Creditors' Rights and Bankruptcy Practice Group

CLIENT ALERT

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NINTH CIRCUIT OPINION BROADENS LENDERS' RECOVERIES FOR INTENTIONAL FRAUDULENT TRANSFERS

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In the case of *DZ Bank AG Deutsche Zentralgenossenschaft Bank, Frankfurt Am Main v. Meyer,* 15-35086 (9th Cir. August 24, 2017), the U.S. Court of Appeals for the Ninth Circuit held that a lender's recovery for an intentional fraudulent transfer is not limited to the value of the assets that were directly traceable to its security interest.

BACKGROUND FACTS

The *Meyer* case arose from a dispute between DZ Bank AG Deutsche Zentralgenossen-schaftsbank ("DZ Bank"), as creditor, and Louis and Lynn Meyer ("the Meyers"), as debtors. Id. at 1.

DZ Bank filed an adversary proceeding against the Meyers in Bankruptcy Court, alleging that the Meyers had fraudulently transferred assets from one of their closely-held companies to another one of their closely-held companies in order to place them out of the bank's reach. Id.

The Bankruptcy Court agreed that the transfer was fraudulent, but limited DZ Bank's judgment to $123,200, which was the portion of the $385,000 in assets transferred that was traceable to DZ Bank's security interest in the assets. Id. at 7. DZ Bank appealed, arguing that the Bankruptcy Court erroneously limited the amount of its non-dischargeable debt. Id.

The District Court affirmed, reasoning that DZ Bank could not recover the value of the other assets because those assets were not the property of the Meyers, but rather, were the property of Louis Meyer's closely-held corporation, Meyer Insurance. Id. at 1-2.

The District Court reasoned that DZ Bank could not maintain a fraudulent transfer claim as to Meyer Insurance's "non-collateral assets," because DZ Bank could only recover assets that were the "property of [the] debtor[s],"under Washington's version of the Uniform Fraudulent Transfer Act ("UFTA") § 19.40.011(2). Id. Since the assets transferred were legally titled in the name of Meyer Insurance, the District Court held that the UFTA did not apply. Id. The Court explained that, for the UFTA to apply, DZ Bank was required to obtain a ruling that Meyer Insurance—which transferred the assets to another closely-held company—was the alter ego of the Meyers, which it failed to do. Id.

THE NINTH CIRCUIT'S DECISION

On appeal, the Ninth Circuit explained that, when Louis Meyer indirectly transferred all of Meyer Insurance's assets to another corporation, he depleted the value of his assets (i.e. the stock of Meyer Insurance) to the detriment of his creditors. Id. at 10. The Court explained that his shares in Meyer Insurance became worthless as a result of his actions, as Meyer Insurance's sole owner and shareholder, while, even after filing for bankruptcy, he continued to receive payments from the transferee company. Id. In other words, Louis Meyer prevented DZ Bank from collecting $385,000 of the debt that he personally owed to DZ Bank under a personal guarantee. Id.

In reaching its decision, the Ninth Circuit first looked at the purpose and intent of the UFTA enacted in Washington and found that, "the overriding purpose of the UFTA is to provide relief for creditors whose collection on a debt is frustrated by the actions of a debtor to place the putatively satisfying assets beyond the reach of the creditor." Id. at 8 (citing *Thompson v. Hanson*, 219 P.3d 659, 665, as amended (Mar. 26, 2010), republished as modified at 239 P.3d 537 (Wash. 2009)).

Next, the Court examined how other courts have interpreted the provisions of UFTA and found cases from Minnesota, South Dakota and the Eleventh Circuit instructive. Id. at 8-9. Those cases explained that UFTA did not require the debtors, themselves, to have legal title to the assets transferred. Id. at 8.

The Ninth Circuit explained that the Bankruptcy Court should have granted a judgment for the full $385,000 that DZ Bank would have recovered if it had been able to execute against Louis Meyer's ownership interest in Meyer Insurance before the transfer occurred. Id.

CONCLUSION

The Ninth Circuit's decision in *Meyer* is an important case for lenders seeking to collect from debtors who attempt to hinder, delay or defraud them by fraudulently transferring assets between separate entities, because the *Meyer* decision makes clear that the amount of a judgment that can be obtained by a lender will not be limited to the value of assets that are a part of their security.

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Creditors' Rights and Bankruptcy. Goodsill's attorneys practicing in the area of creditors' rights and bankruptcy concentrate on the representation of lenders, creditors, trustees, committees and other interestholders in complex bankruptcy, foreclosure, receivership, commercial landlord-tenant, collection and commercial litigation matters. Goodsill attorneys are adept at helping creditors avoid protracted litigation through creative workouts and settlements. Goodsill attorneys in this practice area frequently contribute to publications and lecture at bankruptcy and collection law seminars.