Harder to Hide From Creditors in Pennsylvania

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The February decision by the U.S. Court of Appeals for the Third Circuit held that a bankruptcy trustee advancing a fraudulent transfer claim under the Pennsylvania Uniform Fraudulent Transfer Act (PUFTA) could pursue earnings deposited directly into a bank account owned jointly by the debtor and the debtor's spouse as tenants by the entireties.

The February 20, 2019, decision in the case of *In Re: Paul H. Titus, ___ F.3d ___, 2019 WL 693026 (3d Cir. February 20, 2019)*, addressed an issue of first impression for the court. The court held that the debtor and the spouse were individually liable for a fraudulent transfer under the act. Under PUFTA, if wages deposited into a joint account are used to pay reasonable and necessary household expenses, the wage transfer is not fraudulent to that extent.

When calculating the liability for a fraudulent transfer in a comingled entireties account, a court should follow a pro rata approach. That approach would presume, absent other evidence (such as available tracing evidence), that spending out of the account was in direct proportion to the percentages of fraudulent wage deposits and non-fraudulent deposits. The pro rata approach avoids the need to trace funds from their source to a particular "non-necessary" expenditure.

The court's ruling makes life easier for a fraudulent transfer claimant. Rather than proving which dollars were used to pay for account withdrawals for non-necessary expenses, when there are multiple sources of deposits, a percentage may be applied to determine the recovery of non-necessary withdrawals.

The court provided a formula:

Liability = (Non-Necessity Spending) minus (Nonwage Deposits)

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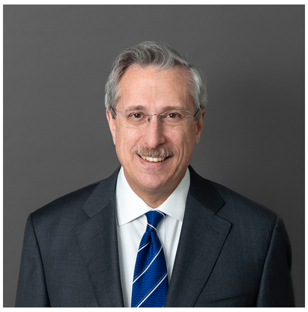

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