

APR 22 2015

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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

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ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No.	CC-14-1321-PaKiTa
	)		
EDWARD E. ELLIOTT,	)	Bk. No.	SV 11-23855-VK
	)		
Debtor.	)	Adv. No.	SV 13-01118-VK
_____	)		
	)		
EDWARD E. ELLIOTT,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>O P I N I O N</b>	
	)		
DIANE C. WEIL, Chapter 7	)		
Trustee,	)		
	)		
Appellee.	)		
_____	)		

Argued and Submitted on March 19, 2015  
at Pasadena, California

Filed - April 22, 2015

Appeal from the United States Bankruptcy Court  
for the Central District of California

Hon. Victoria S. Kaufman, U.S. Bankruptcy Judge, Presiding

Appearances: Andrew E. Smyth, Smyth Law Office, argued for  
appellant Edward E. Elliott; Alla Tenina, Tenina  
Law, Inc., argued for appellee Diane C. Weil,  
Chapter 7 Trustee.

Before: PAPPAS, KIRSCHER, and TAYLOR, Bankruptcy Judges.

1 PAPPAS, Bankruptcy Judge:

2  
3 Debtor Edward E. Elliot ("Debtor") appeals the summary  
4 judgment entered by the bankruptcy court in favor of chapter 7<sup>1</sup>  
5 trustee Diane C. Weil ("Trustee") revoking Debtor's discharge  
6 pursuant to § 727(d)(1) and ordering that Debtor turn over a house  
7 to Trustee pursuant to § 542(a). We conclude that Trustee's  
8 discharge revocation complaint was not timely filed as required by  
9 § 727(e)(1) and, therefore, that the bankruptcy court erred in  
10 revoking Debtor's discharge. We thus VACATE that portion of the  
11 judgment and REMAND this matter to the bankruptcy court with  
12 instructions to dismiss Trustee's § 727(d) claim. As a result, we  
13 also VACATE the judgment of the bankruptcy court requiring  
14 turnover of the house to Trustee and REMAND this matter for  
15 further proceedings.

16 **I. FACTS**

17 Debtor, represented by counsel, filed a chapter 7 petition on  
18 December 1, 2011. In his petition, Debtor listed his address as  
19 Hiawatha Street, Granada Hills, California. On Schedules A and D,  
20 Debtor did not list any real property in which he had an interest,  
21 nor did he list any claims secured by real property. Debtor did  
22 not schedule several creditors holding a money judgment against  
23 him based on fraud and negligent misrepresentation (the "Judgment  
24 Creditors"), who apparently had obtained a judgment lien pursuant  
25 to California law. See Cal. Code Civ. Proc. § 697.310(a).

26  
27 <sup>1</sup> Unless otherwise indicated, all chapter, section and rule  
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1           During his testimony at the initial § 341(a) meeting of  
2 creditors, Debtor confirmed that his address was Hiawatha Street  
3 and stated that the information in his bankruptcy petition,  
4 schedules, and statement of financial affairs ("SOFA") was true  
5 and complete. Debtor further testified that he did not own any  
6 real property and had not transferred or given away anything of  
7 value in the last four years. Based on the information in  
8 Debtor's bankruptcy schedules, SOFA, and his § 341(a) meeting  
9 testimony, Trustee filed a "No Distribution" report in the  
10 bankruptcy case. Debtor received a discharge on March 8, 2012,  
11 and the bankruptcy case was closed on March 13, 2012.

12           On March 26, 2012, Lee Wong Investments, Inc. ("LWI")  
13 transferred certain real property located in Los Angeles (the  
14 "Buckingham Property") to Debtor by quitclaim deed as a gift.  
15 Debtor does not dispute that LWI is a Nevada corporation which he  
16 organized and controlled. LWI was formerly known as Shilalee  
17 Enterprise, Inc., but the name of the corporation was changed on  
18 February 14, 2007. Juanita Jehdian, Debtor's fiancée and LWI's  
19 president, signed the quitclaim deed.

20           Following the transfer of the Buckingham Property to Debtor,  
21 he sent a letter to counsel for the Judgment Creditors, who were  
22 never informed of the bankruptcy filing, advising counsel that  
23 Debtor had acquired the Buckingham Property, and demanding that  
24 the judgment liens be removed. This letter triggered an inquiry  
25 by the Judgment Creditors and eventually Trustee, which revealed  
26 the history of Debtor's interest in the Buckingham Property  
27 through numerous transfers of title.

