

equitable estoppel
§ 522(f)

In re Casper, Case No. 300-30389-elp7

6/12/01 BAP aff'g ELP unpublished

The BAP affirmed Judge Perris's denial of debtor's motion to avoid a judicial lien. Before debtor filed her chapter 7 petition, she had sought a release of a judgment lien on her property so she could sell it. In soliciting the release of lien, debtor, who is a realtor, represented to the creditor that the value of her property was \$110,000, which was more than enough to secure the balance of the judgment creditor's judgment. Debtor paid the creditor \$10,000, and the creditor released a portion of the lien.

After debtor filed bankruptcy, she moved to avoid the remainder of the judgment lien, asserting that her property was worth only \$90,290 and therefore the judgment lien impaired her homestead exemption. Debtor sought to present the testimony of an expert witness to support her claim that the property was worth \$90,290. The BAP affirmed the bankruptcy court's application of equitable estoppel to disallow the expert testimony. Debtor's prepetition representation of value was a representation of fact, not opinion, to which she could be bound in the later proceedings. The BAP held that application of equitable estoppel was not an abuse of discretion.

P01-5(8)

1 **NOT FOR PUBLICATION**

2 **UNITED STATES BANKRUPTCY APPELLATE PANEL**

3 **OF THE NINTH CIRCUIT**

4
5 In re:) BAP No. OR-00-1581-BKry
6 BEVERLY CASPER,)
7 Debtor.) Bk. No. 300-30389-elp7

8 BEVERLY CASPER,)
9 Appellant,)

10 v.)
11 PAUL CADD; MICHAEL BATLAN,)
12 Chapter 7 Trustee,)
13 Appellees.)

FILED

JUN 12 2001

NANCY B. DICKERSON, CLERK
MEMORANDUM¹ U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

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15 Argued² and Submitted on March 21, 2001
16 at Santa Ana, California

17 Filed - June 12, 2001

18 Appeal from the United States Bankruptcy Court
19 for the District of Oregon

Honorable Elizabeth L. Perris, Bankruptcy Judge, Presiding

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22 Before: BRANDT, KLEIN, and RYAN, Bankruptcy Judges.

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25 ¹ This disposition is not appropriate for publication and may
26 not be cited except when relevant under the doctrines of law of the
27 case, res judicata or collateral estoppel. See 9th Cir. BAP Rule
8013-1.

28 ² The parties appeared by video conference from Portland,
Oregon.

*Circulated
summarized*

1 Debtor appeals the bankruptcy court's order denying her motion to
2 avoid a judicial lien. We AFFIRM.

3
4 **I. FACTS**

5 Debtor Beverly Casper is a realtor with extensive experience
6 valuing and selling real property in Deschutes County, Oregon. Casper
7 owned two pieces of real property, a single-family rental and her
8 residence.

9 Appellee Paul Cadd held a judgment against Casper for approximately
10 \$20,000. Casper wished to sell the rental property, and needed Cadd to
11 release his judgment lien to close the sale. On 14 December 1999,
12 Casper's attorney, Larry Erwin, proposed to Cadd's attorney, Gary
13 Linkous, a release upon partial payment of the lien, which would allow
14 Casper to complete the sale and pay her other creditors, thereby
15 possibly avoiding bankruptcy.

16 Linkous requested information from Erwin regarding the value and
17 liens on the residence to determine whether there was sufficient equity
18 in that property to secure the balance of Cadd's judgment. On
19 15 December 1999, Erwin responded in a letter stating,

20 The following is a break down [sic] of values
21 you requested regarding Ms. Casper's homestead.
22 1. Tax assessed value is \$90,700.00
23 2. Market value she believes is \$110,000.00
3. Balance on mortgage is \$72,000.00
4. This leaves \$13,000.00 over her homestead
exemption based on the above.

24 The next day Cadd agreed to release his judgment lien on the rental
25 property for \$10,000, which Casper paid shortly thereafter.

1 Cadd released the lien, but Casper filed for chapter 7³ relief on
2 21 January 2000. She valued her residence at \$90,290 in her schedules,
3 and moved to avoid Cadd's judgment lien.

4 At the evidentiary hearing on Casper's motion, Cadd moved to strike
5 the testimony of Casper's expert witness, appraiser Scott M. Neilsen,
6 because Casper had neither disclosed the witness nor provided a copy of
7 the appraisal prior to the hearing. The bankruptcy court allowed
8 Neilsen to testify on the condition that Cadd be allowed a continuance,
9 at Casper's expense, to prepare for cross-examination and rebuttal. At
10 the conclusion of the hearing, Cadd reserved his right to cross-examine
11 and present rebuttal testimony pending the bankruptcy court's ruling on
12 equitable estoppel.

