

NEWS AND DEVELOPMENTS

Third Circuit Rules in *In Re Allen*

By Marcos A. Ramos

The Third Circuit Court of Appeals decided recently that a debtor does not need to actually possess property recovered under Section 550 for such property to constitute property of the debtor's estate under Section 541(a)(3). See [*In re Allen*](#), No. 13-3543 (3d Cir. Sept. 26, 2014).

In *Allen*, the debtor commenced an adversary proceeding in the Middle District of Florida against a former employee to recover \$6 million in alleged fraudulent conveyances pursuant to Sections 544 and 550 of the Bankruptcy Code. During the course of that litigation, the defendant transferred certain funds to an extraterritorial asset protection trust. The debtor obtained a judgment against the defendant under Sections 544 and 550, but the defendant commenced its own bankruptcy proceeding in the District of New Jersey prior to satisfying the judgment or repatriating the subject funds to the United States as required by order of the debtor's bankruptcy court. The debtor thereafter moved the New Jersey bankruptcy court for relief including a determination that the judgment amount was not property of the defendant's bankruptcy estate and the debtor did not require relief from the stay in order to continue to pursue such funds. The New Jersey court determined that the judgment amount was not property of the debtor's estate under Section 541 because the debtor did not have actual, tangible possession of the funds.

On appeal, the Third Circuit interpreted what it means to "recover" property under Section 541(a)(3). The Third Circuit decided that the New Jersey court had improperly read into Section 541(a)(3) the concept of "actual, tangible possession" of property, even though the plain text of the provision does not include such a requirement. Section 541(a)(3) defines estate property as "any interest in property that the trustee recovers under ... Section 550," and the Third Circuit refused to "impose such a high hurdle" as actual possession where the plain language did not require it. For the Third Circuit, the debtor already had, "in a legal sense, recovered the funds for its estate by securing a Section 550 recovery order." Additionally, the Third Circuit reasoned that requiring "actual possession" would create internal inconsistency in the Code as it would render Section 541's "wherever located and whomever held by" clause superfluous. Accordingly, the Third Circuit held that "where a debtor avoids a fraudulent transfer and obtains a recovery order, it has sufficiently 'recovered' those funds such that they are part of that debtors' estate under the Code."

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