28           In particular, shortly after the Judgment Creditors obtained

1 their judgment, Debtor, who then owned the Buckingham Property,  
2 deeded it to 1019 South Central Associates, Ltd. ("S. Central").  
3 California Secretary of State records evidence that a son of  
4 Debtor's deceased partner organized S. Central. Shortly  
5 thereafter, S. Central transferred the Buckingham Property to LWI;  
6 LWI held title during Debtor's bankruptcy case. LWI conveyed  
7 title back to Debtor after he received his discharge.

8       When the Judgment Creditors discovered Debtor's longstanding  
9 connections to the Buckingham Property, they filed a motion to  
10 reopen Debtor's bankruptcy case, which the bankruptcy court  
11 granted on January 7, 2013. Trustee was reappointed to serve in  
12 the reopened case.

13       After the case was reopened, Debtor amended his schedules to  
14 disclose his interest in the Buckingham Property and to claim any  
15 equity in the property exempt as his homestead. Trustee objected  
16 to this claim of exemption based upon Debtor's bad faith in  
17 failing to disclose his interest in the property, and the  
18 bankruptcy court sustained Trustee's objection and disallowed  
19 Debtor's exemption claim. Debtor appealed and, on December 14,  
20 2014, this Panel vacated the order of the bankruptcy court in  
21 light of the recent decision of the Supreme Court in Law v.  
22 Siegel, 134 S. Ct. 1188 (2014), and remanded the matter to the  
23 bankruptcy court for further proceedings to determine if there was  
24 any statutory basis to deny Debtor's homestead exemption under  
25 California law or under § 522(g)(1). Elliott v. Weil (In re  
26 Elliott), 523 B.R. 188, 197-98 (9th Cir. BAP 2014).

27       In the meantime, on June 4, 2013, Trustee filed an adversary  
28 complaint against Debtor in which she asked the bankruptcy court

1 to determine that the Buckingham Property was property of the  
2 estate, to order Debtor to turn over the Buckingham Property to  
3 Trustee, and to revoke Debtor's discharge. Debtor retained new  
4 counsel to represent him in the reopened bankruptcy case and in  
5 litigation with Trustee.<sup>2</sup>

6 Trustee conducted a continued § 341(a) meeting of creditors  
7 on November 18, 2013, at which time Debtor admitted that he lived  
8 at the Buckingham Property when he filed bankruptcy, that he  
9 considered it to be his home, and that he had purchased it in  
10 1989.

11 On January 13, 2014, Trustee filed a motion for summary  
12 judgment in the adversary proceeding seeking a revocation of  
13 Debtor's discharge and turnover of the Buckingham Property. There  
14 were several attachments to the motion, including a declaration by  
15 Michael Kapulkin, one of the Judgment Creditors, who had obtained  
16 a judgment against Debtor in May 2006; a copy of Debtor's grant  
17 deed conveying the Buckingham Property to S. Central dated August  
18 14, 2006; a transcript of Debtor's deposition taken on November  
19 15, 2013; a copy of the grant deed transferring the Buckingham  
20 Property from S. Central to LWI dated February 13, 2007; a copy of  
21 the form changing the name of Debtor's company from Shilalee  
22 Enterprise, Inc. to LWI dated February 14, 2007; a copy of the  
23 quitclaim gift deed from LWI to Debtor dated March 26, 2012; a

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24  
25 <sup>2</sup> As discussed more fully below, remarkably, although  
26 Trustee's action to revoke Debtor's discharge pursuant to § 727(d)  
27 was commenced more than a year after Debtor received a discharge,  
28 and more than a year after Debtor's case was closed, Debtor did  
not argue in the bankruptcy court, and does not argue on appeal,  
that the discharge revocation action was time-barred under  
§ 727(e).

1 transcript of Debtor's second § 341(a) meeting; a copy of the  
2 Judgment Creditors' state court complaint against Debtor; a copy  
3 of the judgment entered by the state court against Debtor dated  
4 May 4, 2006; and a copy of the letter from Debtor to the Judgment  
5 Creditors' attorney in which he revealed that he had acquired the  
6 Buckingham Property after the entry of his discharge and demanded  
7 that the Judgment Creditors remove their judicial liens on that  
8 property.