13 On 9 August 2000, the bankruptcy court issued a letter ruling and
14 order striking Casper's appraiser's testimony and denying lien
15 avoidance. The court found that Casper was equitably estopped from
16 asserting a value less than the \$110,000 stated in the 15 December
17 letter seeking lien avoidance. Casper timely appealed.

18 The chapter 7 trustee, Michael Batlan, although named as an
19 appellee, took no position in this dispute, did not appear at the
20 hearing, and did not brief or argue on appeal.

21 22 II. JURISDICTION

23 The bankruptcy court had jurisdiction via 28 U.S.C. § 1334 and
24 § 157(b)(1) and (b)(2)(K), and we do under 28 U.S.C. § 158(c).

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28 ³ Absent contrary indication, all section and chapter
references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330.

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III. ISSUES

Whether the bankruptcy court abused its discretion in applying equitable estoppel.

IV. STANDARD OF REVIEW

We review the bankruptcy court's application of equitable estoppel for abuse of discretion. See Hoefler v. Babbitt, 139 F.3d 726, 727 (9th Cir. 1998). A bankruptcy court necessarily abuses its discretion if it bases its decision on an erroneous view of the law or clearly erroneous factual findings. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405 (1990). Under the abuse of discretion standard, we must have a definite and firm conviction that the bankruptcy court committed a clear error of judgment in the conclusion it reached before reversal is proper. AT&T Universal Card Servs. v. Black (In re Black), 222 B.R. 896, 899 (9th Cir. BAP 1998).

V. DISCUSSION

The bankruptcy court found that the 15 December letter equitably estopped Casper from asserting a value for her homestead other than \$110,000. Accordingly, the court struck the testimony of Casper's appraiser, and denied her motion to avoid Cadd's judgment lien because the lien did not impair debtor's homestead exemption: deducting the \$71,748 secured by the deed of trust and the \$25,000 homestead exemption, Or. Rev. Stat. § 23.240(1), from \$110,000 leaves \$13,252, exceeding the \$10,752.59 lien balance. See § 522(f)(2).

Equitable estoppel is
the principle by which a party who knows or should know the truth is absolutely precluded, both at law and in equity, from denying, or asserting the

1 contrary of, any material fact which, by his words
2 or conduct, affirmative or negative, intentionally
3 or through culpable negligence, he has induced
4 another, who was excusably ignorant of the true
5 facts and who had a right to rely upon such words
6 or conduct, to believe and act upon them thereby,
7 as a consequence reasonably to be anticipated,
8 changing his position in such a way that he would
9 suffer injury if such denial or contrary assertion
10 was allowed.

11 28 Am. Jur. 2d Estoppel & Waiver § 28 (2000).

12 Equitable estoppel applies in bankruptcy proceedings. Cukierman v.
13 Mechanics Bank of Richmond (In re J.F. Hink & Son), 815 F.2d 1314, 1318
14 (9th Cir. 1987). Its elements are:

15 (1) knowledge of the true facts by the party to be
16 estopped; (2) intent to induce reliance or actions
17 giving rise to a belief in that intent; (3)
18 ignorance of the true facts by the relying party;
19 and (4) detrimental reliance.

20 Bolt v. United States, 944 F.2d 603, 609 (9th Cir. 1991).

21 The bankruptcy court found that these elements were met:

22 Debtor did not give any reason why she would change
23 her opinion of the market value of the property
24 during the short interval between the letter and
25 her bankruptcy filing. Debtor had lengthy and
26 extensive experience as a realtor in the pertinent
27 market. The representation of value was made to
28 induce reliance; debtor made the representation of
value in an attempt to get Cadd to release his lien
on the rental property. . . .

Cadd believed that the \$110,000 valuation by
debtor was correct because of [Casper's] experience
as a professional realtor. . . .

Cadd detrimentally relied on the
representation, in that he released the lien on the
rental property for \$10,000 and allowed debtor to
receive approximately \$6,000 from the rental
property sale proceeds

Letter Ruling, 9 August 2000, p. 4. Casper does not dispute the
bankruptcy court's factual findings, or that the lien is not avoidable
if the value is \$110,000.

