

Sears Continues to File Hundreds of Preference Suits Against Trade Creditors

Article By:

Thomas S. Onder

Joseph H. Lemkin

The lawsuits just keep coming... last week, Chapter 11 Debtor, Sears Holdings Corporation (“Sears”) continued to file hundreds of preference complaints to recover money from paid pre-petition creditors. The Debtor filed a mass of suits back in November 2019.

For most creditors, it makes no sense that they receive a complaint to return money for goods or services sold prior to October 15, 2018, when the company filed for bankruptcy protection. However, the Federal Bankruptcy Code allows a debtor to recover “preferences” in bankruptcy – 11 U.S.C. 547.

If you are a trade creditor who received a complaint, before you open the checkbook to Sears, know what defenses there are to this statutory claim.

What is Preference?

A preference is a payment received from a debtor, made within 90 days of the bankruptcy filing. Bankruptcy Code section 547(b) allows a bankruptcy trustee or debtor-in-possession to avoid these payments if the transfers were to or for the benefit of a creditor on account of an antecedent debt while the debtor was insolvent. When Congress enacted the Bankruptcy Code, the policy behind preferences was to level the playing field for all creditors by not allowing a creditor to receive more than it would have within the debtor’s bankruptcy case.

The Bankruptcy Code provides the trustee or debtor-in-possession power to recover these transfers. However, you may have certain defenses, including:

- Payments made within the ordinary course of business;
- New value provided for the debt;
- Payments made outside of the 90-day preference period;

- Settlements during the bankruptcy case; and/or
- Payments made via C.O.D.

Gather Information

To determine if you have any defenses, it is critical to analyze the full payment history ***at least a year before*** the bankruptcy filing. This information includes:

1. All correspondence, contracts, emails and the like with the debtor;
2. A copy of all invoices, showing invoice date, terms, and amount of each invoice;
3. A copy of the payments received (i.e. checks, wires, cash deposit slip) and date posted to your client's bank account;
4. Number of days elapsed between date of invoice and date payment was received; and
5. Personnel involved with the debtor's account so they can advise how payments were made, applied and any unique issues with the debtor.

It is critical to properly analyze this information and formulate a corresponding response to reduce or even eliminate preference exposure.

COPYRIGHT © 2025, STARK & STARK

National Law Review, Volume X, Number 36

Source URL: <https://natlawreview.com/article/sears-continues-to-file-hundreds-preference-suits-against-trade-creditors>