)(1)(B) as the Price Defendant Paid For the Property Constituted Reasonably Equivalent Value
- Federal and State Tax Liens Do Not Attach to Fraudulent Conveyance Actions

Recent Preference and Fraudulent Conveyance News

Preference Actions Filed in Standard Register Company

May 16, 2016, Delaware - **SRC Liquidation, LLC (Liquidating Debtor) (**f/k/a SRC Liquidation Company f/k/a The Standard Register Company) and/or its related entities (Debtors) **initiated about 394 complaints seeking the avoidance and recovery of allegedly preferential and fraudulent transfers** under Sections 547, 548 and 550 of the Bankruptcy Code during the month of May 2016.

Previously, on March 12, 2015, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware Court, thereby commencing bankruptcy cases. On November 19, 2015, the Court entered an order confirming the Debtors' second amended Chapter 11 Plan of liquidation. The Plan became effective on December 18, 2015. Pursuant to the Plan, the Liquidating Debtor was granted requisite standing and authority to prosecute, pursue, administer, settle, litigate, enforce and liquidate causes of action, including actions under Chapter 5 of the Bankruptcy Code to

recover payments made to the Debtors' creditors prior to the petition date.

The law firms of ASK LLP and Bayard, P.A. is representing the Debtors in these various preference cases. The pretrial conference has not yet been scheduled. The Debtors bankruptcy cases are jointly administered under Case No. 15-10541. The cases are pending before the Honorable Brendan L. Shannon in the U.S. Bankruptcy Court for the District of Delaware.

Prior to the Petition Date, the Debtors were one of the leading providers in the United States of communications services and communications workflow, content and analytics solutions through multiple communication channels, maintained business relationships with various business entities, including vendors, creditors, suppliers and distributors, and regularly purchased, sold, received and/or delivered goods and services in support of their operations.

Leading Edge Logistics – Preference Actions Filed

May 17, 2016, Delaware - **Alfred Giuliano, the Chapter 7 Trustee for the bankruptcy estate of Leading Edge Logistics, LLC (Debtor) filed approximately 80 complaints during the second week of May 2016**. The Trustee initiated the lawsuits in the U.S Bankruptcy Court for the District of Delaware and argued that the assets held by the defendants belonged to the Debtor and that the payments received by various defendants are avoidable and subject to recovery under 11 U.S.C. § 547 of the bankruptcy code. The avoidance actions have been initiated primarily against transportation companies that had served as subcontracted carriers for the Debtor in the period leading up to its bankruptcy.

The Debtor filed for protection under Chapter 7 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware in May 2014. Prior to the petition date, the Debtor was a privately-held global logistics management company that provided truckload transportation, specialized heavy haul transportation, freight forwarding, international shipping, intermodal, air/ocean, contract carriage, and warehousing.

The Debtor's preference actions are pending before the Honorable Judge Mary F. Walrath. The Trustee is represented by the law firm Subranni Zauber LLC. The Debtors cases are administered under Case no. 1:14-bk-11260.

JPMorgan wins dismissal of Madoff investors' U.S. lawsuit

New York, May 18, 2016 - In a class action suit brought by Richard Friedman and Carla Hirschorn on behalf of investors in Bernard L. Madoff's Ponzi scheme, alleging that the U.S. bank JPMorgan Chase & co. played an active role in Madoff's Ponzi scheme and ignored red flags of his fraud, the Court held in favor of bank.

The Honorable U.S. District Judge John G. Koeltl in Manhattan held that the plaintiffs failed to show that JPMorgan had specific control over Madoff's fraud and the allegations only suggested that JPMorgan and its employees were negligent, not fraudulent in dealing with Madoff. Judge Koeltl also dismissed several state law claims, saying they were preempted by federal law.

The lawsuit was brought on behalf of an estimated 2,500 net winners who withdrew more money from their accounts at Bernard L. Madoff Investment Securities LLC than they invested. They sought to hold JPMorgan liable for failing to end its relationship with Madoff although it knew or should have known his business was a fraud, and failing to report suspicious activity to the U.S. Securities and Exchange Commission.

