MARKS & WEINBERG, P.C.

Official Committee of Unsecured Creditors v. Shapiro

1999 WL729267 (E.D. PA, 2000)

When Walnut Leasing Company, Inc. (ñWalnutò) began having financial difficulties, it created Equipment Leasing Company, Inc. (ñELCò). Apparently, ELC and Walnut were marketed as separate entities even though ELCôs sole function was to acquire leases from Walnut and to sell certificates to raise money to keep Walnut financially afloat.

Eventually both ELC and Walnut went bankrupt and the committee of unsecured creditors acting as Trustee, brought suit on behalf of the debtor corporationôs against certain officers and directors of such corporations. The claim stated that ñthe debtors were fraudulently induced to register, offer and sell securities when insolvent and thus without ability to repay their obligations to investors [and] as a result the debtorôs outstanding debt was continually expanded out of all proportion with their ability to repay forcing them into bankruptcy.ò

An issue arose as to whether or not the Trustee could raise, on behalf of the debtor, a claim by the debtor against its own officers and directors. Clearly the Trustee stands in the shoes of the bankrupt corporation and is able to bring all of that corporationôs claims. However, the corporation, and therefore the Trustee, cannot assert claims on behalf of the bankrupt corporationôs creditors. As such, a key issue was whether or not claim against officers and directors really belong to the corporation or to the creditors.

The Court noted that at least four (4) cases have concluded that deepening insolvency is a cognizable injury to corporate debtors but noted that the complication of the current case resulted from the fact that the debtor corporationôs were trying to make claims against their own officers rather than third parties. The court cited the ñin pari delictoò and noted that debtors would not have a claim if they did ñnot sustain injuries as a victim of a fraud but were injured if all only because they participated in pari delicto in the fraudulent scheme as corporate conspirators and became the subjects of involuntary bankruptcy petitions when the schemes went sour.ò According to the Court, whether or not the in pari delicto rule could be utilized could be dependent on whether or not the fraud of the officer of the corporation had been imputed to the corporation. Such imputation occurs when the officerôs fraudulent contact is in the course of his employment and for the benefit of the corporation.

In the case at bar, there was no doubt that the fraud should be imputed to the corporation because the officers in question were the sole shareholders and directors and officers of the corporation. The Court also rejected an argument that the claim was barred by the one year statute of limitations, quoting the bankruptcy stay over rule 108(a).

Marks & Weinberg, PC is a law firm with significant experience in dealing with virtually every type of equipment and facility lease financing. The lawyers of the firm have participated in leasing financings for more than a billion dollars of equipment and are recognized throughout the industry. If you would like more cases or articles on leasing, or have any questions or comments about this Article or other leasing issues, please visit leaselawyer.com or contact Barry Marks at 205.251.8303 or Ken Weinberg at 205.251.8307.