

Second Circuit Says Section 546 of Bankruptcy Code Preempts State Law Constructive Fraud Claims

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Unanimous panel affirms dismissals of two actions brought by creditors seeking to avoid transactions through an end run around Section 546

In a final opinion dated March 29, 2016, the Second Circuit unanimously held that in circumstances where Section 546 of the Bankruptcy Code bars estate representatives from asserting constructive fraudulent conveyance claims under state law, the statute likewise prevents individual creditors from bringing those claims after the estate's time to do so expires. The Circuit's ruling in *In re: Tribune Company Fraudulent Conveyance Litigation*, No. 13-3992, and summary order in related case *Whyte v. Barclays Bank*, 13-2653, were the first decisions from a circuit court on the issue and settled a conflict among its lower courts. In a 53-page decision, the Circuit rejected the argument that the text of the statute only bars constructive fraud claims brought by a trustee or other estate representative, instead holding that the doctrine of implied preemption protects settlement payments and swap transactions from constructive fraud claims brought by any party. The decision may put an end to recent

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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