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### *Trustee No Better Than Debtor*

With limited exceptions, a bankruptcy trustee “stands in the shoes of the debtor” and may only recover in a legal action what the debtor itself would have been able to recover. A second legal principle is that one wrongdoer cannot recover from another for joint wrongdoing, referred to by the Latin term *in pari delicto*. For example, two partners in a fraudulent scheme cannot sue each other for damages if the scheme does not succeed.

Together, these two principles mean that a bankruptcy trustee bringing a lawsuit may also be defeated by the defense of *in pari delicto*. A federal appellate court recently applied the doctrine of *in pari delicto* to a bankruptcy trustee standing in the shoes of a creditor, rather than in the shoes of the debtor.

Prior to its bankruptcy, the debtor corporation used “dodgy” accounting practices to artificially inflate its accounts receivable and, therefore, its revenues. After the company collapsed, its bankruptcy trustee sued one of the debtor’s financial advisors, which the trustee alleged knew of the debtor’s improper accounting practices, for its role in the debtor’s collapse. The bankruptcy court concluded that the trustee’s claims were defeated by the doctrine of *in pari delicto*, because the debtor itself was the primary wrongdoer with regard to the accounting practices which caused its demise.

The trustee appealed the bankruptcy court’s decision arguing that he was able to bring the claims under a provision of the bankruptcy statute which allowed him to assert claims that a hypothetical creditor holding a judgment against the debtor could have asserted. The trustee argued that standing in the shoes of the innocent judgment creditor, he is not subject to the defense of *in pari delicto*. The appellate court disagreed, concluding that the hypothetical judgment creditor, also, could only stand in the shoes of the

debtor and would itself have been subject to the *in pari delicto* defense. The trustee achieved no better position standing in the creditor shoes.

*Anderson v. Morgan Keegan & Co. (In re Infinity Bus. Group)*, 31 F.4<sup>th</sup> 294 (4<sup>th</sup> Cir. 2022).

### *Easier Stay Relief*

A Maryland bankruptcy judge recently made it easier to obtain relief from the automatic stay and foreclose on collateral.

A bank acting as trustee for a fund that purchased mortgages moved for stay relief to permit the continuation of a state court foreclosure on a mortgage in default. The homeowner opposed on the grounds that the bank could not establish a chain of title showing that the fund actually owned the mortgage. The bankruptcy judge held that proof of ownership of the mortgage was not necessary. The bank could obtain the stay relief provided it could show a “colorable claim” that it had a right to proceed with the foreclosure in state court.

*Specialized Loan Servicing v. Byrd (In re Bird)*, 2022 Bankr. LEXIS 417 (Bankr. D. Md. 2022).

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