The JPMorgan lawsuit began in March 2014, after the bank agreed to pay $2.6 billion to settle other Madoff litigation.

The case is *Friedman et al v. JPMorgan Chase & Co et al*, U.S. District Court, Southern District of New York, No. 15-05899.

Judge Bars Sales of Ch. 11 Grocery Stores Due to Fraudulent Claims

May 31, 2016, Delaware – A Delaware bankruptcy judge restrained a failed grocery chain's owners and subsidiaries from selling its stores to an insider-controlled company and granted the plaintiff's ex parte motion for temporary restraining order and motion for preliminary injunction. **The case relates to an alleged fraudulent transfer of Debtor Fresh & Easy LLC's real property to an insider-owned affiliate for no consideration.**

Two years ago, in April 2014, the Debtor suffered significant recurring losses and was substantially insolvent. The Debtor's insiders allegedly transferred 19 parcels of unencumbered real property to the newly formed, insider-owned FEFOS, LLC (FEFOS). The Debtor allegedly received nothing in exchange for this transfer. Based on this, the creditors' committee, acting on the Debtor's behalf, sought to avoid and recover the alleged fraudulent transfer for the benefit of the estate and its creditors.

The Committee in its motion for temporary restraining order and preliminary injunction requested the Court to enter an ex parte temporary restraining order enjoining FEFOS from transferring any of the stores, except as approved in advance by the Committee; transferring any proceeds from the sale of the stores, except as necessary to pay any reasonable expenses in the ordinary course of business or as approved in advance by the Committee; and commingling any proceeds from the sale of the stores with any other funds, except as approved in advance by the Committee.

The Committee alleged that the transfer was made with the actual intent to hinder, delay, or defraud creditors to which the Debtor was or became indebted to on or after the date of the transfers. The Debtor received less than reasonably equivalent value in exchange for the Transfer. Indeed, the Debtor received no value whatsoever for the Transfer. Thus, **the alleged transfer is liable to be recovered as fraudulent under Sec. 548(a) (1) and Sec. 548 (b) (1).**

The Court stated that the balance of hardship and public interest favors in granting the injunctive relief and accordingly restrained FEFOS to either transfer the stores or transfers/ commingle the proceeds from the sale of stores. The Court is scheduled to conduct a hearing on the Committee's request in motion for preliminary injunction on June 13, 2016.

Trustee in TelexFree Bankruptcy Files a Lawsuit against Gerald Nehra and the Nehra and Waak law firm

May 5, 2016, Massachusetts - **The Trustee for the Debtor TelexFree bankruptcy filed a lawsuit against Defendants Gerald P. Nehra, Nehra and Waak law firm, alleging that they were actively involved in promoting the Ponzi scheme and duping customers.** The Trustee alleged that the Defendants were retained by the Debtor in the spring of 2012 to provide advice with respect to the implementation of the Debtors' business plan, but failed to provide the Debtors with any compensable advice during the two years of their retention by the Debtors. The Trustee has now initiated adversary proceeding to recover payments made to the Defendants within two years of the bankruptcy filings as fraudulent transfers.

Charles Bennett, a Former Corporate Lawyer at Skadden, Arps, Slate, Meagher & Flom, Sentenced to Prison for Running a $5 million Ponzi scheme

May 19, 2016, New York - Charles Bennett, 57, a former corporate lawyer at Skadden, Arps, Slate, Meagher & Flom, was sentenced to prison for running a $5 million Ponzi scheme. Bennett had left a suicide note before trying to kill himself which revealed the scheme that defrauded his friends and family members. Bennett survived the suicide attempt.

Bennett allegedly began the scheme in 2008, duping several investors with promises of up to 25 percent returns and misleading claims. As per the complaint, the investment fraud came after Bennett launched his own law practice in 2001. As a part of the scheme, Bennett allegedly told investors that he had a relationship with a Wyoming fund manager and could arrange for investments in his fund. But Bennett never invested the money and instead used it for his own benefit and to repay investors. He attempted to commit suicide after investors began demanding repayment.

The case is *U.S. v. Bennett*, U.S. District Court, Southern District of New York, Case No. 15-00020.

