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The Bankruptcy Trustee's Arsenal Against the Enforcement of Stock Redemptions

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Attorneys are frequently asked to address the problem of developing the most appropriate means for a stockholder to divest himself of holdings in a closely held corporation. Usually this problem is solved through the drafting and execution of a stock redemption agreement. These agreements, however, may not always withstand the test of time.

The typical stock redemption problem arises when a corporation has few stockholders and one or more of them become disenchanted with the operation of the business. Seeking to have his stockholdings acquired by the corporation, the disenchanted stockholder begins by reviewing the financials of the corporation to determine the existence and extent of the shareholder's equity and, thereby, to determine a fair value for his shares. The next step is to analyze the corporation's cash position. As often occurs, even though there may be sufficient capital surplus to justify the redemption of stock, the cash flow may be insufficient to permit the corporation to consummate the redemption entirely on a cash basis. Rather, a portion of the redemption value is paid in cash at the time of the surrender of the stock certificates and the remainder is accounted for through the execution of a note. The note is payable over a stated period of time and may be secured by assets of the corporation.

The thrust of this article is to point out the consequences that may be encountered by the holder of this note when the corporation's business takes a downturn such that the corporation ceases to have a capital surplus and becomes insolvent. Thereafter, the corporation's assets are subject to the jurisdiction of a bankruptcy or equity court and will be administered by a bankruptcy trustee or a state court, an assignee for the benefit of creditors and receiver. A bankruptcy trustee must determine the validity of the stock redemption transaction and whether any recovery can be made from the former shareholder. A key element of this determination turns upon when the stock redemption is considered to have occurred.

Section 2-301 of the Maryland Corporations and Associations Article[1] defines a distribution as "a direct or indirect transfer of money or other property. . .or an incurrence. . .of indebtedness by a corporation to or for the benefit of the corporation's stockholders in respect of any of its shares."[2] Such a distribution may be in the form of "[a] purchase, redemption. . .or other acquisition of shares; or [as] [a]n issuance of evidence of indebtedness."[3] Section 2-311 states that "[i]f the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made."[4] In interpreting the language of these two sections, the bankruptcy trustee may conclude that each payment of the stock redemption note should be looked at as a separate and distinct transaction, the validity of which must be determined.

The bankruptcy trustee has five different weapons in his arsenal through which he can render the redemption transactions invalid and thereby recover assets for the bankruptcy estate from the former shareholder. These "weapons" include: (a) Maryland statutes restricting acquisition of stock; (b) the Maryland Uniform Fraudulent Conveyance Act; (c) the Uniform Fraudulent Transfer Act under section 548 of the Bankruptcy Code; (d) preferences under section 547 of the Bankruptcy Code; and (e) subordination under section 510 of the Bankruptcy Code.

Section 544 of the Bankruptcy Code provides:

> (a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of the property of the debtor

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or any obligation incurred by the debtor that is voidable by—

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists;

(3) a bona fide purchaser of real property from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser at the time of the commencement of the case, whether or not such a purchaser exists.

(b) The trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title.[5]

Section 544 has historically been known as the "strong arm clause." This section confers upon the trustee the status of a hypothetical judicial lien creditor, which thereby enables him to avoid certain transactions. This hypothetical creditor has the rights and powers of a creditor of the debtor who upon a simple contract could have obtained a judicial lien on the debtor's property, or of a creditor who has obtained an execution against the debtor which is returned unsatisfied, or of a bona fide purchaser of real property from the debtor, other than fixtures, which property passes to the bankruptcy trustee.[6] In essence, section 544(a) states that

"[w]herever under the applicable law such a creditor... might prevail over prior transfers, liens, encumbrances or the like, the trustee will also prevail. [Similarly,] section 544(b) permits the trustee to exercise whatever rights of avoidance any creditor holding an unsecured allowable claim could have exercised on his own behalf under applicable state or federal law."[7]

I. STATE LAW

The bankruptcy trustee has had an entire body of state law conferred upon him by reference by virtue of section 544. It has been stated that "[w]hether the trustee is entitled to such a status and the conditions under which he may attain it, are federal questions governed by the Bankruptcy Code."[8] "But the extent of the trustee's rights, remedies and powers as a lien creditor are measured by the substantive law of the jurisdiction governing the property in question."[9]

In Maryland, the power to invalidate stock redemption transactions can be found in: (a) sections 2-301 through 2-312 of the Corporations and Associations Article of the Maryland Code regarding restrictions on corporate acquisition of stock; and (b) sections 15-201 through 15-214 of the Commercial Law Article of the Maryland Code[10] regarding the Uniform Fraudulent Conveyance Act.