9 In response to Trustee's summary judgment motion, Debtor  
10 filed his own declaration. He claimed that he had provided all  
11 the information about LWI, his interest in the company, and the  
12 Buckingham Property, to his bankruptcy attorney. However, Debtor  
13 averred, the attorney failed to include this information in his  
14 bankruptcy schedules. He also stated that, while he had read and  
15 signed the bankruptcy petition and schedules, he did not  
16 understand them. In addition, Debtor claimed his attorney advised  
17 him to answer Trustee's questions the way he did in the initial  
18 § 341(a) meeting. Further, Debtor claimed that the bankruptcy  
19 petition that he read at his attorney's office listed the  
20 Buckingham Property as his home address and that the address must  
21 have been changed by his attorney before it was filed. Finally,  
22 Debtor stated that the quitclaim deed from LWI to Debtor "speaks  
23 for itself," and he, therefore, denied Trustee's allegation that  
24 he received the deed after his discharge.

25 Debtor asked that the motion for summary judgment be denied  
26 because there were triable issues of fact. Specifically, Debtor  
27 argued that "[a]dvice of [an] attorney may excuse some types of  
28 fraud." Debtor then filed a statement of "genuine issues in

1 response to summary judgment." Debtor identified three fact  
2 issues for trial: "1. Did [Debtor] list his residential address as  
3 [] Hiawatha St[reet] 2. Did [Debtor] state at the [§ 341(a)]  
4 hearing that he resided at [] Hiawatha St[reet] [and] 3. Were the  
5 errors and omissions in the bankruptcy schedules the result of  
6 [Debtor's] reliance on his attorney."

7 The bankruptcy court conducted a hearing on Trustee's motion  
8 for summary judgment on March 19, 2014, at which the parties  
9 appeared through counsel and argued their positions. On April 7,  
10 2014, the bankruptcy court granted Trustee's summary judgment  
11 motion and entered a "Judgment Vesting Property in Trustee and  
12 Revocation of Discharge." In this judgment, the bankruptcy court  
13 finds and concludes that the Buckingham Property was property of  
14 the bankruptcy estate and ordered that it be turned over to  
15 Trustee. In addition, the Court found and concluded:

16 The Court finds [Debtor] knowingly and  
17 fraudulently failed to disclose a significant  
18 asset in his schedules, i.e., [Debtor's]  
19 interest in a corporation that held title to  
20 his residence. For no consideration, less  
21 than three weeks after [Debtor] obtained his  
22 discharge, [Debtor] obtained title to his  
23 residence from that corporation. [Debtor's]  
24 residence, a single family home, has a fair  
25 market value in excess of \$600,000. [Debtor]  
26 concealed his residence, and the debt secured  
27 by his residence, in his chapter 7 petition.  
28 In his chapter 7 petition and at his initial  
meeting of creditors pursuant to [] § 341(a),  
[Debtor] knowingly and fraudulently  
misrepresented where he lived. [Trustee] did  
not know of [Debtor's] fraud until after  
granting of the debtor's discharge.  
Therefore, [Debtor's] bankruptcy discharge  
shall be, and is, hereby revoked pursuant to  
[] § 727(d)(1) and (e)(1).

On April 15, 2014, Debtor, now acting pro se, filed a motion

1 requesting relief from the judgment. On June 23, 2014, through  
2 new counsel, Debtor filed a notice of appeal. The bankruptcy  
3 court denied Debtor's motion on July 24, 2014. Debtor did not  
4 amend the notice of appeal to include the bankruptcy court's  
5 denial of Debtor's motion for relief from the judgment. Our  
6 motions panel determined that Debtor's appeal of the summary  
7 judgment was timely filed because Debtor had filed a tolling  
8 motion. We agree that the appeal is timely.

## 9 **II. JURISDICTION**

10 Although not addressed by either the bankruptcy court or the  
11 parties during the proceedings in the bankruptcy court, or in this  
12 appeal, § 727(e) presents a jurisdictional impediment to the  
13 resolution of the merits of this appeal, which the Panel is  
14 compelled to address sua sponte. See Kontrick v. Ryan, 540 U.S.  
15 443, 455 (2004) (a challenge to a federal court's subject matter  
16 jurisdiction may be made at any stage of the proceeding, and the  
17 court should raise the question sua sponte) (citing Mansfield, C.  
18 & L.M.R. Co. v. Swan, 111 U.S. 379, 382 (1884)). We discuss the  
19 subject matter jurisdiction issue below.

