UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Murray Drabkin v. District of Columbia; Murray Drabkin, Trustee v. District of Columbia

824 F.2d 1102, 263 U.S. App. D.C. 122 (D.C. Cir. 1987) · No. Nos. 86-5285, 86-5287 · Decided July 24, 1987

SUMMARY

The United States Court of Appeals for the District of Columbia Circuit considered whether Auto-Train Corporation's pre-bankruptcy payment of employee withholding taxes to the District of Columbia was made from trust funds or constituted a voidable preference under the Bankruptcy Code. The court held that payment of funds covered by a statutory trust provision, without more, does not create a trust for purposes of 11 U.S.C. § 541, particularly where the debtor did not segregate or trace the funds.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	D.H. Ginsburg; Ruth B. Ginsburg; Buckley
JURISDICTION	Federal
DECIDED	July 24, 1987
DOCKET	Nos. 86-5285, 86-5287
DISPOSITION	affirmed
PROCEDURAL POSTURE	The District of Columbia appealed consolidated bankruptcy and district-court rulings holding that Auto-Train Corporation's prepetition payment of withheld District income taxes was an avoidable preference recoverable by the bankruptcy trustee.
STANDARD OF REVIEW	De novo review of the statutory interpretation and summary-judgment ruling; the material facts were undisputed.
PRECEDENTIAL VALUE	Published federal appellate opinion; binding D.C. Circuit precedent subject to statutory amendments and subsequent precedent.
PARTIES	District of Columbia v. Murray Drabkin, Trustee

TOPICS

preferences chapter 11 chapter 7 statutory interpretation appellate procedure

PRACTICE AREAS

bankruptcy tax trusts statutory interpretation appellate procedure

QUESTIONS PRESENTED

1. Whether a prepetition payment of withholding taxes made within the preference period was an avoidable preference under 11 U.S.C. § 547.
2. Whether the mere fact that Auto-Train paid funds covered by a statutory trust provision was sufficient to establish that the payment was made from trust property excluded from the bankruptcy estate under 11 U.S.C. § 541.
3. What tracing standard applies to prepetition tax payments made after the applicable 45-day ordinary-course period under the pre-1984 Bankruptcy Code.

HOLDINGS

1. A prepetition payment of withholding taxes made after the applicable 45-day period may be recovered as a preferential transfer when the payment was made from estate property, unless the funds are traceable to a trust excluded from the estate.
2. The mere fact of prepetition payment of funds covered by a statutory trust provision does not, without more, create a trust for purposes of § 541 or exclude the payment from the bankruptcy estate.
3. For a late prepetition tax payment, courts should use reasonable assumptions in tracing funds to a statutory trust, but the mere act of payment is not a reasonable assumption when the payment has no prior relationship to withheld tax funds.

KEY QUOTATIONS

> *"In affirming the district court order, we hold that in such circumstances the fact of payment, without more, does not create a trust for purposes of the Code."* (1103)

> *"That the "assumption" espoused by the District is not "reasonable" but indeed heroic becomes obvious when we consider the 45-day rule."* (1117)

FACTUAL BACKGROUND

Auto-Train withheld employee income taxes owed to the District of Columbia but did not segregate the withheld amounts or maintain a tax or trust account. An initial check was dishonored, and after receiving a tax assessment Auto-Train paid the District $8,203 by cashier's check on August 27, 1980, using funds drawn from an operating account funded by terminal receipts rather than employee payroll funds. Auto-Train filed for bankruptcy on September 8, 1980, within 90 days of the payment.

PROCEDURAL HISTORY

Auto-Train filed a Chapter 11 reorganization petition on September 8, 1980, and the case was later converted to Chapter 7 liquidation. The bankruptcy court granted the trustee summary judgment and ordered the District to return the August 27, 1980 payment with interest. The district court summarily affirmed, and the District appealed.

DISPOSITION

affirmed

CASES CITED

- In re Auto-Train Corp., Inc., 810 F.2d 270 (D.C. Cir. 1987)
- United States v. Randall, 401 U.S. 513 (1971)
- In re Kennedy & Cohen, Inc., 612 F.2d 963 (5th Cir. 1980), cert. denied, 449 U.S. 833 (1980)
- Lusk Corp. v. Arizona State Tax Commission, 462 F.2d 187 (9th Cir. 1972)
- England v. United States (Matter of Shakesteers Coffee Shops), 546 F.2d 821 (9th Cir. 1976), cert. denied, 431 U.S. 974 (1977)
- In re Tamasha Town & Country Club, 483 F.2d 1377 (9th Cir. 1973)
- In re Rohar Associates, Inc., 375 F. Supp. 637 (S.D.N.Y. 1974)
- In re Rodriguez, 50 B.R. 576 (Bankr. E.D.N.Y. 1985)
- In re Razorback Ready-Mix Concrete Co., 45 B.R. 917 (Bankr. E.D. Ark. 1984)
- In re Olympic Foundry Co., 63 B.R. 324 (Bankr. W.D. Wash. 1986), rev'd on other grounds, 71 B.R. 216 (Bankr. 9th Cir. 1987)
- Georgia Pacific Corp. v. Sigma Service Corp., 712 F.2d 962 (5th Cir. 1983)
- In re Commodity Exchange Services Co., 62 B.R. 868 (Bankr. N.D. Tex. 1986)
- In re First Fidelity Financial Services, Inc., 36 B.R. 508 (Bankr. S.D. Fla. 1983)
- In re Nashville White Trucks, Inc., 22 B.R. 578 (Bankr. M.D. Tenn. 1982), aff'd, 731 F.2d 376 (6th Cir. 1984)
- Selby v. Ford Motor Co., 590 F.2d 642 (6th Cir. 1979)
- In re Casco Electrical Corp., 28 B.R. 191 (Bankr. E.D.N.Y.), aff'd, 35 B.R. 731 (E.D.N.Y. 1983)
- In re Air Florida Systems, Inc., 50 B.R. 653 (Bankr. S.D. Fla.), aff'd sub nom. United States v. Air Florida, Inc., 56 B.R. 732 (S.D. Fla. 1985)
- In re Design Store Corp., 67 B.R. 325 (Bankr. D. Md. 1986)
- In re Bulk Transport, 23 B.R. 538 (Bankr. E.D. La. 1981)
- In re American International Airways, Inc., 70 B.R. 102 (Bankr. E.D. Pa. 1987)
- In re Major Dynamics, 59 B.R. 697 (Bankr. S.D. Cal. 1986)
- Slodov v. United States, 436 U.S. 238 (1978)
- United States v. Whiting Pools, Inc., 462 U.S. 198 (1983)