Recent Preference and Fraudulent Conveyance Opinions

Commissions Received by a Wholesale Insurance Broker are Preferences under Sec. 547(b)

Kartzman v. Peachtree Special Risk Brokers (In re John A. Rocco Co.), Nos. 12-01269 (JKS), 10-18799 (JKS), 2016 Bankr. LEXIS 2079 (U.S. Bankr. D.N.J. May 18, 2016)

Debtor John A. Rocco Co., Inc. was an insurance producer. **Defendant Peachtree** was a wholesale insurance broker. Debtor and Peachtree entered into an agreement pursuant to which the Debtor placed two insurance policies for its clients through Peachtree. The clients defaulted and the policies were cancelled. A few months later, the Debtor sought to reinstate the policies and wired a total of $138,114.50 from its trust account into Peachtree's trust account. Peachtree further remitted the funds to the insurers, less its commission of $15,870.60 and the two policies were then reinstated retroactively.

The Debtor filed a voluntary Chapter 11 petition and the Trustee commenced the adversary proceeding against Peachtree to recover the alleged payments as preferential. **The Bankruptcy Court granted partial summary judgment in favor of the Trustee** on his claim to recover $138,114.50 as preference payments. The District Court remanded the case to determine whether Peachtree was the initial transferee from whom the preference payment can be recovered. In the meantime, the Trustee settled its claims directly with the Debtor's clients towards their two insurance policies and filed a notice of settlement in the Court. Pursuant to the settlement, the Trustee was entitled to pursue its claims against Peachtree but such claims were limited to the recovery of the commissions retained by Peachtree. So, the only remaining issue was whether the commissions of $15,870.60 received by Peachtree were preferences under section 547(b) of the Bankruptcy Code.

Upon remand, the Court concluded that **Peachtree was the initial transferee as it received payment directly from the Debtor and retained the commissions for its own benefit**. The Court reasoned that Peachtree was a creditor of the Debtor because the Debtor guaranteed Peachtree full payment of premiums and commissions on each policy written pursuant to the parties' agreement. Peachtree issued invoices to the Debtor demanding payment of the two premiums and the commission payments were made on account of this antecedent debt because they relieved the Debtor of this liability. Peachtree did not challenge the presumption of insolvency set forth in section 547(f) and the transfer occurred during the 90-day preference period. Finally, the transfers enabled Peachtree to receive more than it would receive in Chapter 7 because over $19,000,000 in claims were filed in the bankruptcy case and the Debtor's petition reflected only $119,320.50 in assets. **Since all of the elements of section 547(b) were present, the Court held that the commission payments of $15,870.60 were preferences.**

Amounts Withheld for Payment of Taxes are Not Avoidable as Preferential Transfers

Slobodian v. United States IRS (In re Net Pay Sols., Inc.), No. 15-2833, 2016 U.S. App. LEXIS 8601 (3d Cir. May 10, 2016)

Debtor Net Pay Sols., Inc. managed its clients' payrolls and handled their employment taxes pursuant to a payroll services agreement. The agreement gave clients the option of authorizing Net Pay to transfer funds from their bank accounts into Net Pay's account and to remit those funds to the clients' employees, the IRS, and other taxing authorities. At issue were five transfers Net Pay made on behalf of its clients to the IRS, three months before it filed its Chapter 7 petition. **The Trustee for Net Pay, Markian Slobodian sought to recover the monies represented by these five payments, arguing that they were avoidable preferential transfers.**

The District Court concluded that four of the five transfers were not subject to recovery as preference payments because they were less than the minimum amount established by law ($5,850) under Sec. 547(c)(9). The Trustee argued that the statutory threshold did not apply, as the payments exceed $5,850 in the aggregate. The District Court rejected this argument, reasoning that **different transfers can be aggregated only if they are transactionally related to the same debt**. Since, the five payments were

separate and unrelated transactions in satisfaction of independent antecedent debts to different creditors, the Court held that they could not be aggregated to satisfy the statutory minimum. On appeal, the Third Circuit also affirmed the District Court judgment and held that **Sec. 547(c)(9) precludes aggregation of multiple preferential transfers for the benefit of different creditors on distinct debts.**

With regard to the fifth payment that exceeded the statutory minimum, the question remained whether it was a "transfer of an interest of the debtor in property." The Court concluded that the fifth transfer was also not avoidable as a preferential transfer as the funds were withheld from the paychecks of employees of a client for payment of taxes and by statute the **Debtor held those funds in trust for the IRS. Thus, the transfer of those funds did not constitute a transfer of an interest of the debtor in property subject to avoidance as a preferential transfer.** The Third Circuit affirmed the District Court judgment.

