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Coleman & Horowitz Attorney, Russ Reynolds, Secures Victory Before the Ninth Circuit Court of Appeals

By the Collections and Creditor Rights Group

In a recent decision, *In re Hutchinson*, ___ F.3rd ___, 2021 DJDAR 10838 (9th Cir. 2021), the Court affirmed the Bankruptcy Court and the Ninth Circuit BAP holding that a debtor may not attempt to avoid a penalty portion of a tax lien if a trustee takes action to do so, and if the trustee is successful, the value of the avoided lien is recovered for the benefit of the estate, not the debtor.

In the action, Leonard and Sonya Hutchinson, who were homeowners, failed to pay taxes. The IRS filed liens for the unpaid taxes. The liens included taxes, interest, and penalties. The Hutchinsons filed bankruptcy claiming a homestead exemption on their home. Following the meeting of creditors, the trustee filed an application to employ counsel. The debtors then filed an adversary proceeding against the IRS and trustee to avoid the penalty portion of the tax liens under 11 USC § 522(h). The trustee filed a cross-claim against the IRS to avoid the same liens under section 724(a) and answered the complaint of the debtors claiming the trustee had the superior right to avoid the liens. The IRS filed a motion to dismiss the debtors' complaint. The debtors argued that even if their claim to avoid the lien was dismissed, they should remain a party to the action so they might recover the value of the avoided lien for their benefit under section 522(g)(1). The Bankruptcy Court dismissed the debtors' claim and the estate would be entitled to the value of any avoided lien.

The Hutchinsons appealed. Bankruptcy cases can be appealed to the district court or to a bankruptcy appellate panel in the circuit where the bankruptcy court sits. The Bankruptcy Appellate Panel for the Ninth Circuit affirmed the holding of the bankruptcy court. The Hutchinsons then appealed to the Ninth Circuit Court of Appeals.

In upholding the lower court decisions, the Ninth Circuit held that the debtors could not avoid the penalty portion of the tax liens under 522(h) because the trustee took action under 724(a) and the debtors were not able to exempt the property under 522(b). Further, under the plain language of section 551, a transfer avoided by the trustee under section 724(a) is preserved for the benefit of the estate.

Few lawyers get to argue before the 9th Circuit. Even fewer are successful in a published decision. Well done, Russ.

The Collections and Creditor Rights group at Coleman & Horowitz, LLP represents creditors in collection of commercial and retail trade debt, secured and unsecured obligations and representation of creditors, trustees, and creditor committees in bankruptcy matters, including

bankruptcy appeals. For more information, contact Russell W. Reynolds or Darryl J. Horowitz at (559) 248-4820 or by e-mail at rreynolds@ch-law.com or dhorowitz@ch-law.com.

About the Firm:

Established in 1994, Coleman & Horowitz, LLP is a statewide law firm focused on delivering responsive and value driven service and preventive law. The firm represents businesses and their owners in matters involving transactions, litigation, agriculture & environmental regulation and litigation, intellectual property, real estate, estate planning and probate. The Firm has been recognized as a “Top Law Firm” (Martindale Hubbell) and a “Go-To” Law Firm (Corporate Counsel). From six offices in California, and the Firm’s membership in Primerus, a national and international society of highly rated law firms (www.primerus.com), the Firm has helped individuals and businesses solve their most difficult legal problems. For more information, see www.ch-law.com and www.primerus.com.