1 Instead, Casper advances three arguments against the application of
2 equitable estoppel: first, that the representation of value in the
3 15 December letter was opinion, not fact; second, assuming it was fact,
4 denial of her lien avoidance motion was an inappropriate remedy; and
5 third, that the application of equitable estoppel impermissibly destroys
6 her homestead exemption.

7 An expression of opinion is generally not sufficient to support the
8 application of equitable estoppel. See Whitney v. United States, 826
9 F.2d 896, 898 n.5 (9th Cir. 1987); see also Buder v. Denver Nat'l Bank,
10 151 F.2d 520, 524 (8th Cir. 1945) ("An expression of opinion alone can
11 not be the foundation of any equitable estoppel by representation.").
12 Some courts recognize an exception to this rule for expressions of legal
13 opinion where the party making the representation possesses special
14 knowledge. See 28 Am. Jur. 2d Estoppel & Waiver § 51 (2000).

15 Casper's representation in the 15 December letter was ostensibly
16 her belief (opinion) as to the value of the property. But opinion and
17 fact are not necessarily mutually exclusive: we agree with the
18 bankruptcy court's implicit finding that Casper's extensive expertise in
19 valuing and selling real property in the relevant market transformed her
20 opinion into a statement of fact sufficient to support equitable
21 estoppel. This is but a modest extension of the "special knowledge"
22 exception for expressions of legal opinion noted above. See Gilbert v.
23 City of Martinez, 152 Cal. App. 2d 374, 378, 313 P.2d 139,141 (1957).

24 We note that, in the fraud context, expressions of opinion,
25 including opinions of property value, are also generally not actionable.
26 Equitable Life & Cas. Ins. Co. v. Lee, 310 F.2d 262, 267 (9th Cir.
27 1962); 37 Am. Jur. 2d Fraud & Deceit § 112 (1968). However, an
28 exception exists for opinions "stated falsely and with intent to

1 deceive." Equitable Life & Cas., 310 F.2d at 267 (citing Hansen v.
2 Holmberg, 176 Or. 173, 156 P.2d 571, 574 (1945)); see also 37 Am. Jur.
3 2d Fraud & Deceit § 112 (representation of property value actionable as
4 fraud where utterer knows representation to be untrue and intends to
5 mislead the representee, and representee relies on representation and is
6 injured thereby). We see no reason these rules should not apply in the
7 context of equitable estoppel, which is predicated on fraud. See
8 Dickerson v. Colgrove, 100 U.S. 578, 580 (1879).

9 However, the bankruptcy court did not make an explicit finding of
10 the first element of equitable estoppel (knowledge of the true fact by
11 the party to be estopped): there is no finding that Casper knew on
12 15 December 1999 that the value of the property was insufficient to
13 cover Cadd's lien without impairing her exemption. Nevertheless,
14 Casper's bankruptcy schedules and her testimony at trial support such a
15 finding, or the lesser but sufficient finding that she knew the material
16 facts were other than as she represented. See 28 Am. Jur. 2d Estoppel
17 & Waiver § 45.

18 Casper's remaining arguments are without merit. Their essence is
19 that application of equitable estoppel is contrary to the Bankruptcy
20 Code and Oregon exemption statutes, and that equitable remedies may not
21 be used to defeat clear statutory language. As the bankruptcy court
22 aptly stated: "This is a purely factual issue. Applying estoppel to
23 hold debtor to her earlier representation is not inconsistent with the
24 Code or the rules; it is merely holding her to her earlier
25 representations."

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VI. CONCLUSION

Casper has not shown the bankruptcy court abused its discretion in applying equitable estoppel. As we may affirm on any basis supported by the record, Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1295 (9th Cir. 1998), and the requisite finding was implicit in the bankruptcy court's ruling, we AFFIRM.

RYAN, Bankruptcy Judge, dissenting:

I do not agree with the majority that "Casper's bankruptcy schedules and her testimony at trial" support a finding that she knew on December 15, 1999 that the "value of the property was insufficient to cover Cadd's lien without impairing her exemption" or that "she knew the material facts were other than as she represented."

For equitable estoppel to have applied, the bankruptcy court needed to find that at the time of the December 15, 1999 letter the value of the rental property was such that Cadd's lien actually impaired Casper's homestead exemption. Second, the bankruptcy court needed to find that Casper at the time knew that the value of the property (the true fact) was insufficient to cover Casper's exemption. Neither finding was made.

Without these findings, I do not see how the necessary elements for collateral estoppel were satisfied.

Accordingly, I respectfully DISSENT.