A. Restrictions on Stock Acquisitions

As noted previously, section 2-301 of the Corporations and Associations Article defines a corporate distribution as including a purchase, redemption, or other means of acquisition of the corporation's shares.[11] Therefore, each payment by the corporation on the note for the redemption of shares from the former shareholder falls into the category of a corporate distribution. The corporate charter may provide for the acquisition of the corporation's own shares, but the acquisition must be in compliance with section 2-311 of the Corporations and Associations Article. Section 2-311 states that

[n]o distribution may be made if, after giving effect to the distribution:

"[T]he language of section 2-312 effectively pierces the corporate veil . . ."

(1) The corporation would not be able to pay debts of the corporation as the debts become due in the usual course of business; or

(2) The corporation's total assets would be less than the sum of the corporation's total liabilities plus, unless the charter permits otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of stockholders whose preferential rights on dissolution are superior to those receiving the distribution.[12]

In other words, the distributions or payments on the note for the redemption of stock are invalid either if after, or as a result of, making such payment, the corporation is unable to meet its debts as they mature, or if the corporation's total assets fail to exceed the corporation's liabilities plus the preferred shareholders' equity. Once the corporation becomes insolvent and finds itself in the bankruptcy arena, either or both of these tests are generally met, thereby rendering further payments made on the stock redemption note avoidable. Similarly, the trustee can look back in time and determine if either of these tests were met at the time that each payment was made.

Section 2-312 of the Corporations and Associations Article provides that if it is established that a director's duties were not performed in compliance with the standard of care required by section 2-405.1 of this article[13] "[a] director who votes for or assents to a distribution made in violation of the [corporate] charter or [aforementioned] section 2-311 of this subtitle is personally liable to the corporation for the amount of the distribution that exceeds what could have been made without violating the charter or section 2-311 of this subtitle."[14] Therefore, in the event the trustee invalidates the payments made on the note for redemption of stock due to violations of section 2-311, through his powers granted by section 544 of the Bankruptcy Code, the trustee can seek to recover the assets from both the former stockholder and all directors who may be liable for the unlawful distributions. It is interesting to note that the language of section 2-312 effectively pierces the corporate veil and holds each director personally liable. Section 2-312(c) sets the limitations for bringing an action against the former shareholders and/or directors at a maximum of three years following the date of each unlawful distribution.[15]

B. Uniform Fraudulent Conveyance Act

The second means through which the trustee can seek to recover from the former stockholder under Maryland law is through the use of the Maryland Uniform Fraudulent Conveyance Act (MUFCA). This Act is codified in the Commercial Law Article of the Maryland Code in sections 15-201 through 15-214.[16]

MUFCA has a statute of limitations of three years.[17] Thus, the trustee can conceivably utilize his powers granted under section 544 of the Bankruptcy Code, in conjunction with this Act, to invalidate up to three years of payments on the stock redemption note and to recover from the former shareholder. The bankruptcy trustee must bring his cause of action based upon state statutes. While section 546(a) of the Bankruptcy Code preserves for the trustee the exclusive right to bring suits within two years following his or her appointment,[18] the state's law statute of limitations for a state claim must not have expired.[19] Since the statute of limitations for state claims under Maryland law begins to run, in the absence of an exception to the general rule, from the accrual of the cause of action,[20] the trustee's MUFCA claims on some of the earlier payments on the note may expire during the trustee's two-year exclusive rights period.

The heart of MUFCA, as it applies to the stock redemption scenario presented, is set out in sections 15-201 through 15-204 of the Commercial Law Article. Section 15-201 defines the term "conveyance" to include, *inter alia*, every payment of money, transfer, pledge of tangible or intangible property, and the creation of any lien or encumbrance.[21] "Every conveyance made and every obligation incurred by a [debtor] who is or will be rendered insolvent by it is fraudulent as to creditors without regard to his actual intent, if the conveyance is made or the obligation is incurred without a fair consideration."[22] Insolvency is not limited to its definition in the usual bankruptcy sense, but rather encompasses any situation where the present fair salable value of the debtor's assets is less than the amount that will be required to pay existing debts as they become due.[23]

