

Tribune State-Law Fraudulent Conveyance Litigation Update

September 25, 2013 | Client Update

On September 23, 2013, U.S. District Judge Richard Sullivan of the Southern District of New York issued a decision with potential implications for the interpretation of Section 546(e) of the Bankruptcy Code, the statute that protects “settlement payments” in securities transactions from avoidance claims. In a 16-page decision, the Court dismissed state-law constructive fraudulent conveyance claims brought by creditors seeking to avoid payments made to former shareholders of the Tribune Company during the Company’s 2007 leveraged buyout (“LBO”). The Court found that the plaintiffs—all individual creditors of Tribune—lacked standing to avoid those payments while the representative of the Tribune bankruptcy estate was seeking to avoid the same transfers under a different legal theory. Although the Court dismissed the claims, it also concluded that Section 546(e) only bars claims brought by a bankruptcy estate “trustee” – and does not preempt individual creditors’ state-law-based constructive fraudulent conveyance claims. If left to stand, the decision leaves open the possibility that individual creditors may assert constructive fraudulent transfer claims that the Bankruptcy Code would preclude an estate representative from asserting. The case is *In re Tribune Company Fraudulent Conveyance Litigation*, No. 11 MC 2296 (RJS) (S.D.N.Y. Sept. 23, 2013).

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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