Payments Pursuant to a Garnishment Lien is Avoidable as a Preferential Transfer

Weinman v. Alt. Revenue Sys. (In re Stevens), Nos. 15-11776 HRT, 15-01340, 2016 Bankr. LEXIS 2093 (U.S. Bankr. D. Colo. May 23, 2016)

Debtors Kwanza B Stevens and Mindy M. Stevens filed voluntary petitions under Chapter 7 of the Bankruptcy Code and the Trustee brought a complaint against **Defendant Alt. Revenue Systems (ARS)**, alleging claims for avoidance, preservation, turnover, and disallowance under 11 U.S.C. §§ 547, 551, et al. Prior to the bankruptcy filing, ARS obtained a judgment against Debtor Mindy Stevens in Denver County Court, and served a writ of continuing garnishment on her employer.

The Trustee alleged that the wage garnishments ARS received during the 90 days prior to the petition date were avoidable transfers under § 547(b). ARS argued that the relevant transfer took place on the date the writ of garnishment was served, before the 90-day preference period, rather than with each paycheck garnished. Both parties generally agreed the facts were not in dispute, except as to the date the wages were earned versus the date they were paid. **ARS relied upon the decision in *Straight v. First Interstate Bank (In re Straight)*, 207 B.R. 217 (BAP 10th Cir. 1997), where the court had held that the payments made during the preference period, pursuant to a garnishment or attachment obtained prior to the preference period, were transfers, but not avoidable as preferences because they did not enable the creditors to receive more than they would have without them if the debtor were liquidated in Chapter 7**. Accordingly, ARS argued that the alleged transfers were not avoidable transfers under the reasoning of the *Straight* decision.

The Court held that the ruling of the *Straight* court regarding garnishments not being avoidable would be correct in the context of property or a bank account in existence at the time the garnishment was served. In that situation, when the garnishment is served, the judgment lien attaches and a transfer occurs immediately because the judgment debtor has present rights in the property. But that situation is distinct from a continuing wage garnishment served prior to an employee obtaining rights in the property by

earning wages. The Court stated that majority of wage garnishment cases have held that, regardless of when the garnishment writ was served, each garnished paycheck in the 90-day pre-petition period was an avoidable transfer under § 547(b).

The Colorado bankruptcy court followed the majority rule and held that, regardless of when the garnishment writ was issued and served, each time the Debtors' paycheck was garnished in the 90 days pre-petition, a transfer occurred which enabled ARS to receive more than it would have under Chapter 7 of the Bankruptcy Code. Accordingly, the Trustee was entitled to recover the alleged transfer as preference.

Genuine Issue of Fact Exist as to Whether Alleged Transfer is Earmarked for Payment of Pre-Petition Debt

Deeba v. Pinkerton & Finn, P.C. (In re Macco Props.), No. 12-1118-R, 2016 Bankr. LEXIS 2101 (U.S. Bankr. W.D. Okla. May 23, 2016).

The Trustee for **Debtor Macco Properties, Inc**. brought an action against **Defendant Pinkerton & Finn**, **P.C.(P&F),** contending that a few weeks after filing its Chapter 11 petition, Debtor wire-transferred a total of $61,288.05 from its general operating bank account to P&F in payment of a prepetition debt. The Trustee contended that the transfers were avoidable under 11 U.S.C. § 549(a), as they were not authorized by statute or by any court, and sought to recover the alleged transfers from P&F under 11 U.S.C. § 550(a).

