

Reversed burden of proof when appellate court rules on alleged loan

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General rule and exemption Comment

In a recent case regarding several transfers of funds from one business partner to another acting in a joint development project, the appellate court reversed the burden of proof and ruled that the transferor of funds bears the burden to prove that a transfer constitutes a repayable loan.

General rule and exemption

According to case law, a party is entitled to reclaim transfers of funds if it is undisputed that the transfer has occurred and the transferee has failed to provide sufficient evidence that he or she is entitled to keep the funds (eg, that the funds constitute a gift).

This general rule was recently disputed in an appellate court case (T 11560-14) in which A had transferred funds on several occasions to B for financing the development of a water tank (in which they had a joint business interest). A claimed that the funds constituted a loan from A to B and claimed repayment. B argued that the funds were given as a contribution for development costs and without any repayment obligations.

The lower court noted that the transferee had failed to prove any obligations by the transferor to contribute to the development costs (or other reason why the transferor would not be entitled to repayment). With reference to the general rule and in line with A's testimony, the district court resolved that the transfer established a loan from A to B and that A was indeed entitled to repayment.

The appellate court overruled the district court decision by noting that the general rule did not apply in the present case. Since the parties had no other points of contact or common interests than those of the water packaging business and water container products, the court argued that the transferor should bear the burden of proof to prove its entitlement to repayment. This position was further supported by the transferor having refrained from reclaiming the funds during an eight-year period and that the transferor had in previous court proceedings referred to the transfers as development costs. In light of this, and the fact that the transferor did not provide compelling evidence to the contrary, the transferor failed to prove that the transfer constituted a loan to the transferee and the transferor was therefore not entitled to repayment.

Comment

The decision highlights exemptions from the general rule to the effect that the burden of proof may, under certain circumstances, be reversed to the benefit of the transferee. Circumstances that may provide for such exemption include:

- that no other points of contact exist between the parties than those regarding the transfer;
- that the transferor has failed to reclaim payment under the alleged loan for a significant duration of time; and
- that the transferor has previously expressed that the transfers were not a loan.

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In light of this, it is advised that the nature of a transfer of funds and any conditions for repayment are well documented in writing (especially if the transferor does not foresee claiming repayment in the near future).

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