> 'Fair and Valuable' consideration, as distinguished from adequate consideration, means that there shall be a substantial compensation for the property conveyed or that it shall be reasonable in view of surrounding circumstances. What constitutes a fair consideration under the Uniform Fraudulent Conveyance Act must be determined from the standpoint of creditors—that is, whether the debtor's estate has been unfairly diminished by this conveyance—and the existence of any intent to defraud on the part of either the grantor or the grantee is immaterial.[24]

Once a corporation becomes insolvent, the underlying value of its shares are negligible. Thus, the surrendering of such shares by the former shareholder in exchange for the redemption payments on the note cannot be deemed fair consideration for the payments. As such, the trustee may bring a cause of action based upon MUFCA to invalidate each transaction that occurred at a point in time when the corporation was insolvent.

II. FEDERAL LAW

A. Uniform Fraudulent Transfer Act

Section 548 of the Bankruptcy Code incorporates the language of the Uniform Fraudulent Transfer Act (UFTA) as promulgated in 1984. Although similar in many respects to the Uniform Fraudulent Conveyance Act adopted in Maryland, UFTA contains a stronger definition of "consideration for transfer" which enables the trustee to attack fraudulent transfers more easily.

The pertinent language of section 548 states:

> (a) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor...
>
> (2)(A) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
>
> (B)(i) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation....[25]

"Insolvency is not limited to its definition in the usual bankruptcy sense,..."

Rather than requiring merely a fair consideration, UFTA requires a reasonably equivalent value in exchange for the transfer. A leading case in this area, *In re Roco Corp.*,[26] addressed the problem of reasonably equivalent value and stock redemptions. In this case, the sole shareholder of a corporation redeemed 100 percent of his shares for 300,000 dollars, evidenced by a note to be paid in weekly installments and collateralized by a security interest in the corporation's assets. The appellate court, in affirming the bankruptcy court, held that the corporation, while it was insolvent, did not receive a reasonably equivalent value for the transfer and "indeed received nothing but all of its outstanding stock."

As early as 1935, the Court of Appeals for the Fifth Circuit, in *Robinson v. Wangemann*,[27] stated:

> A transaction by which a corporation acquires its own stock from a stockholder for a sum of money is not really a sale. The corporation does not acquire anything of value equivalent to the depletion of its assets, if the stock is held in the treasury, as in this case. It is simply a method of distributing a proportion of the assets to the stockholder.

The court went on to add:

> The assets of a corporation are the common pledge of its creditors and stockholders are not entitled to receive any part of them unless creditors are paid in full. When such a transaction is had, regardless of the good faith of all parties, it is essential to its validity that there be sufficient surplus to retire the stock without prejudice to creditors, at the time payment is made out of the assets. In principle, the contract between [t]he redeeming stockholder and the corporation was executory until the stock should be paid for in cash.

The *Robinson* court expressed three important principles: first, the logic in and fairness to creditors in requiring a surplus before redemption; second, the time for measuring the date on which the transfer is deemed to have been made is the date of payment; and third, that when a corporation is insolvent, its shares of stock are valueless. These elements, when present, set the basic parameters of the fraudulent conveyance. Thus, the surrendering of stock certificates having little or no value in exchange for cash and a secured note does not meet the "reasonably equivalent value" test under section 548.

Lack of reasonably equivalent value in exchange for the transfer is only the first part of a two-part test. Not all stock redemptions fall under the guise of fraudulent transfers. The second part is the requirement that the debtor "was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation...."[28] The Bankruptcy Code defines "insolvent" as a "financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of...(i) property transferred, concealed, or removed with intent to hinder, delay or defraud such entity's creditors...."[29]

Section 548(d)(1) declares that the time when a transfer shall be deemed to have been made is the point in time when the transfer has been perfected.[30] This is consonant with the earlier conclusion that each payment on the stock redemption note stands as a separate transaction to be challenged by the trustee. It is relatively unimportant that the transferor was solvent at the time the stock certificates were surrendered and the note for the redemption price was executed, if the corporation was insolvent at the time the transfer was perfected and "made," pursuant to section 548(d)(1).

In summary, the bankruptcy trustee can utilize the powers granted by section 548 to invalidate transactions representing fraudulent transfers in much the same way as he can invalidate transactions representing fraudulent conveyances under Maryland law. The trustee's powers are greater under section 548 since a lesser burden is required (i.e., the standard of reasonably equivalent value in exchange for the transfers). Regardless, the trustee may prefer to pursue his actions in the bankruptcy forum, using state law because of the three-year statute of limitations, as opposed to the statute of limitation of one year contained by section 548.