P&F admitted that it received $61,288.05 from the Debtor, but asserted that the funds transferred by the Debtor were not property of the bankruptcy estate, but instead were funds that the Debtor received from a related entity that was not in bankruptcy. P&F argued that the alleged funds were deposited into the Debtor's account for the express purpose of paying P&F's invoices and hence, such funds were earmarked for payment to P&F. So, the Defendant argued that as earmarked funds are not the property of the estate; the estate cannot avoid the alleged transfer of such funds under Section 549(a)

The Court found that P&F could not establish from the given facts that earmarking occurred under any of the defined tests. There was no evidence that the Debtor lacked the power to choose who would and would not be paid from the account. There was no evidence that any entity depositing funds in the account restricted Debtor from using the funds for purposes other than payment of P&F. **No evidence supported P&F's allegation that funds were deposited into the Debtor's account to cover the payments to P&F or that particular deposit was allegedly earmarked**. The Defendant did not submit any evidence that supported an inference that the deposited funds were held by the Debtor in trust.

The Court held in favor of the Trustee to avoid and recover from P&F the full amount of the wire transfers, $61,288.05, for the benefit of the Debtor's estate.

Tax Upset Sale is Not Avoidable Under Sec. 548(a)(1)(B)(i) Because the Price Defendant Paid for the Property Constituted Reasonably Equivalent Value.

Crespo v. Abijah Tafari Immanuel (In re Crespo), Nos. 14-11629REF, 14-326, 2016 Bankr. LEXIS 2073 (U.S. Bankr. E.D. Pa. May 18, 2016).

Debtor Edwin O. Crespo and his wife, Angela Crespo, resided at Allentown, PA (Property), and were the record owners of the Property. They became delinquent on their property tax obligations. The Debtor and the Tax Claim Bureau entered into an agreement, pursuant to which the Debtor was required to pay the overdue tax in four installment payments for the Tax Claim bureau to stay the tax sale. The Debtor defaulted on the agreement and missed the installment payments. The Tax Claim Bureau sent a delinquency notice to the Debtor by certified mail, attempted to serve the Debtor and his wife personally with tax sale notices twice, but the attempts were unsuccessful. Finally, the Bureau obtained the waive notice permission and the exposed the Property to a tax upset sale.

Defendant Abijah Tafari Immanuel, who was engaged in the business of purchasing, selling, and leasing real estate, bid $27,000 for the Property and was successful. A few months later, the Debtor filed the petition to set aside this tax sale of the Property for lack of notice irregularities and due process violations in a State Court. The State Court rejected the Debtor's notice and due process arguments and denied the petition to set aside tax sale. Subsequently, the Debtor filed the Chapter 13 bankruptcy petition and initiated an adversary proceeding to avoid the pre-bankruptcy petition tax upset sale as a fraudulent transfer under Sec. 548 (a)(1)(B)(i). The Debtor alleged that the Property was sold at a tax upset sale for less than reasonably equivalent value; that the Res Judicata Doctrine precluded the Court to adjudicate on this matter.

Doctrine of res judicata, also known as claim preclusion, precludes parties from relitigating claims that were litigated, or could have been raised, in a prior action based on the same cause of action. The Court stated that the petition which the Debtor filed with the State Court, related to the setting aside of the tax upset sale owing to notice irregularities and due process violations. However, the cause of action in the bankruptcy case involved, a claim that the tax upset sale should be avoided as a fraudulent transfer under Sec. 548 (a)(1)(B)(i). This claim was neither raised in the state court proceeding nor was it identical to the cause of action litigated in the state court proceeding. So, the action to set aside the tax upset sale as a fraudulent transfer was not barred by the doctrine of res judicata.

Next, t**he Court held that the tax upset sale was not avoidable under Sec. 548(a)(1)(B)(i) because the price Immanuel paid for the Property constituted reasonably equivalent value.** The Court rejected the Debtor's argument that the price obtained at a tax upset sale did not constitute reasonably equivalent value because it was likely to be less than the price obtained at a foreclosure sale and based on an arms-length open market transaction. The Court reasoned that the protections, rights and remedies afforded to a delinquent taxpayer under the Pa. Tax Law are no less than those afforded to a mortgagor under Pennsylvania mortgage foreclosure law.

