Bankruptcy Court Decisions
WEEKLY NEWS & COMMENT

Split widens between state and federal courts on assignee issue

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On Oct. 4, 2006, the **California Court of Appeals, Fourth District** held in *Credit Managers Association of California v. Countrywide Home Loans, Inc.*, 2006 WL 2820882 (Cal.App.4 Dist.) that Bankruptcy Code Sections 544 and 547, the provisions governing the avoidance of preferential transfers, do not preempt California Code of Civil Procedure Section 1800, which allows the assignee in a general assignment for the benefit of creditors to avoid certain preferential transfers under California state law.

The *CMAC* panel reached the same conclusion as the **California Court of Appeals, Second District** in *Haberbush v. Charles & Dorothy Cummins Family Limited Partnership*, (2006) 139 Cal.App.4th 1630. Both *CMAC* and *Haberbush* directly conflict with the prior conclusion of the **9th U.S. Circuit Court of Appeals** in *Sherwood Partners, Inc. v. Lycos, Inc.*, 44 BCD 24 (9th Cir. 2005). There, the 9th Circuit held that the Bankruptcy Code does preempt Section 1800, which means, according to the federal court, that general assignees cannot avoid preferential payments to certain creditors under Section 1800.

In *CMAC*, the trial court followed *Sherwood* and held that the Bankruptcy Code preempted Section 1800. The appellate court analyzed both *Sherwood* and *Haberbush*, found *Haberbush* more persuasive, and reversed the trial court. The 9th Circuit in *Sherwood* held that the Bankruptcy Code preempted Section 1800 on the grounds that the two statutes cannot peaceably coexist because if a state assignee were to recover and distribute a preferential transfer under Section 1800, then a trustee in a federal bankruptcy proceeding would not be able to recover the same sum. The 9th Circuit also held that Section 1800 impermissibly alters the incentives of individual creditors to avail themselves of federal bankruptcy law.

The *Haberbush* court based its decision, in part, on the fact that **Congress** intended voluntary assignments for the benefit of creditors to coexist peaceably with federal bankruptcy law. That conclusion means that under preemption analysis, the Bankruptcy Code does not preempt Section 1800. The court also found that regardless of whether Section 1800 altered the incentives of individual creditors, that alteration neither interfered with, nor created an obstacle to the Bankruptcy Code's objective of equitable distribution. The court concluded that *Sherwood* offered no persuasive reason to alter a state scheme that had long coexisted with federal bankruptcy law.

The *CMAC* decision widens the split between California state appellate courts and the 9th Circuit on the issue of whether an assignee, who accepts an assignment for the benefit of creditors, has the authority to recover preferential payments from creditors under California state law. The **U.S. Supreme Court** should step in to resolve the conflict.

In the meantime, whether an assignee for the benefit of creditors can pursue preference actions under California state law may well depend upon whether the preference action in question is before a state court or a federal court. ▯