B. Preferences

In addition to invalidating transactions as fraudulent conveyances or transfers, the bankruptcy trustee may avoid prebankruptcy transfers as preferences. Codified primarily in section 547(b) of the Bankruptcy Code, the law allows the trustee to avoid transfers as preferences when all the following elements exist: (a) any transfer of an interest of the debtor in property; (b) to or for the benefit of a creditor; (c) for or on account of an antecedent debt owed by the debtor before such transfer was made; (d) made while the debtor was insolvent; (e) made within ninety days prior to the filing of the petition, or, in the case of an insider, made within one year prior to the filing; and (f) enables such creditor to receive more than he would have under a Chapter 7 proceeding in the absence of the transfer.[31] By application of section 550(a), the trustee may recover the property transferred, or the value of such property, from the transferee.[32]

The primary purpose of the preference provisions is to "facilitate the prime bankruptcy policy of equality of distribution among creditors of the debtor."[33] The intent or motive of the debtor or creditor is not material.[34]

There is a presumption of insolvency during the period beginning ninety days prior to the filing of the petition for bankruptcy.[35] While payments made to insiders within one year of the filing may be avoided by the trustee, there is no presumption of insolvency with respect to transfers or payments occurring more than ninety days prior to the filing of the petition.[36] Although the bankruptcy trustee has the opportunity to recover from insiders for transactions occurring over a longer period of time, a higher burden of proof is required.

In the stock redemption of a closely held corporation, the redeeming shareholder would most likely be an "insider" as a director, officer, or person in control of the corporation.[37] Assuming all of the elements of a preference exist, payments on the stock redemption note made within one year prior to the filing of the petition are vulnerable to attack by the trustee. The 1984 amendments to section 547 of the Bankruptcy Code eliminated the requirement that an insider must have reasonable cause to believe that the debtor was insolvent at the time of the transfer.[38]

> *"The trustee's powers are greater under Section 548 . . ."*

Payments on the note clearly are transfers for the benefit of a creditor on account of an antecedent debt, and thus satisfy the first three elements of a preference. Insolvency is presumed for all payments made to non-insiders. The interpretation of the last element, as set forth by the Supreme Court in its holding in *Palmer Clay Prods. Co. v. Brown*,[39] is that whether a particular transfer is preferential should be determined not by what the situation would have been if the debtor's assets had been liquidated and distributed among his creditors at the time the alleged preferential payment was made, but by the actual effect of the payment as determined when bankruptcy results."[40] In essence, if an unsecured creditor would have received anything less than a 100 percent dividend in the bankruptcy proceeding, any payment to the creditor, even as a partial payment for his debt, will satisfy the last element.[41]

The determination as to whether a creditor received a greater amount under the preferential payment than he would have received under a Chapter 7 liquidation is a necessary element. But, as of what date should this hypothetical liquidation analysis be determined? In the case of *In re Tenna Corp.* an action was brought to avoid a preferential transfer two and one-half years after the original filing of a Chapter 11 reorganization. In deciding that the petition date was the date for such determination, the *Tenna* court held: "We believe that it is inconceivable and illogical to assume that Congress intended to permit the estate's trustee to control the timing for testing whether a payment can be avoided as a preference."[42]

In summary, proceeding under section 547 of the Bankruptcy Code may be a favorable means for the bankruptcy trustee to invalidate payments made on a stock redemption note within one year of the filing of the petition for bankruptcy. Unlike invalidating the payments as fraudulent transfers under section 548, the trustee does not have to address the issue of consideration. Likewise, for payments made within ninety days of the filing of the petition, the trustee has a presumption of insolvency, a key element not present under section 548.

C. Subordination

The final avenue through which the bankruptcy trustee may avoid claims from the redeeming shareholder for payments on the stock redemption note is by way of subordination. The redeeming shareholder may pursue a claim against the estate not only for payments coming due after the filing of the petition for bankruptcy, but also for any prior payments that have been recovered from him by the bankruptcy trustee as a preference, fraudulent transfer, or other means. Whether this claim will be fulfilled, in whole or in part, through the distribution of the estate, will depend largely upon its level of priority.