20 As to the judgment granting turnover to Trustee, the  
21 bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and  
22 157(b)(2)(E). We have jurisdiction over that aspect of the appeal  
23 under 28 U.S.C. § 158.

## 24 **III. ISSUES**

25 Whether the bankruptcy court had jurisdiction to revoke  
26 Debtor's discharge pursuant to § 727(d)(1) and (e)(1).

27 Whether the bankruptcy court erred in granting turnover of  
28 the Buckingham Property.

1 IV. STANDARDS OF REVIEW

2 We review questions of subject matter jurisdiction de novo.  
3 Wilshire Courtyard v. Cal. Franchise Tax Bd. (In re Wilshire  
4 Courtyard), 729 F.3d 1279, 1284 (9th Cir. 2013) (citing Montana v.  
5 Goldin (In re Pegasus Gold Corp.), 394 F.3d 1189, 1193 (9th Cir.  
6 2005)); see also Mangun v. Bartlett (In re Balboa Improvements,  
7 Ltd), 99 B.R. 966, 969 (9th Cir. BAP 1989) (citing Peter Starr  
8 Prod. Co. v. Twin Cont'l Films, Inc., 783 F.2d 1440, 1442 (9th  
9 Cir. 1986)). "The burden of establishing subject matter  
10 jurisdiction rests on the party asserting that the court has  
11 jurisdiction." In re Wilshire Courtyard, 729 F.3d at 1284 (citing  
12 McNutt v. GM Acceptance Corp., 298 U.S. 178, 182-83 (1936)).

13 We review a bankruptcy court's grant of summary judgment de  
14 novo. Caneva v. Sun Cmty. Operating Ltd. P'ship (In re Caneva),  
15 550 F.3d 755, 760 (9th Cir. 2008). Summary judgment, according to  
16 Civil Rule 56, as applicable to adversary proceedings pursuant to  
17 Rule 7056, is appropriate if there is a showing "that there is no  
18 genuine dispute as to any material fact and the movant is entitled  
19 to judgment as a matter of law." Civil Rule 56(a); Celotex Corp.  
20 v. Catrett, 477 U.S. 317, 322 (1986). The evidence must be viewed  
21 in the light most favorable to the nonmoving party. In re Caneva,  
22 550 F.3d at 760. The movant bears the initial burden to  
23 demonstrate absence of any genuine issue of material fact and that  
24 the movant is entitled to judgment as a matter of law. Id. at  
25 761. Once the moving party meets its burden the nonmoving party  
26 must show that a genuine issue of fact remains for trial. Id.

27 "Whether property is included in a bankruptcy estate and  
28 procedures for recovering estate property are questions of law

1 that we review de novo." Newman v. Schwartz (In re Newman), 487  
2 B.R. 193, 197 (9th Cir. BAP 2013) (citing White v. Brown (In re  
3 White), 389 B.R. 693, 698 (9th Cir. BAP 2008)).

#### 4 V. DISCUSSION

##### 5 A. The bankruptcy court lacked subject matter jurisdiction 6 over Trustee's claim to revoke Debtor's discharge.

7 Subject matter jurisdiction is granted to the bankruptcy  
8 courts via 28 U.S.C. § 1334 and § 157(b). In re Wilshire  
9 Courtyard, 729 F.3d at 1284-85 (citing Celotex Corp. v. Edwards,  
10 514 U.S. 300, 307 (1995); Battle Ground Plaza, LLC v. Ray (In re  
11 Ray), 624 F.3d 1124, 1130 (9th Cir. 2010)). "Bankruptcy courts  
12 have subject matter jurisdiction over proceedings 'arising under  
13 title 11, or arising in or related to cases under title 11.'" In  
14 re Wilshire Courtyard, 729 F.2d at 1285 (quoting 28 U.S.C.  
15 § 1334(b) and citing 28 U.S.C. § 157(b)(1)). A proceeding "arises  
16 under" title 11 if it "involve[s] causes of action created or  
17 determined by a statutory provision of that title." Id. (citing  
18 Harris v. Wittman (In re Harris), 590 F.3d 730, 737 (9th Cir.  
19 2000)). An action to revoke a debtor's discharge is a core  
20 proceeding. 28 U.S.C. § 157(b)(2)(J).

