

September 2019

## 9<sup>th</sup> Circuit Affirms Bankruptcy Court Ruling in Petit Oil Chapter 7 Bankruptcy Case

By [Deborah A. Crabbe](#)

On November 15, 2013, Pettit Oil Company (“Debtor”) filed its Chapter 11 bankruptcy petition. Approximately 60 days later the bankruptcy case was converted to Chapter 7 and Kathryn A. Ellis was appointed Chapter 7 bankruptcy trustee (the “Trustee”).

Under the Bankruptcy Code and specifically, 11 U.S.C. § 544, a trustee is granted “strong-arm” powers as of the Petition Date, which provide that a trustee has

the rights and powers of, or may avoid any transfer of property of the debtor . . . that is voidable by a creditor that extends credit to the debtor [as of the Petition Date], and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien. See 11 U.S.C. § 544(a)(1).

After the Trustee’s appointment, the Trustee learned that the Debtor’s primary fuel supplier, IPC (USA), Inc. (“IPC”), had entered into a Consignment Agreement with the Debtor to supply fuel to the Debtor’s “card-lock” facilities, which are similar to consumer gasoline stations. As a general proposition, a consignment under the Uniform Commercial Code “is treated as a secured transaction subject to the attachment, perfection, and priority rules of Article 9.” Julian McDonnell & James P. Nehf, 1D SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE § 33.04[1] (2017).

This means that if a consignor wishes to protect an interest in consigned goods from the claims of creditors, a consignor must file a UCC-1 Financing Statement with the appropriate state recording office. In this case, the Trustee discovered that IPC had failed to file a UCC-1 Financing Statement to notify creditors of its consignment interest in the consigned fuel being supplied to the cardlock sites. The Trustee determined that on the bankruptcy filing date there was consigned fuel inventory in the Debtor’s cardlock tanks, uncollected accounts receivable arising from the sale

of consigned fuel and cash on deposit in the Debtor’s bank account from the sale of consigned fuel.

As a result, on August 27, 2014, Foster Pepper and bankruptcy attorney Deborah A. Crabbe filed an adversary proceeding (the “Adversary Proceeding”) on behalf of the Trustee in the U.S. Bankruptcy Court - Western District of Washington at Tacoma (the “Bankruptcy Court”) seeking, among other things, a judgment declaring that (i) IPC’s fuel deliveries pursuant to the Consignment Agreement constituted “consignments” as defined and governed by Article 9; (ii) as of the Petition Date, IPC held no more than an unperfected security interest in the “Consigned Fuel Inventory”, “Accounts Receivable”, and “Cash Proceeds”; (iii) the Trustee, as a hypothetical judgment lien creditor under 11 U.S.C. § 544(a)(1), could avoid IPC’s unperfected security interests; and (iv) under 11 U.S.C. § 550, the Trustee could recover from IPC the value of the Consigned Fuel Inventory, Accounts Receivable and Cash Proceeds for the benefit of the bankruptcy estate.

On May 19, 2016 the Bankruptcy Court filed a memorandum decision and entered an order granting partial summary judgment in favor of the Trustee recognizing the Trustee’s superior lien interest in the Consigned Fuel Inventory. On July 1, 2016, the Bankruptcy Court read an oral ruling into the record and entered an order recognizing the Trustee’s superior lien interest in the Accounts Receivable and Cash Proceeds. On September 29, 2016, the Court heard argument from Ms. Crabbe and counsel for IPC on the amount of damages that the Trustee should be awarded for the value of the Consigned Fuel Inventory, Accounts Receivable and Cash Proceeds.

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On November 3, 2016, the Bankruptcy Court issued a Memorandum Decision awarding the Trustee damages in the aggregate amount of \$5,493,498.69 and subsequently entered a Final Judgment in favor of the Trustee in the sum of \$5,493,498.69.

IPC appealed the ruling from the Bankruptcy Court to the Bankruptcy Appellate Panel of the Ninth Circuit (the “BAP”). On October 23, 2017, the BAP issued a published decision affirming the Bankruptcy Court’s ruling and judgment entered in favor of the Trustee in the sum of \$5,493,498.69 (the “BAP ruling”). See *IPC (USA), Inc. v. Ellis (In re Pettit Oil Co.)*, 575 B.R. 905, 911 (B.A.P. 9th Cir. 2017).

IPC subsequently appealed the BAP ruling to the U.S. Court of Appeals for the 9th Circuit (the “9th Circuit Court”). On March 11, 2019, the 9th Circuit Court issued a published decision affirming the ruling and judgment from the Bankruptcy Court and the BAP entered in favor of the Trustee in the sum of \$5,493,498.69. See *IPC (USA) Inc. v. Ellis (In re Pettit Oil Co.)*, 917 F.3d 1130 (9th Cir. 2019).

IPC has now paid the judgment to the bankruptcy estate, and the Trustee is in the process of allowing claims and paying creditors. It is anticipated that all claims of Chapter 7 and Chapter 11 creditors, former employees and home heating oil customers will either be paid in full or paid close to the entire amount owing on the claims.

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