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Restructuring Department Bulletin

Supreme Court Reaffirms Fraudulent Transfer Actions Are “Suits at Common Law” That Must Be Heard by a Jury

In *Sec. & Exch. Comm’n v. Jarkesy*, 144 S. Ct. 2117 (2024), the Supreme Court held that the Securities and Exchange Commission’s (“SEC”) adjudication of securities fraud claims before an administrative law judge rather than an Article III court with a jury violates the Seventh Amendment. The Seventh Amendment guarantees the right to a jury trial for “suits at common law.” The Court held that (a) the SEC enforcement action replicates common law fraud and must be heard by a jury and (b) the “public rights” exception did not apply. The exception permits an administrative agency to adjudicate matters involving “public rights” (matters that the executive and legislative branches historically could have exclusively determined) without a jury. The Court relied on *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989) in which it had held that a creditor that has not submitted a claim against a bankruptcy estate has a jury trial right when sued by a debtor for a fraudulent transfer. *Id.* at 36. The Court noted in *Jarkesy* that the SEC’s enforcement action, like a fraudulent transfer claim, targets “the same basic conduct as common law fraud” and amounts to a “matter[] of private rather than public right.” The Court’s endorsement of *Granfinanciera* affirms the right to a jury trial for some fraudulent conveyance actions, and its *dicta* that adjudication of creditor claims against the estate are “closely intertwined” with and “inseparable from” the bankruptcy regime reaffirms that adjudication of such claims against the estate do not necessarily have a similar right.

Successor Liability Claims Are Estate Property New Jersey Bankruptcy Court Holds

In *In re Whittaker, Clark & Daniels, Inc.*, No. 23-13575 (Bankr. D.N.J. Aug. 13, 2024), the New Jersey Bankruptcy Court held that successor liability claims against non-debtor parties are property of the debtors’ estates. In *Whittaker*, asbestos claimants sued non-debtor third parties alleging they are liable as successors of the debtors. Applying applicable Third Circuit authority, the court held that such claims are estate property because (a) they are general in nature, rather than personal to a plaintiff and (b) they seek to hold the non-debtor defendant indirectly liable for the debtors’ tort liabilities rather than impose a remedy that is traceable directly to the non-debtor’s own conduct.

The court’s decision prevents individual creditors from pursuing successor liability claims against non-debtor third parties outside of bankruptcy. The court emphasized that it “holds firm that allowing Debtors to pursue the Successor Liability Claims will prevent the proverbial race to the courthouse, will ensure more equitable creditor recoveries, and will enable creditors to avoid the significant risk, cost and delay (potentially years) that would result from pursuing the non-debtors and related parties through litigation.” *Id.* at 19.

Questions? Please contact any of our Restructuring Partners to discuss these or other topics in greater depth.



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DID YOU KNOW...

- In *Kartzman v. Latoc, Inc. (In re the Mall at the Galaxy, Inc.)*, 2024 WL 3688721 (3d Cir. Aug. 7, 2024), the Third Circuit applied settled fraudulent transfer law to affirm the bankruptcy court’s holding that an insolvent debtor received less than reasonably equivalent value when it was used as a conduit by incurring a loan the proceeds of which were forwarded to a non-debtor third party. The Third Circuit held that the bankruptcy court correctly applied the “collapsed-transaction doctrine” to hold the various parts of the deal were a single, integrated transaction designed to circumvent contractual restrictions otherwise preventing a direct loan to the recipient of the debtor’s loan proceeds.
- In *Seavitt v. N-able, Inc.*, the Delaware Court of Chancery held that the charter of a Delaware corporation cannot incorporate by reference the substantive terms of a stockholders or other private agreement. Because parties could amend such agreements without a stockholder vote, and thus change the charter’s substantive terms, incorporating private agreements into a charter deprives stockholders of their statutory right to vote on charter amendments. See our [client alert](#) for additional analysis.