



## LLC Members Equitably Estopped From Claiming Ownership of LLC Property

### Eighth Circuit Bankruptcy Monitor

In [\*Richards v. Rabo Agrifinance, LLC \(In re Kip and Andrea Richards Family Farm & Ranch, LLC\)\*](#), the Eighth Circuit BAP (Judges Schermer, Shodeen and Sandberg) affirmed the bankruptcy court's determination that members of a debtor LLC were equitably estopped from claiming ownership of LLC property.

The Debtor and its secured lender agreed to a stipulated chapter 11 plan that, among other things, required the sale of substantially all the Debtor's assets and for the lender to receive the sale proceeds. The lender also agreed as part of the plan to dismiss any litigation against the members of the Debtor.

Post-confirmation, the lender moved to compel the Debtor's compliance with the plan by requiring the Debtor to liquidate or deliver certain equipment to the lender. The members, however, claimed that they owned some of the equipment and that the Debtor therefore could not and was not obligated to liquidate or deliver that equipment. The bankruptcy court concluded that the members were equitably estopped from advancing such an interest. The BAP found the bankruptcy court's holding justified by the following record facts, among others:

- The members prepared and submitted operating reports listing the equipment as the Debtor's property;
- The members omitted to disclose in the Debtor's schedules that the Debtor possessed equipment that was owned by another;[\[1\]](#)
- The Debtor's post-petition tax returns, signed by one of the members, listed the equipment as being the Debtor's;

- The individual members' tax returns included no entry for depreciation of the equipment, although one included entries for depreciation of other equipment; and,
- The individual members supplied personal balance sheets to the lender shortly before confirmation that showed the members did not claim an interest in the Debtor's assets.

As noted, the BAP affirmed the bankruptcy court, applying clear error review on issues of fact, *de novo* review on issues of law, and an abuse of discretion standard for the bankruptcy court's denial of the members' motion for a new trial.

The Court observed that the parties and the bankruptcy court looked to the substantive law of Nebraska for the elements of equitable estoppel, and the Court followed suit without further discussion. Although it probably was not outcome determinative in this instance, the parties likely could have referenced federal law principles of equitable estoppel instead of state law, because the issue first arose on a motion to compel plan performance under section 1142. *See, e.g., In re Wertz*, 557 B.R. 695, 705 (Bankr. E.D. Ark. 2016) ("When a claim of equitable estoppel is made with respect to a federal statute, federal law principles of equitable estoppel apply."). In any event, the Court held that the bankruptcy court's factual findings were adequately supported by the evidence as to each element of equitable estoppel, and that the bankruptcy court did not abuse its discretion in denying a new trial.

The BAP characterized the members as having repeatedly and consistently represented that the Debtor owned the property at issue. The outcome of the appeal, therefore, is not surprising. But, the BAP did make a noteworthy observation in response to the members' argument that the lender did not exercise sufficient diligence to permit the lender to rely on the doctrine of equitable estoppel. In particular, the members argued that a "search of public records . . . would have shown that titled vehicles listed in the Debtor's schedules were not titled in the Debtor's name." The BAP agreed with the bankruptcy court that the lender was under no obligation to take additional steps to verify the accuracy of the Debtor's schedules before relying on them. In fact, the BAP agreed that the lender "was entitled to rely as a matter of law . . . on the listing of machinery and equipment on the Debtor's schedules . . . as the machinery and equipment to be sold under the Plan." This observation should be some comfort to lenders relying on debtors' sworn

representations in reaching consensual resolutions.

This blog post was drafted by Ryan Hardy, an attorney in the Spencer Fane LLP St. Louis, MO office. For more information, visit [www.spencerfane.com](http://www.spencerfane.com).

---

[\[1\]](#) Only one of the members signed the operating reports and schedules. But, at least with respect to the operating reports, the record showed that the other member actually prepared same. Thus, the case does not present an issue where one member of an LLC was deemed estopped from asserting rights due to misrepresentations by another member in which she played no role.