Updates
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Third Circuit Decides Goods Are “Received” Upon Physical Possession in Bankruptcy Case

Many creditors that provide goods to a debtor before a bankruptcy case begins believe that their recovery will be mere cents on the dollar. While prepetition claims often receive small, if any, distributions, Section 503(b)(9) of the Bankruptcy Code provides administrative expense status to the value of "goods" received during the 20 days prior to a bankruptcy filing, meaning those claims have priority equal to the fees owed to the debtor's professionals and a better chance of payment *in full*. A recent decision by the U.S. Court of Appeals for the Third Circuit interpreted the term "received" to mean "physical possession" for purposes of calculating the timing of a claim under Section 503(b)(9) of the Bankruptcy Code. The decision reversed a ruling that denied a Section 503(b)(9) claim based on a finding that the debtor had assumed the risk of loss/damage during shipping and, therefore, the goods were "constructively received" upon shipment and not upon physical receipt. This is the first reported case by a circuit court ruling on the definition of "received" in the context of Section 503(b)(9).

The timing of when the goods are "received" by the debtor is instrumental in determining whether the claim falls within the 20-day period of Section 503(b)(9). In *In re World Imports, Ltd., et al.,* 2017 WL 2925429 (3rd Cir. 2017), the goods in question were shipped to the debtor more than 20 days before the filing of the bankruptcy case, but were accepted less than 20 days before the filing. The goods were sent "free on board" via a common carrier, meaning liability for damage and the risk of loss passed to the debtor upon shipment. However, despite the shift in liability and the risk of loss, the Third Circuit found that a common carrier is not an agent for the recipient and, therefore, accepting goods for shipment does not represent actual ***or*** constructive receipt by the buyer. The court's ruling is consistent with the interpretation of the meaning of "received" in the context of Section 546(c), which dictates reclamation conditions, and the Uniform Commercial Code (UCC) definition of "receipt" of goods.

The new ruling is beneficial to sellers of goods to distressed buyers since delaying the date upon which "receipt" of goods actually occurs increases the likelihood that the actual receipt of the goods will be within the 20 day window of Section 503(b)(9). And, after all, what trade creditor would not want to have the same priority of payment as the debtor's attorneys?

Authors

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