

Chapman Client Alert

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Current Issues Relevant to Our Clients

In Departure from Seventh Circuit, Ninth Circuit Holds Tax Sales Are Not Fraudulent Transfers

Updating an earlier alert (January 27, 2016, “[Seventh Circuit Holds Illinois Tax Sales May Be Set Aside as Fraudulent Transfers](#)”), on September 8, 2016, the Ninth Circuit held in *In re Tracht Gut, LLC v. L.A. Cnty. Treasurer & Tax Collector*, No. 14-60007, 2016 U.S. App. LEXIS 16513 (9th Cir. Sept. 8, 2016) that California real estate tax sales are for reasonably equivalent value and cannot be set aside as fraudulent transfers under 11 U.S.C. §548(a)(1)(B).

The Ninth Circuit now joins the Fifth and Tenth Circuits in extending the Supreme Court’s holding in *BFP v. Resolution Trust Corp.*, 511 U.S. 531 (1994) (holding mortgage foreclosure sales conducted in accordance with relevant foreclosure laws are for reasonably equivalent value) to real estate tax sales.

In holding that real estate tax sales are not for equivalent value, the Seventh Circuit in *In Re Smith*, No. 15-1166, 2016 WL 231769 (7th Cir. Jan. 20, 2016) emphasized that Illinois tax sales do not involve competitive bidding and the bid amount bears no relationship to the value of the underlying real estate. *Id.* at 2. While the debtor in *Tracht Gut* argued the exact same thing, the Ninth Circuit, relying on “the rationale and policy considerations” of the *BFP* holding, largely ignored the debtor’s arguments. Noting that similar to mortgage foreclosure sales, tax sales in California require such procedural safeguards as notice to the defaulting land owner, substantial lead time before the foreclosure sale and strict adherence to prescribed bidding and auction procedures, the Ninth Circuit applied *BFP*’s holding to California tax sales. With its deference to state law on matters concerning real estate, the Ninth Circuit has further reinforced *BFP*’s mantra that “market value has no applicability in the forced sale context.”¹

The Ninth Circuit appears to be avoiding what the Seventh Circuit may have created, inadvertently or not — instability in the tax sale market and an added obstacle to a State’s or local government’s collection of delinquent real estate taxes.

For More Information

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¹ *Id.* at 12 (quoting *BFP*, 511 U.S. at 537).