



Kelley Drye Wins Major Victory for State Street Bank

September 6, 2002

In a significant victory, Kelley Drye successfully represented State Street Bank and Trust Company in an adversary litigation in bankruptcy court with one of its former borrowers, Sharp International Corp.

Sharp alleged that in 1998, State Street learned that Sharp's management systematically looted cash from the company, and failed to disclose Sharp's fraud to Sharp's auditor. The allegations were false. The U.S. Bankruptcy Court for the Eastern District of New York rejected Sharp's claim, and found that Sharp's ultimate repayment of its debt to State Street did not constitute a fraudulent conveyance. State Street itself was a victim of fraud, and had no knowledge of Sharp's management's misdeeds.

Based upon the Court's holding, to show liability for fraud, a plaintiff must plead that the defendant affirmatively assisted the underlying wrong. Absent an independent fiduciary duty to act, mere inaction does not constitute aiding and abetting fraud. Further, the Court determined that acceptance of repayment for a valid antecedent debt cannot render a bank liable for a fraudulent conveyance simply because the bank later discovers that the borrower is engaged in misconduct.