



Bankruptcy Court Rules on Aggregate Value and Constructive Fraud

Young v. Dantone (In re Transcontinental Refrigerated Lines, Inc.), 2010 WL 3529468 (Bankr. M.D. Pa. Sept. 2, 2010)

The Honorable John J. Thomas of the Bankruptcy Court for the Middle District of Pennsylvania issued an opinion of apparent first impression under section 547(c)(9) of the Bankruptcy Code. Section 547(c)(9) provides that the trustee in a case filed by a debtor whose debts are not primarily consumer debts may not avoid a transfer under section 547 if “the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,475.” The question posed was whether section 547(c)(9)’s \$5,475 threshold should be evaluated on a transfer-by-transfer basis or in relation to the aggregate value of the transfers at issue. The court also considered whether Rule 9(b) of the Federal Rules of Civil Procedure applies to a claim for constructive fraud.

The defendant argued that each individual transfer at issue must exceed the \$5,475 threshold in order for the trustee to recover such transfer. The court found that there was no case law interpreting this provision of section 547(c)(9) and therefore looked to decisions interpreting similar language in 11 U.S.C. § 547(c)(8), the majority of which the court found to consider the aggregate value of the transfers at issue. The court further discussed, and ultimately relied on, section 102(7) of the Bankruptcy Code, which provides that the use of the singular in the code should be read to include the plural. The court therefore concluded that the term “transfer” under section 547(c)(9) should be construed to include the plural—“transfers”—and held that the court should consider the aggregate value of the transfers at issue under section 547(c)(9).

The court also addressed whether a plaintiff must meet the heightened pleading standard applicable to allegations of fraud under Federal Rule of Civil Procedure 9(b) when attempting to state a claim for constructive fraud. The court noted that the majority of decisional authority in the Third Circuit does not apply Rule 9(b) to constructive fraud claims. Consistent with this precedent, the court held that Rule 9(b) does not apply to constructive fraud claims.

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