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Public Tax Sale to Pay Unpaid Real Estate Taxes Held to Constitute “Reasonably Equivalent Value” for Fraudulent Transfer Purposes

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A voluntary or involuntary transfer of property by a debtor for less than “reasonably equivalent value” at a time when the debtor is insolvent may be avoided as a fraudulent transfer 11 USC § 548, irrespective of the debtor’s intent. In Jacobson v A127, LLC (In re Jacobson), No. 14-20452 (ASD) (Nov. 25, 2014), the Debtor challenged a municipal tax sale under Connecticut law as a constructive fraudulent transfer under 11 USC §548 on the ground that the tax sale, which was conducted to collect \$74,000 in taxes, yielded a sale price of \$200,000 when the fair market value of the property at the time of sale was \$400,000.

The Debtor argued that the U.S. Supreme Court’s decision in BFP v. Resolution Trust Co., 511 US 531 (1994) (holding that a non-collusive mortgage foreclosure sale conclusively establishes “reasonably equivalent value” under fraudulent transfer law), did not apply to a Connecticut tax sale because it is a non-judicial procedure which does not afford the opportunity to receive “reasonably equivalent value.” In support of her position, the Debtor relied on Connecticut bankruptcy court decisions holding that a strict mortgage foreclosure does not, as a matter of law, produce “reasonably equivalent value,” and other bankruptcy court decisions holding that a tax collection enforcement action which permitted the taxing authority to take immediate title to property after notice to the delinquent taxpayer and a failure to pay, did not establish “reasonably equivalent value.”

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The Court distinguished these decisions on the basis that the Connecticut tax sale statute only permits tax sales to be conducted after repeated newspaper advertisements, public postings and multiple mailings to affected persons both before and after the sale, following which title will pass to the purchaser only after the taxpayer’s six-month redemption period expires. Based on these attributes of a Connecticut tax sale, combined with the possibility of judicial review for sale irregularities, the Court held that a Connecticut tax sale is sufficiently similar to a foreclosure by sale and thus conclusively establishes “reasonably equivalent value” and may not be avoided as a fraudulent transfer.

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