

## Fraud and Bad Faith in Bankruptcy Cases

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## Overview

- **Fraudulent Transfers:** The meanings of "transfer," "reasonably equivalent value," and, in corporate context, "imputation of intent."
- **Fraud and Discharge:** The meaning of "actual fraud" after *Huskey*; fraud in the context of discharge under section 727.
- **Bad Faith:** The standards for evaluating claims of bad faith in the filing of voluntary and involuntary petitions.

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A "transfer" under section 101(54) of the Code includes a debtor's deposits into an unrestricted checking account.

- A. True
- B. False

Cases: Compare *Ivey v. First Citizens Bank & Trust Co. (In re Whitley)*, 848 F.3d 205 (4th Cir. 2017) with *In re Weltach*, 811 F.3d 99 (3rd Cir 2017)

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The term "reasonably equivalent value" may mean:

- A. A transfer providing a tangible economic benefit
- B. A transfer holding objective value in the abstract
- C. A transfer in which the transferor's net worth is preserved
- D. All of the above
- E. Answers A and C

Cases: *Janvey v. Golf Channel, Inc.*, 834 F. 3d 570 (5th Cir. 2016); *DeGiacomo v. Sacred Heart U. (In re Palladino)*, 556 B.R. 10 (Bankr. D. Mass. 2016)

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Additional cases on elements of fraudulent transfers

- *In re Abell*, 549 B.R. 631 (Bankr. D. Md. 2016) (equitable tolling and the "collapsing the transaction" doctrine for purposes of look-back period)
- *In re Int'l Mgt Assocs.*, 563 B.R. 393 (Bankr. N.D. Ga. 2017) (explanation of the parameters of the Ponzi scheme presumption in fraudulent transfer litigation)
- *In re Tribune Co. Fraudulent Conveyance Litig.*, 2017 U.S. Dist. LEXIS 3029 (S.D.N.Y 2017) (imputation theory is limited to "those actors who deliberately and directly exert control inside the boardroom" and disagreeing with *In re Lyondell Chemical Co.*, 554 B.R. 635 (S.D.N.Y 2016))

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After *Huskey*, actual fraud under section 523(a)(2)(A):

- A. May require justifiable reliance
- B. May require reasonable reliance
- C. Never requires reliance
- D. None of the above

Cases: *In re Cahill*, 2017 WL 713565 (Bankr. E.D.N.Y. 2017); *In re Holmes*, 2017 WL 1806507 (Bankr. W.D. Mo. 2017). See also *Momoh v. Osayande*, 564 B.R. 1 (D.D.C. 2017)

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### Two interesting cases on discharge under section 532(a)(4)

- *In re Harris*, 561 B.R. 726 (8<sup>th</sup> Cir. BAP 2017) (“fiduciary fraud and defalcation” theory under section 523(a)(4))
- *In re Palladino*, 560 B.R. 608 (Bankr. D. Mass. 2016) (judgment debt stemming from debtor’s Ponzi scheme “would be except from discharge as one for money obtained by debtor’s larceny”)

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### Reckless indifference can constitute fraud under section 727(a)(4)(A).

- A. True
- B. False

Cases: *Robinson v. Worley*, 849 F.3d 577 (4<sup>th</sup> Cir. 2017); *In re Hannon*, 839 F.3d 63 (1<sup>st</sup> Cir. 2016); *In re Eilan*, 659 Fed.Appx. 104 (3<sup>rd</sup> Cir. 2016); *In re Rademacher*, 549 B.R. 889 (Bankr. E.D. Mo. 2016)

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### Interesting cases on fraud and revocation of discharge

- *In re Mack*, 2017 WL 1380485 (Bankr. E.D. Wis. 2017) (knowledge of chapter 7 trustee not imputed to U.S. trustee for purposes of section 727(d)(1))
- *In re Larson*, 553 B.R. 646 (Bankr. W.D. Mich. 2016) (knowledge of chapter 7 trustee not imputed to U.S. trustee for purposes of section 727(d)(1))
- *In re Lee*, 561 B.R. 581 (Bankr. N.D. Ga. 2016) (discusses and distinguishes requirements of sections 727(d)(1) and (d)(2))

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The following factor(s) may warrant dismissal of an involuntary petition:

- A. Two-party dispute
- B. Tactical advantage in litigation
- C. Ill-will between petitioning creditor(s) and debtor
- D. Whether involuntary petition satisfies requirements of Code (e.g., reasonable inquiry before filing)
- E. Subjective bad faith
- F. All of the above

Cases: *In re Murray*, 543 B.R. 484 (Bankr. S.D.N.Y. 2016); *In re Metrograde, L.L.C.*, 2016 Bankr. LEXIS 2242 (Bankr. D. Del. 2016)

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Bad Faith in Voluntary Filings

- *In re Bouchard*, 560 B.R. 385 (Bankr. D.R.I. 2016) (explaining that, in chapter 13 case, both petition and plan must be filed in good faith and dismissing case under section 1307(c))
- *In re Wigley*, 557 B.R. 671 (8<sup>th</sup> Cir. BAP 2016) (explaining that "courts consider the totality of the circumstances, including the court's evaluation of the debtor's financial condition, motives, and the local financial realities" in evaluating a bad faith filing claim in a chapter 11 case under section 1112)

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QUESTIONS?

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