Codified in the Bankruptcy Code under section 510(b), the pertinent language of the law of subordination states:

> For the purpose of distribution under this title, a claim arising from recission of a purchase or sale of security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interest that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as

common stock.[43]

Additionally, courts will closely scrutinize the conduct of claimants who are insiders in order to determine whether their transactions with the debtor justify equitable subordination of their claims under section 510(c).[44] This result is appropriate in that shareholders have positioned themselves as creditors, thereby prejudicing general creditors. "The exercise of equitable subordination power is appropriate when there is a showing of fraud, inequity, or unfairness."[45]

Recently the doctrine of equitable subordination was applied by the court to a stock redemption scenario in the case of *In re Washington Plate Glass Co.* The sole shareholder of the Washington Plate Glass Co. sold his shares to the corporation when it was solvent. The terms of the sale included a ten-year note secured by the assets of the corporation. There was no evidence that the transaction was fraudulent or entered into in anticipation of bankruptcy. The corporation remained solvent for several years thereafter. Washington Plate Glass defaulted on the note upon becoming insolvent and the former shareholder entered a claim against the estate for the balance of the note. The court subordinated the claim to claims of unsecured general creditors holding that "the bankruptcy corporation's promise to pay for ... [the] stock must be viewed as conditioned upon the continued ability of the corporation to pay without impairing capital or creditors' interests."[46] Quoting *Robinson v. Wangemann*,[47] the court stated:

> [t]he assets of a corporation are the common pledge of its creditors and stockholders are not entitled to receive any part of them unless creditors are paid in full. When such a transaction [i.e., stock redemption] is had, regardless of the good faith of the parties, it is essential to its validity that there be sufficient surplus to retire the stock, without prejudice to creditors, at the time payment is made out of assets....[48]

In two similar cases, *McConnell v. Estate of Butler*[49] and *In re Poole, McGonigle & Dick, Inc.*,[50] the court followed the same line of reasoning. In these cases,[51] the court looked to state law to determine the validity of payments made on a stock redemption note at a time when the redeeming corporation was insolvent.

It is unclear whether applying the *Robinson* analysis to Maryland law would yield the same result of subordination. As discussed earlier, under the language of the newly enacted section 2-311 of the Corporations and Associations Article of the Maryland Code, a distribution or stock redemption made when the corporation is insolvent would be invalid. Subsection (d) of section 2-311, however, allows such claim as a general creditor by providing that

> [a] corporation's indebtedness to a stockholder, incurred by reason of a distribution made in accordance with this section, is at parity with the corporation's indebtedness to the corporation's general, unsecured creditors, except to the extent subordinated by agreement.[52]

"[T]he court looked to state law to determine the validity of payments made on a stock redemption note..."

It should be noted, however, that the official comment made by the section 6.40 Task Force of the Committee on Corporate Law states:

> The federal Bankruptcy Act and state fraudulent conveyance statutes...are designed to enable the benefit of creditors funds distributed to others in some circumstances. In light of these diverse purposes, it was not thought necessary to make the tests of section 6.40 identical to the tests for insolvency under these various statutes.[53]

Therefore, the question of whether a redeeming shareholder may "upgrade" his former position as a shareholder to that of a general creditor will be left to the courts for ultimate resolution.

III. CONCLUSION

A stock redemption agreement entered into between a shareholder and a closely held corporation may be executed in good faith with full anticipation that the corporation will continue as a viable, profitable entity. The redeeming shareholder, however, may likely find himself relatively powerless to enforce the agreement into the future. If the corporation's business takes a downturn and the corporation is in bankruptcy, the redeeming shareholder may find himself in a position where the corporation has defaulted on the note given for the remainder of the redemption price, and the trustee is seeking recovery of prior payments that the shareholder received. The trustee, by careful use of the avoiding powers, may: (a) avoid future payments on the stock redemption note; (b) recover monies paid under the note; and (c) possibly subordinate the redeeming shareholders claim to the claims of all general, unsecured creditors. As may be now readily apparent, if the stock redemption agreement calls for an installment method of payment, the redeeming shareholder may find that he will ultimately receive far less than that for which he has bargained.

