

BANKRUPTCY & INSOLVENCY LITIGATION

AMERICAN BAR ASSOCIATION SECTION OF LITIGATION



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Equitable Tolling Applied to Adversary Proceeding Limitation

Liberty Brands, LLC v. Feit (In re Liberty Brands, LLC), 2012 WL 3730578 (Bankr. D. Del. Aug. 27, 2012)

The Delaware Bankruptcy Court denied defendants' motions to dismiss plaintiff-trustee claims to recover unauthorized post-petition transfers under 11 U.S.C. § 549.

In *Liberty Brands, LLC v. Feit*, the Delaware Bankruptcy Court denied the defendants' motions to dismiss the plaintiff-trustee's claims to recover unauthorized post-petition transfers under 11 U.S.C. § 549. According to the defendants, the trustee's claims were time-barred because the trustee did not file within two years after the date of the transfer at issue. The court denied the defendants' motions to dismiss after concluding that the doctrine of equitable tolling applied to extend the limitations period under Section 549(d)(1).

Debtor Liberty Brands LLC manufactured and marketed discounted cigarettes and filed a voluntary petition for relief after it defaulted on its obligation to make settlement-related payments to certain states. After its petition date, the debtor agreed to settle a disputed claim by payment of \$1.1 million to the claimant and the parties' settlement was approved by the court. The claimant's attorney of record in the debtor's bankruptcy case later directed the claimant to transfer the funds to the defendants. A liquidating plan was approved and the trustee was appointed to administer the estate and pursue causes of action.

The trustee later sued the defendants (among other parties) for charges including the following: fraud, conversion, receipt of preferential, fraudulent or unauthorized post-petition transfers, civil conspiracy, unjust enrichment, and disallowance of claims. With regard to its Section 549 claim, the trustee alleged that the claimants' claim was fraudulent and that the claimant was controlled by, or acted for the benefit of, the defendants with regard to the claim and resolution thereof. The trustee therefore sought to recover the funds from the defendants because the debtor's transfer of the funds to the defendants was not authorized by the court. The defendants moved to dismiss the Section 549 claim because it was not asserted within two years after the date of the transfer as required under Section 549(d)(1).

The court concluded that it had core jurisdiction over the counts for conversion, avoidance of preferential, fraudulent and unauthorized post-petition transfers, and disallowance of claims.

The court also concluded that the trustee had stated a claim for fraud on the court, relying on *Miller v. Greenwich Capital Fin. Prods., Inc. (In re Am. Business Fin. Servs., Inc.)*, 384 B.R. 80, 85 (Bankr. D. Del. 2008) (fraud on court requires (i) intentional fraud, (ii) by officer of court, (iii) directed at court and (iv) that deceives court).

Finally, the court agreed with the trustee that equitable tolling of the limitations period under Section 549(d)(1) was appropriate. The court noted that the Third Circuit has approved application of the doctrine of equitable tolling when: (1) the defendant has actively misled the plaintiff with respect to the cause of action; (2) the plaintiff has been prevented from asserting its rights in some extraordinary way; or (3) the plaintiff has timely asserted its rights mistakenly in the wrong forum. Here, the court determined that the trustee had satisfied its burden with regard to equitable tolling because the trustee had demonstrated that the alleged fraud at issue only became known to the trustee through discovery propounded to the claimant in the proceeding. As noted by the court, “[c]ounsel purporting to act on behalf of [Claimant] had filed and prosecuted claims in [the Debtor’s] case. It was not until [Claimant] filed answers to interrogatories stating that it had no claim that the [Trustee] could have asserted claims for the recovery” of the funds as unauthorized transfers.

Keywords: litigation, bankruptcy, insolvency, Third Circuit, 11 U.S.C. § 549, equitable tolling

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