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Ninth Circuit Holds One-Year Period in Sec. 727(a)(2) Not Subject to Equitable Tolling

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Ronald Neff was a dentist against whom his patient, Douglas DeNoce, obtained a judgment for malpractice. After he filed a c*hapter 13 bankruptcy* petition, Neff recorded a quit-claim deed transferring a condominium from himself to a trust. This first chapter 13 case was dismissed, as was a second chapter 13 case filed by Neff. Neff then filed his third bankruptcy case, a chapter 7 proceeding, more than one year following the recording of the quit-claim deed. DeNoce filed an adversary proceeding, seeking the denial of Neff's discharge under § 727(a)(2) of the Bankruptcy Code, asserting the transfer of the condominium was made with intent to hinder, delay or defraud creditors. Because § 727(a)(2) requires the transfer be made within one year before the bankruptcy filing, Neff contended the transfer of the condominium, which occurred more than a year before he filed his chapter 7 petition, did not bar his discharge.

The bankruptcy court granted Neff a summary judgment on the complaint, and DeNoce appealed, contending the one-year period in the statute is subject to equitable tolling based on Neff's first two bankruptcy cases. The Ninth Circuit BAP affirmed, as did the Ninth Circuit. ***DeNoce v. Neff (In re Neff)***, 2016 WL 3201236 (9th Cir. 2016).

The sole question before the Ninth Circuit was whether the one-year time period contained in § 727(a)(2) can be subject to equitable tolling. The Ninth Circuit concluded it is not, in an straight-forward analysis. First, the court noted that equitable tolling "is fundamentally a equstion of statutory intent," and that the Supreme Court presumes that Congress intended equitable tolling would be available "if the period in question is a statute of limitations." *Young v. United States*, 535 U.S. 43 (2002). However, this presumption has only been applied to statutes of limitation and has not been applied to other statutes, such as statutes of repose. *Lozano v. Montoya Alvarez*, 134 S. Ct. 1224 (2014).

Consequently, the court determined the question before it was whether the time period in § 727(a)(2) is a statute of limitations. The court noted that a statute of limitations is generally "[a] law that bars claims after a specified period; specifically, a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued." *CTS Corp. v. Waldburger*, 134 S. Ct. 2175 (2014). The purpose of a statute of limitations is to encourage claimants to diligently pursue their claims. The court concluded that § 727(a)(2) was not a statute of limitations. Its purpose was not to encourage claimants to timely pursue claims against a debtor, but rather its purpose is to prevent dishonest debtors from abusing the bankruptcy process by evading the consequences of their misconduct. The court stated: “At the core of the Bankruptcy Code are the twin goals of ensuring an equitable distribution of the debtor’s assets to his creditors and giving the debtor a fresh start.” *Sherman v. SEC (In re Sherman)*, 658 F.3d 1009 (9th Cir. 2011). The one-year is designed to set a date on transfers for which a debtor may be denied a discharge, and is not a statute of limitations by which a creditor must bring an action.

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