The Court further highlighted that the price obtained at a forced sale is deemed to constitute "reasonably equivalent value" if the forced sale was conducted in compliance with the requirements of a state's forced sale law, under the U.S. Supreme Court's ruling in *BFP v. Resolution Trust Corn*. In the case at bar, the State Court, had already decided on this and found that the tax upset sale of the Property was conducted in compliance with due process and the Pa. Tax Law. The Bankruptcy Court thus, under the doctrine of collateral estoppel, was bound by the findings of the State Court and hence, those findings must be given collateral estoppel effect. The Court found that each of the other elements for collateral estoppel was satisfied- the issues decided in the state court action, i.e., that the tax upset sale was conducted in compliance with due process requirements and the Pa. Tax Law, were identical to the issues before the bankruptcy court; the party against whom collateral estoppel was asserted, namely Debtor, was a party in the state court action and had a full and fair opportunity to litigate the issue in question.

Hence, the tax upset sale was not avoidable under § 548(a)(1)(B)(i) as the sale of the property was conducted in compliance with due process and the Pennsylvania Tax Law.

Federal and State Tax Liens Do Not Attach to Fraudulent Conveyance Actions

Richardson v. Green (In re THR & Assocs.), Nos. 12-72022, 14-07008, 2016 Bankr. LEXIS 2121 (U.S. Bankr. C.D. Ill. May 26, 2016).

Debtor THR & Assocs. was in the business of buying and reselling gold, other precious metals, coins, collectibles, art, and other miscellaneous property. Jeffrey A. Parsons was the sole shareholder and president of THR. **Defendants Todd Green, Panther 4700, LLC (Panther), United Community Bank (UCB), Jacob Parsons, and Uncle Buck's Trading Post, LLC (Uncle Buck's) entered into certain transactions with the Debtor regarding lease of a residence and purchase of a boat for Jeffrey Parsons' personal use**. The Debtor made several monthly and lump-sum payments to Panther towards Jeffrey Parsons' rent, escrow payments, purchase of a boat etc. These transactions were made with the assets belonging to the Debtor for the benefit of the Defendant. **The Trustee brought an adversary proceeding against the Defendants to avoid and recover these transactions as actual fraudulent conveyances pursuant to §548(a)(1)(A) and 548(a)(1)(B).**

The Trustee contended that Jeffrey Parsons took money (much of which was booked as shareholder distributions) from the Debtor and paid that money to the Defendant Green and Panther to finance a lease-purchase deal on a house and the purchase of a boat. The Debtor did not receive reasonably equivalent value; that the conveyances were made at a time when the Debtor was insolvent constituting constructive fraud on the one hand; or that the transfers constituted actual fraud, as they were made with the specific intent of defrauding or hindering creditors.

The Defendants alleged that the Trustee's complaint did not set forth the alleged actual fraud with sufficient particularity and hence should be dismissed. The Trustee lacked standing to bring the action because any potential recovery will be encumbered by liens of the Internal Revenue Service ("IRS"), the Illinois Department of Revenue ("IDOR"), and the Illinois Department of Employment Security

("IDES"). Thus, there will be no potential benefit to the estate from the Trustee's pursuit of the action and, therefore, the action must be dismissed.

The Court rejected the Defendants first argument and found that the Trustee did allege the existence of several traditional badges of fraud, including that Debtor was insolvent at the time of the transfers and that the Debtor received no consideration for the transfers. Such allegations were sufficient to support the drawing of an inference of fraudulent intent and to avoid dismissal of the complaint.

The Court rejected the Defendant's next argument as well and found that the validity, priority, and extent of the liens on the Debtor's assets that were allegedly transferred to the Defendants could not be determined in this case or on the documents before the Court. **Further analysis was required to determine, if the transferred assets and their potential proceeds were fully encumbered or not.**

The Court next concluded that **the Trustee had standing to bring a fraudulent conveyance action and that the potential recovery will be not be encumbered by liens of the IRS, IDR, IDOR because the federal and state tax liens do not attach to a fraudulent conveyance action.** Under Sec. 6321 of IRS Code, the property of a taxpayer to which the liens might attach, certainly includes causes of action held by the taxpayer against third parties, it does not include a right to bring a fraudulent conveyance action, as that right is not the property of the person or entity that made the allegedly fraudulent transfer. That right arises by statute for the benefit of creditors and do not come into the estate as property owned by the debtor. So, the IRS, IDOR, and IDES liens did not attach to the fraudulent conveyance actions.

