
BANKRUPTCY APPELLATE PANEL SUMMARY

March 2017

Spradlin v. Khouri (In re Bruner), 561 B.R. 397 (B.A.P. 6th Cir. 2017). **Issue:** Whether the bankruptcy court erred when it concluded that the chapter 7 trustee was not entitled to turnover of funds transferred postpetition without first avoiding the postpetition transfer. **Facts:** Debtor filed a chapter 13 petition and scheduled no cash on hand. Six months later, a warrant search of the debtor's home revealed \$270,000 of cash in a safe. The case was converted to chapter 7. Thereafter, the debtor's mother deposited \$51,000 into a joint bank account held by the debtor and her mother. The mother then transferred \$50,000 from the joint account to retain criminal counsel for the debtor. **Procedure:** The chapter 7 trustee filed an adversary complaint, seeking turnover of the \$50,000 from criminal counsel. Following a trial, the bankruptcy court dismissed the complaint because the trustee failed to seek the avoidance of the postpetition transfer. The

bankruptcy court reasoned that the funds were not estate property, a prerequisite of turnover, until the trustee avoided the transfer. The trustee appealed, arguing that a trustee may pursue postpetition, fraudulent transfers without first avoiding the transfer. **Holding:** The bankruptcy court did not err when it concluded that the chapter 7 trustee was not entitled to turnover of funds transferred postpetition without first avoiding the postpetition transfer. **Analysis:** Turnover under 11 U.S.C. § 542(a) is limited to assets that are undisputedly estate property at the time of the turnover demand. Property transferred postpetition is no longer estate property unless avoided under 11 U.S.C. § 549(a). Trustees cannot use § 542(a) to supplant the Bankruptcy Code's avoidance statutes (§§ 547, 548, and 549) and, in the process, by-pass the limitations periods for the avoidance actions. **AFFIRMED.**



In re Zenga, 562 B.R. 341 (B.A.P. 6th Cir. 2017). **Issue:** Whether the bankruptcy court erred, when ruling upon a contested involuntary petition, by precluding the putative debtor from introducing evidence of more than eleven creditors pursuant to the doctrine of equitable estoppel. **Law:** Equitable estoppel requires proof of: (1) misrepresentation by the party against whom estoppel is asserted; (2) reasonable reliance on the misrepresentation by the party asserting estoppel; and (3) detriment to the party asserting estoppel. **Facts:** Prior to filing an involuntary petition, a state court judgment creditor obtained post-judgment interrogatories from judgment debtor. The sworn interrogatories stated that the judgment debtor had only eleven creditors. In reliance upon this information, the judgment creditor filed an involuntary bankruptcy

petition as the sole petitioning creditor. **Procedure:** The putative debtor moved to dismiss the involuntary petition due to the existence of more than eleven creditors. The bankruptcy court denied the motion, concluding that the debtor was equitably estopped from proving the existence of more than eleven creditors. The debtor appealed, arguing that equitable estoppel did not apply. **Holding:** The bankruptcy court erred, when ruling upon a contested involuntary petition, by precluding the putative debtor from introducing evidence of more than eleven creditors pursuant to the doctrine of equitable estoppel. **Analysis:** The bankruptcy court did not find that the petitioning creditor suffered any detriment. If the debtor had been permitted to introduce evidence of more than eleven creditors, Fed. R. Bankr. P. 1003 would have given the

petitioner a reasonable opportunity to join additional petitioning creditors. **VACATED**

and REMANDED.

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In re Stubbs, No. 16-8025, 2017 WL 928491, 2017 Bankr. LEXIS 643, ___ B.R. ___ (B.A.P. 6th Cir. Mar. 9, 2017). **Issue: Whether the bankruptcy court erred when it refused to revoke the discharge of a chapter 7 debtor who failed to comply with a Rule 2004 order requiring the debtor to provide income tax returns to the trustee and appear for examination regarding the same.** Facts: Debtor filed a chapter 7 petition in December. At the January creditors' meeting, the trustee advised the debtor not to spend any tax refunds and provide the trustee with tax returns when filed. The court entered a discharge in April. In September, the trustee obtained a Rule 2004 order requiring the debtor to produce the tax returns and appear for examination. The debtor failed to appear or produce the returns. Procedure: The trustee filed a complaint to revoke the discharge. The debtor did not respond to the complaint or the trustee's motion for default judgment. The court set the motion for hearing. At the hearing, which the debtor did not attend, the court expressed its preference to have the bankruptcy case dismissed without a discharge, similar to a chapter 13 case. Following a continued hearing the bankruptcy court entered an order, critical of the trustee's

administration, denying the motion for default judgment, dismissing the adversary complaint, and vacating its Rule 2004 order. The court thought the trustee should have obtained dismissal of the chapter 7 case prior to the entry of a discharge. The trustee appealed. **Holding: The bankruptcy court erred when it refused to revoke the discharge of a chapter 7 debtor who failed to comply with a Rule 2004 order requiring the debtor to provide income tax returns to the trustee and appear for examination regarding the same.** Analysis: The bankruptcy court abused its discretion. The debtor, after proper service, failed to respond to a Rule 2004 order that was clear and specific. The United States Trustee's Program was created to separate the judiciary from the administrative aspects of the bankruptcy system. Although the bankruptcy court may have disagreed with the trustee's administration of the case, courts must defer to the legally valid, discretionary administrative decisions of chapter 7 trustees. Moreover, unlike the voluntary nature of chapter 13, chapter 7 estate assets are usually administered regardless of whether a debtor receives a discharge. **VACATED and REMANDED.**