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DEBTOR RECEIVED REASONABLY EQUIVALENT VALUE FOR INTEREST IN COMMUNITY PROPERTY DESPITE DISPROPORTIONATE PROPERTY DISTRIBUTION IN DIVORCE DECREE

By: Tara Gayle Richard

The Fifth Circuit Court of Appeals upheld a summary judgment in favor of the Debtor's former husband, resulting in the dismissal of a fraudulent transfer claim asserted by the former wife's chapter 7 trustee to set aside an admittedly "disproportionate" court-ordered property settlement. *Ingalls v. Erlewine (In re Erlewine)*, 2003 U.S. App. Lexis 21653 (5th Cir. Tex, Oct. 23, 2003). The bankruptcy court ruled that, as a matter of law, the Debtor received a reasonably equivalent value for her community property interest under Section 548 of the Bankruptcy Code, even though the divorce court divided the couple's property on a basis explicitly described as disproportionate. In reaching its decision, the Fifth Circuit acknowledged that the judicial division of the couple's assets admittedly favored the Debtor's former husband but noted that the divorce court awarded the assets only after finding that the Debtor spent a disproportionate share of community assets and had taken an unreasonable position in the divorce litigation. In essence, the Fifth Circuit refused to find that the Debtor received less than reasonably equivalent value for her claims *solely* because she received less than half of the community property.

The bankruptcy court also decided that the divorce decree effected a "transfer" of an interest in property within the meaning of Section 548. The Fifth Circuit, however, did not directly address the "transfer" issue. Instead, before determining whether the Debtor received a reasonably equivalent value for her community property, the Fifth Circuit merely mentioned that the parties agreed that the property settlement effected a "transfer" of the Debtor's claim to community property for purposes of Section 548.

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Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact our Bankruptcy practice group:

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