The Court held that the Defendants' assertions that the liens attached to the fraudulent conveyance causes of action were inaccurate and did not support their motions to dismiss for lack of standing. **The Court denied the Defendants' motion to dismiss the adversary proceeding and granted time to the Defendants until June 16, 2016, to answer or otherwise plead to the Trustee's Complaint.**

Snapshot of Clawback Cases Filed

Groups of Adversary Proceedings filed by the Debtors	Total cases filed	Name of Judge	Largest Case in the group	Claim Amount of the Largest Case	Petition Date	District
SRC Liquidation, LLC	394	Brendan Linehan Shannon	Cenveo Corporation	$ 3,520,186.00	3/12/2015	District of Delaware
Leading Edge Logistics LLC	86	Mary F. Walrath	YRC, Inc.	$ 910,970.75	5/19/2014	District of Delaware
Universal Logistics Group, Inc.	42	Rosemary Gambardella	ProLogis	$ 1,689,720.18	5/22/2014	District of New Jersey

Licking River Mining, LLC	30	Tracey N. Wise	Whayne Supply Company	$ 1,723,353.42	5/22/2014	Eastern District of Kentucky
Castle Cheese Inc.	21	Jeffery A. Deller	Bunge North America, Inc.	$ 214,439.92	5/30/2014	Western District of Pennsylvania
International Manufacturing Group, Inc.	17	Robert S. Bardwil	Camray Marketing Corp.	$ 4,949,292.44	5/30/2014	Eastern District of California
Exiom Site Services LLC	16	Brenda T. Rhoades	Aggregates Now	$ 83,150.14	3/2/2016	Eastern District of Texas
NRAD Medical Associates, P.C.	16	Louis A. Scarcella	Joseph Zito	$ 1,916,516.83	7/7/2015	Eastern District of New York
Money Centers of America, Inc.	15	Christopher S. Sontchi	Bakken Ridge Entertainment, L.L.C.	$ 1,496,263.96	3/21/2014	District of Delaware
Maritech Windows LLC		Stacey G. Jernigan	David Allen Crawford	$ 747,262.82	5/23/2014	Northern District of Texas

BIO

About Roland Jones

Mr. Jones has practiced bankruptcy law for over two decades. His primary focus is representing corporate defendants in preference and fraudulent conveyance litigation. Mr. Jones has a national client base and has also represented corporate clients based in Europe and the Far East.

In addition to his law practice, Mr. Jones has authored professional articles on bankruptcy issues for the *New York Law Journal*, *The Environmental Claims Journal*, *The Mergers and Acquisitions Report*, and other scholarly publications.

Mr. Jones also edits and writes the ***Clawback Report***, a monthly publication on preference and fraudulent conveyance litigation.

Mr. Jones was the founding member and former Chair of the Federal Bar Association Empire State Chapter Bankruptcy Committee. The Bankruptcy Committee has hosted experts to speak on topics important to both bankruptcy and non-bankruptcy practitioners. Guest speakers have included The Honorable Jerrold Nadler on new bankruptcy legislation, Wilbur L. Ross, Jr. of Rothschild Inc. on the distressed bond market, and Professor Edward Altman of New York University on bankruptcy investing.

Mr. Jones is the founding member and current President of the National Association of Bankruptcy Litigators. The NABL is a new organization focusing exclusively on clawback issues consisting of 110 bankruptcy lawyers from throughout the country.

Mr. Jones' introduction to bankruptcy practice began by serving as a judicial law clerk to Chief U.S. Bankruptcy Judge Conrad B. Duberstein of the Eastern District of New York during law school. He continued his training after graduation by clerking for U.S. Bankruptcy Judge Cecilia H. Goetz of the Eastern District of New York from 1990 to 1991.