21 In this case, Trustee rests her claim against Debtor on  
22 § 727(d)(1), a Code provision which, under appropriate  
23 circumstances, requires the bankruptcy court to revoke a debtor's  
24 chapter 7 discharge, and provides:

25 On request of the trustee, a creditor, or the  
26 United States trustee, and after notice and a  
27 hearing, the court shall revoke a discharge  
28 granted under subsection (a) of this section  
if -

(1) such discharge was obtained through the

1 fraud of the debtor, and the requesting party  
2 did not know of such fraud until after the  
granting of such discharge[.]

3 Under Rule 7001(2), a proceeding to revoke a debtor's  
4 discharge requires an adversary proceeding. Section 727(e)(1), in  
5 turn, establishes the statutory deadline for commencement of the  
6 adversary proceeding under § 727(d)(1) to revoke a debtor's  
7 discharge: "[t]he trustee, a creditor, or the United States  
8 trustee may request revocation of a discharge – (1) under  
9 subsection (d)(1) of this section within one year after such  
10 discharge is granted[.]" In turn, Rule 9024(2) makes clear that  
11 "a complaint to revoke a discharge in a chapter 7 liquidation case  
12 may be filed only within the time allowed by § 727(e) of the  
13 Code."

14 In contrast to § 727(d), there is no time prescribed in the  
15 Code within which a party may request that a debtor be denied a  
16 discharge under § 727(a). Instead, the deadline to file an action  
17 to deny a discharge under § 727(a) is provided in Rule 4004(a).  
18 The Supreme Court has addressed whether the Rule 4004(a) time  
19 limit constitutes a "jurisdictional" limitation on the authority  
20 of the bankruptcy court to adjudicate an objection to discharge  
21 under § 727(a). Kontrick, 540 U.S. at 455 (2004). In an action  
22 filed after the time period specified in the Rule had expired, but  
23 where the debtor did not timely raise the Rule as a defense, the  
24 Court determined that Rule 4004(a) did not impose a jurisdictional  
25 bar and, instead, held that the time period set out in the Rule  
26 should be treated in the same fashion as affirmative defenses to  
27 an action under § 727(a), any of which is subject to forfeiture if  
28 not timely raised by the debtor. Id. at 456-57. "In short, the

1 filing deadlines prescribed in Bankruptcy Rules 4004 and  
2 9006(b)(3) are claim-processing rules that do not delineate what  
3 cases bankruptcy courts are competent to adjudicate." Id. at 454.  
4 Important in this case, in reaching its decision in Kontrick, the  
5 Court found it significant that the time limit for a § 727(a)  
6 action is set out in what it described as the "Court-prescribed"  
7 rules, and that "[o]nly Congress may determine a [bankruptcy  
8 court's] subject-matter jurisdiction." Id. at 452 (citing U.S.  
9 CONST., Art. III, § 1).

10       The considerations in this case are distinctly different to  
11 those addressed in Kontrick. Here, while Congress has provided a  
12 statutory basis for the bankruptcy court to exercise subject  
13 matter jurisdiction over "arising under" proceedings, such as one  
14 to revoke a debtor's discharge, it has also imposed a temporal  
15 limitation in the Code on the bankruptcy court's ability to grant  
16 such relief. In particular, the discharge granted by the  
17 bankruptcy court in Debtor's favor in this case was entered on  
18 March 8, 2012, and the bankruptcy case was closed on March 13,  
19 2012. Trustee's adversary proceeding requesting the revocation of  
20 that discharge was filed on June 4, 2013. Because Trustee's  
21 § 727(d)(1) action was commenced after the expiration of the one-  
22 year time limit provided by § 727(e)(1), we conclude that the  
23 bankruptcy court lacked subject matter jurisdiction to grant any  
24 relief as to that claim.

25       We have located no controlling Ninth Circuit authority  
26 regarding whether § 727(e) limits the bankruptcy court's  
27 jurisdiction to adjudicate a revocation of discharge claim.  
28 Indeed, the Panel has specifically declined to decide whether the

1 failure to timely comply with § 727(e)(1) is an absolute bar to a  
2 § 727(d)(1) action. See Lopez v. Specialty Rest. Corp. (In re  
3 Lopez), 283 B.R. 22, 27 n.8 (9th Cir. BAP 2002) ("We do not decide  
4 this issue. The bankruptcy court stated 'it appears' the ability  
5 to seek revocation of the discharge 'has passed' pursuant to  
6 Section 727(e). We note that most courts appear to reject any  
7 extension of the time limits in Section 727(e), although a  
8 minority view would either extend the overall time or hold that  
9 closing interrupts the running of that time period.") (citations  
10 omitted).

