Daily Bankruptcy News Features Haynes and Boone Alert Exploring Eighth Circuit's Decision that Raises Concerns About Standing of Real Estate Lenders to Defend Against Substantive Consolidation

By Lawrence Mittman | November 3, 2016

RELATED PRACTICES Finance, Real Estate Finance, Real Estate, Restructuring

The highly regarded newsletter *Daily Bankruptcy News* has republished the recent Haynes Boone client alert, "The Best Offense is a Good Defense" authored by four of the firm's New York real estate finance and bankruptcy and business reorganization lawyers.

The newsletter, widely distributed within the bankruptcy legal community, is considered a primary research tool for corporate professionals, bankers, lawyers and finance executives.

Authored by Partners Larry Mittman, Trevor Hoffmann and Geoffrey Raicht, and Associate Kevin J. Kiley, Jr., the alert examines the impact of a recent decision by a Court of Appeals of the Eighth Circuit that has raised concerns about the standing of real estate lenders to defend against substantive consolidation.

As the third part in a series of alerts on the decision, this particular piece reviews a subsequent decision of the Bankruptcy Court, issued three days after the Eighth Circuit's decision, ruling that the lenders were not liable for a constructive fraudulent conveyance. In dismissing the complaint, the Bankruptcy Court held that substantive consolidation could not retroactively create a requisite creditor when in fact none existed – and thus the Trustee lacked standing to prosecute his state law fraudulent transfer claims under Bankruptcy Code section 544(b).

"Lenders need to be exceedingly vigilant and understand these recent court decisions (and others that are certain to come in the future) so they can be prepared if their investments show signs of distress or actually commence bankruptcy proceedings," the alert concludes.

© 2026 Haynes and Boone, LLP