NOTES

[1] Md. Corps. & Ass'ns Code Ann. §2-301 (1985 & Supp. 1988).
[2] *Id.* at §2-301(a).
[3] *Id.* at §2-301(b).
[4] *Id.* at §2-311(e)(2).
[5] 11 U.S.C. §544 (1982).
[6] L. King, *Collier on Bankruptcy* 544-12 (15th ed. 1988); 11 U.S.C. §544 (1982). *See also In re Center Wholesale, Inc.*, 759 F.2d 1440 (9th Cir. 1985).
[7] *Id., supra* note 6 at 544-3.
[8] L. King, *Collier on Bankruptcy, supra*, note 6 at 544-8; *see also Erie Railroad Co. v. Tompkins*, 394 U.S. 64 (1938).
[9] *Id.* at 544-8,9; *See also Commercial Credit Co. v. Davidson*, 112 F.2d 54 (5th Cir. 1940).
[10] Md. Com. Law Code Ann. §§15-201 to -214 (1983 & Supp. 1988).
[11] Md. Corps. & Ass'ns Code Ann. §2-301(b) (1985 & Supp. 1988).
[12] *Id.* at §2-311(a).
[13] *Id.* at §2-405.1. Standard of care required of directors.

(a) *In general*—A director shall perform his duties as a director, including his duties as a member of a committee of the board on which he serves:

(1) In good faith;

(2) In a manner he reasonably believes to be in the best interests of the corporation; and

(3) With the care that an ordinarily prudent person in a like position would use under similar circumstances...

[14] Md. Corps. & Ass'ns Code Ann. §2-312(a) (Supp. 1988).
[15] *Id.* at §2-312(c).
[16] Md. Com. Law Code Ann. §§15-201 to -214 (1983 & Supp. 1988).
[17] Md. Cts. & Jud. Proc. Code Ann. §5-101 (1984 & Supp. 1988); *see also Dixon v. Bennett*, 72 Md. App. 620, 623 n.2, 531 A.2d 1318, 1320 n.2 (1987).
[18] 11 U.S.C. §546(a) (1982).
[19] *Dixon*, 72 Md. App. at 630 n.5, 531 A.2d at 1323 n.5.
[20] Md. Cts. & Jud. Proc. Code Ann. §5-101 (1984 & Supp. 1988).
[21] Md. Com. Law Code Ann. §15-201(c) (1983 & Supp. 1988).
[22] *Id.* at §15-204.
[23] 37 Am. Jur. 2d *Fraudulent Conveyances* §15 (1968).
[24] *Id.* at §18.
[25] 11 U.S.C. §548 (1982).
[26] 701 F.2d 978 (1st Cir. 1983).
[27] 75 F.2d 756, 757 (5th Cir. 1935).
[28] 11 U.S.C. §548(a)(2)(B)(i) (1982).
[29] 11 U.S.C. §101(26) (1982 & Supp. II 1984).
[30] 11 U.S.C. §548(d)(1) (1982).
[31] 11 U.S.C. §547(b) (1982).
[32] 11 U.S.C. §550(a) (1982).
[33] H.R. Rep. No. 595, 95th Cong., 1st Sess. 177-78 (1977).
[34] *See e.g., In re Craig Oil Co.*, 785 F.2d 1563, 1566 (11th Cir. 1986); *Barash v. Public Fin. Corp.*, 658 F.2d 504, 510 (7th Cir. 1981).
[35] 11 U.S.C. §547(f) (1982).
[36] L. King, *supra* note 6 at 547-36.
[37] *See* 11 U.S.C. §101 (1982 & Supp. II 1984).
[38] The Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 355 (1984).
[39] 297 U.S. 227 (1936).
[40] *Palmer Clay*, 297 U.S. at 229.
[41] *See In re Lewis W. Shurtleff, Inc.*, 778 F.2d 1416 (9th Cir. 1985).
[42] *See In re Tenna Corp.*, 15 Collier Bankr. Cas. 2d (MB) 1250 (6th Cir. 1986).
[43] 11 U.S.C. §510 (1982 & Supp. II 1984).
[44] *Id.* at §510(c); *Pepper v. Litton, 308 U.S. 295 (1939).*
[45] *In re Washington Plate Glass Co.*, 27 Bankr. 550 (Bankr. D.C. 1982); *see Pepper*, 308 U.S. at 305-07.
[46] 27 Bankr. 550 (Bankr. D.C. 1982).
[47] 75 F.2d 756, 757 (5th Cir. 1935).
[48] *In re Washington*, 27 Bankr. at 551-52.
[49] 402 F.2d 362 (9th Cir. 1968).
[50] 796 F.2d 318 (9th Cir. 1986).
[51] *See also, Mountain State Steel Foundries v. Commissioner*, 284 F.2d 737 (4th Cir. 1960).
[52] Md. Corps. & Ass'ns Code Ann. §2-311(d) (1985 & Supp. 1988).
[53] Revised Model Business Corp. Act §6.40 comment 3 (1984).

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