Mr. Jones attended the Horace Mann School, Columbia University (B.A. Ancient Studies) and Brooklyn Law School (J.D. 1990) He is admitted to practice law before the United States District Courts for the Southern and Eastern Districts of New York, as well as the United States Court of Appeals for the Second Circuit.

Mr. Jones was born in New York City.

Bar Admissions
New York State Bar Admission - 1990

United States District Court Southern District of New York - 1991
United States District Court Eastern District of New York - 1991

Professional Memberships
President: National Association of Bankruptcy Litigators
Member: New York State Bar Association
Member: Association of Bar City of New York
Member: Turnaround Management Association
Member: American Bankruptcy Institute

Education
1972 – 1977: The Horace Mann School
1977 – 1979: Vassar College
1985 – 1987: Columbia University; top 10% of the graduating class
1988 – 1990: Brooklyn Law School; top 10% of the graduating class

Writings
"Are repos exempt from automatic stay?"; Bankruptcy Law - New York Law Journal; Pg. 31, (col. 6); Vol. 213, 2586 words

"Bankruptcy's conflict of Interest Rule"; Outside Counsel - New York Law Journal; Pg. 35, (col. 3); Vol. 212, 2117 words

"Bankruptcy and Environmental Law", The Environmental Claims Journal

"Mergers and Acquisitions in Bankruptcy", The Mergers and Acquisitions Report

The Clawback Report, A Quarterly Publication on Preference and Fraudulent Conveyance Litigation Issues.

"Introduction to Preference Law", National Association of Bankruptcy Litigators Journal

Bankruptcy Bulletin: "Wellness International Network, Ltd. v. Sharif, 135 S. Ct. 1932 (2015)", National Association of Bankruptcy Litigators Journal

Majority Report: "Redefining the Circuit Split Over the § 547(c)(4) Subsequent New Value Defense" by Roland Jones, Esq. and Solomon Rotstein, National Association of Bankruptcy Litigators Journal

Videos
Please feel free to watch our video, Basic Preference Law, on YouTube.

Below is a list of other clawback related videos that we have uploaded to YouTube. For an in-depth review of the preference laws, please see our five-part video series. CLE credit is currently available for New Jersey and Texas. We are expecting to be approved in more states shortly.

Introduction to the Bankruptcy Preference Laws - Part 1/5

Introduction to the Bankruptcy Preference Laws - Part 2/5
Introduction to the Bankruptcy Preference Laws - Part 3/5
Introduction to the Bankruptcy Preference Laws - Part 4/5
Introduction to the Bankruptcy Preference Laws - Part 5/5

For other videos on special topics regarding clawback law, please see the following:

Adversary Complaint – Who Bears the Burden of Proof of Service of Process?

Can Summary Judgment Be Granted If Factual Issues Exist?

Agriculture Preference Issues - Part 1

Agriculture Preference Issues - Part 2

Transfer of a Security Interest in Property During the Preference Period–Is it Preferential?

Preference Issues in the Construction Industry

Non-Filing of the Creditor's Claim Against the Debtor – How Does It Affect Court's Jurisdiction?

Sudden Change In the Mode of Payment During the Preference Period-Is It Out of the Ordinary Course?

Is an Express Trust Constituted During the Preference Period Preferential?

The Preference Period Payments Match the Base Period Timing of Payments - Are they Preferential?

Payments Received By a Conduit During the Preference Period - Are they Preferential?

Change in the Scope of Work- Does the Industry Standard Defense Still Apply?

Internal E-mail Listing the Assets and Liabilities - Is It Sufficient To Prove Debtor's Insolvency?

Creation of a Judgment Lien - Is It a Preferential Transfer?

The Source of Preferential Payments - Is It Relevant To the Preference Analysis?

What Is the Purpose Behind the New Value Exception?

Baseline of Dealings For the Ordinary Course Defense - Who Bears the Burden To Establish It?

Faster Payments During the Preference Period - Can They Be Protected By the Ordinary Course Defense?

Payments Resulting From Collection Pressure - Are They Preferential?

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