

## EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

**§ 550. Liability of transferee of avoided transfer**

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—

(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(2) any immediate or mediate transferee of such initial transferee.

(b) The trustee may not recover under section<sup>1</sup> (a)(2) of this section from—

(1) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(2) any immediate or mediate good faith transferee of such transferee.

(c) If a transfer made between 90 days and one year before the filing of the petition—

(1) is avoided under section 547(b) of this title; and

(2) was made for the benefit of a creditor that at the time of such transfer was an insider;

the trustee may not recover under subsection (a) from a transferee that is not an insider.

(d) The trustee is entitled to only a single satisfaction under subsection (a) of this section.

(e)(1) A good faith transferee from whom the trustee may recover under subsection (a) of this section has a lien on the property recovered to secure the lesser of—

(A) the cost, to such transferee, of any improvement made after the transfer, less the amount of any profit realized by or accruing to such transferee from such property; and

(B) any increase in the value of such property as a result of such improvement, of the property transferred.

(2) In this subsection, “improvement” includes—

(A) physical additions or changes to the property transferred;

(B) repairs to such property;

(C) payment of any tax on such property;

(D) payment of any debt secured by a lien on such property that is superior or equal to the rights of the trustee; and

(E) preservation of such property.

(f) An action or proceeding under this section may not be commenced after the earlier of—

(1) one year after the avoidance of the transfer on account of which recovery under this section is sought; or

(2) the time the case is closed or dismissed.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2601; Pub. L. 98-353, title III, §465, July 10, 1984, 98 Stat. 379; Pub. L. 103-394, title II, §202, Oct. 22, 1994, 108 Stat. 4121.)

## HISTORICAL AND REVISION NOTES

## LEGISLATIVE STATEMENTS

Section 550(a)(1) of the House amendment has been modified in order to permit recovery from an entity for whose benefit an avoided transfer is made in addition to a recovery from the initial transferee of the transfer. Section 550(c) would still apply, and the trustee is entitled only to a single satisfaction. The liability of a transferee under section 550(a) applies only “to the extent that a transfer is avoided”. This means that liability is not imposed on a transferee to the extent that a transferee is protected under a provision such as section 548(c) which grants a good faith transferee for value of a transfer that is avoided only as a fraudulent transfer, a lien on the property transferred to the extent of value given.

Section 550(b) of the House amendment is modified to indicate that value includes satisfaction or securing of a present antecedent debt. This means that the trustee may not recover under subsection (a)(2) from a subsequent transferee that takes for “value”, provided the subsequent transferee also takes in good faith and without knowledge of the transfer avoided.

Section 550(e) of the House amendment is derived from section 550(e) of the Senate amendment.

## SENATE REPORT NO. 95-989

Section 550 prescribes the liability of a transferee of an avoided transfer, and enunciates the separation between the concepts of avoiding a transfer and recovering from the transferee. Subsection (a) permits the trustee to recover from the initial transferee of an avoided transfer or from any immediate or mediate transferee of the initial transferee. The words “to the extent that” in the lead in to this subsection are designed to incorporate the protection of transferees found in proposed 11 U.S.C. 549(b) and 548(c). Subsection (b) limits the liability of an immediate or mediate transferee of the initial transferee if such secondary transferee takes for value, in good faith and without knowledge of the voidability of the transfer. An immediate or mediate good faith transferee of a protected secondary transferee is also shielded from liability. This subsection is limited to the trustee’s right to recover from subsequent transferees under subsection (a)(2). It does not limit the trustee’s rights against the initial transferee under subsection (a)(1). The phrase “good faith” in this paragraph is intended to prevent a transferee from whom the trustee could recover from transferring the recoverable property to an innocent transferee, and receiving a retransfer from him, that is, “washing” the transaction through an innocent third party. In order for the transferee to be excepted from liability under this paragraph, he himself must be a good faith transferee. Subsection (c) is a further limitation on recovery. It specifies that the trustee is entitled to only one satisfactory, under subsection (a), even if more than one transferee is liable.

Subsection (d) protects good faith transferees, either initial or subsequent, to the extent of the lesser of the

<sup>1</sup> So in original. Probably should be “subsection”.

cost of any improvement the transferee makes in the transferred property and the increase in value of the property as a result of the improvement. Paragraph (2) of the subsection defines improvement to include physical additions or changes to the property, repairs, payment of taxes on the property, payment of a debt secured by a lien on the property, discharge of a lien on the property, and preservation of the property.

Subsection (e) establishes a statute of limitations on avoidance by the Trustee. The limitation is one year after the avoidance of the transfer or the time the case is closed or dismissed, whichever is earlier.

#### AMENDMENTS

1994—Subsecs. (c) to (f). Pub. L. 103-394 added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.

1984—Subsec. (a). Pub. L. 98-353, § 465(a), substituted “549, 553(b), or 724(a) of this title” for “549, or 724(a) of this title”.

Subsec. (d)(1)(A). Pub. L. 98-353, § 465(b)(1), inserted “or accruing to” after “by”.

Subsec. (d)(1)(B). Pub. L. 98-353, § 465(b)(2), substituted “the value of such property” for “value”.

Subsec. (d)(2)(D). Pub. L. 98-353, § 465(b)(3), substituted “payment of any debt secured by a lien on such property that is superior or equal to the rights of the trustee; and” for “payment of any debt secured by a lien on such property.”

Subsec. (d)(2)(E), (F). Pub. L. 98-353, § 465(b)(3), (4), struck out subpar. (E) “discharge of any lien against such property that is superior or equal to the rights of the trustee; and” and redesignated subpar. (F) as (E).

Subsec. (e)(1). Pub. L. 98-353, § 465(c), substituted “or” for “and”.

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#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

### § 551. Automatic preservation of avoided transfer

Any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or any lien void under section 506(d) of this title, is preserved for the benefit of the estate but only with respect to property of the estate.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2602.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 551 is adopted from the House bill and the alternative in the Senate amendment is rejected. The section is clarified to indicate that a transfer avoided or a lien that is void is preserved for the benefit of the estate, but only with respect to property of the estate. This prevents the trustee from asserting an avoided tax lien against after acquired property of the debtor.

##### SENATE REPORT NO. 95-989

This section is a change from present law. It specifies that any avoided transfer is automatically preserved for the benefit of the estate. Under current law, the court must determine whether or not the transfer should be preserved. The operation of the section is automatic, unlike current law, even though preservation may not benefit the estate in every instance. A preserved lien may be abandoned by the trustee under

proposed 11 U.S.C. 554 if the preservation does not benefit the estate. The section as a whole prevents junior lienors from improving their position at the expense of the estate when a senior lien is avoided.

### § 552. Postpetition effect of security interest

(a) Except as provided in subsection (b) of this section, property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

(b)(1) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, products, offspring, or profits of such property, then such security interest extends to such proceeds, products, offspring, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable non-bankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

(2) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, and notwithstanding section 546(b) of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to amounts paid as rents of such property or the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties, then such security interest extends to such rents and such fees, charges, accounts, or other payments acquired by the estate after the commencement of the case to the extent provided in such security agreement, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2602; Pub. L. 98-353, title III, § 466, July 10, 1984, 98 Stat. 380; Pub. L. 103-394, title II, § 214(a), Oct. 22, 1994, 108 Stat. 4126; Pub. L. 109-8, title XII, § 1204(2), Apr. 20, 2005, 119 Stat. 194.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 552(a) is derived from the House bill and the alternative provision in the Senate amendment is rejected. Section 552(b) represents a compromise between the House bill and the Senate amendment. Proceeds coverage, but not after acquired property clauses, are valid under title 11. The provision allows the court to consider the equities in each case. In the course of such consideration the court may evaluate any expenditures by the estate relating to proceeds and any related improvement in position of the secured party. Although this section grants a secured party a security interest in proceeds, product, offspring, rents, or profits, the section is explicitly subject to other sections of title 11. For example, the trustee or debtor in possession may use, sell, or lease proceeds, product, offspring, rents or profits under section 363.