11 While there is no appellate authority in this Circuit, a  
12 persuasive discussion of this issue is found in the First Circuit  
13 BAP's opinion in The Cadle Co. v. Andersen (In re Andersen), 476  
14 B.R. 668 (1st Cir. BAP 2012). In that case, the panel determined  
15 that § 727(e) is indeed a limit on a bankruptcy court's subject  
16 matter jurisdiction based upon Kontrick. The panel held,  
17 "[§] 727(e)(1)'s time requirement is not 'a mere statute of  
18 limitations, but an essential prerequisite to the discharge  
19 revocation proceeding.'" In re Andersen, 476 B.R. at 673 (quoting  
20 Gonsalves v. Belice (In re Belice), No. 08-11927-WCH, 2011 WL  
21 4572003, at \*3 (1st Cir. BAP 2011) and citing Pelletier v. Donald  
22 (In re Donald), 240 B.R. 141, 146 (1st Cir. BAP 1999)). Further,  
23 the panel rejected the argument that § 727(e) is subject to  
24 equitable tolling and noted "[n]ot only does § 727(e) 'announce an  
25 absolute one year limit for discharge revocation actions,' it  
26 omits a provision for extension." Id. at 674 (quoting Murrietta  
27 v. Fehrs (In re Fehrs), 391 B.R. 53, 67 (Bankr. D. Idaho 2008)).

28 In addition, several bankruptcy courts have also recognized

1 the jurisdictional nature of the § 727(e)(1) deadline. See Clarke  
2 Cnty. State Bank v. Scott (In re Scott), No. 12-30052-als, 2014 WL  
3 1048550 (Bankr. D. Iowa Mar. 18, 2014) (collecting cases); Romano  
4 v. Defusco (In re Defusco), 500 B.R. 664, 667 (Bankr. D. Mass.  
5 2013) (citing In re Andersen and noting the "clear majority view"  
6 that § 727(e) provides a bankruptcy court with a limit on its  
7 subject matter jurisdiction over § 727(d) causes of action).

8 We agree with the First Circuit BAP that, based upon the  
9 logic of the Supreme Court's decision in Kontrick, § 727(e) is  
10 both Congress's grant to, and limitation on, a bankruptcy court's  
11 subject matter jurisdiction over discharge revocation actions.  
12 Section 727(e) is a non-waivable statute of repose, and its time  
13 limits are not subject to tolling such that the failure to  
14 commence a § 727(d) adversary proceeding within the time period  
15 specified in § 727(e) deprives the bankruptcy court of  
16 jurisdiction to adjudicate that action.<sup>3</sup> Because Trustee's action  
17 was not timely commenced, that portion of the bankruptcy court's

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21 <sup>3</sup> The Supreme Court has explained that "[s]tatutes of  
22 limitations, but not statutes of repose, are subject to equitable  
23 tolling, a doctrine that 'pauses the running of, or "tolls," a  
24 statute of limitations when a litigant has pursued his rights  
25 diligently but some extraordinary circumstance prevents him from  
26 bringing a timely action.'" CTS Corp. v. Waldburger, 134 S. Ct.  
27 2175, 2183 (2014) (quoting Lozano v. Montoya Alvarez, 134 S. Ct.  
28 1224, 1231-32 (2014)). However, a statute of repose, unlike a  
statute of limitation, "mandates that there shall be no cause of  
action beyond a certain point, even if no cause of action has yet  
accrued." Id. at 2187; see also DeNoce v. Neff (In re Neff), 505  
B.R. 255, 263 (9th Cir. BAP 2014) ("In other words, a statute of  
limitations sets a time limit for bringing an action; a statute of  
repose sets a time period in which an event giving rise to a claim  
for relief must occur.").

1 summary judgment revoking Debtor's discharge must be vacated.<sup>4</sup> On  
2 remand, the bankruptcy court is instructed to enter an order  
3 dismissing Trustee's § 727(d) discharge revocation claim.

4 **B. The bankruptcy court erred in granting Trustee turnover**  
5 **of the Buckingham Property.**

6 Read charitably Debtor's opening brief also argues the  
7 bankruptcy court erred in granting turnover to Trustee of the  
8 Buckingham Property. While Debtor's summary approach to this  
9 issue is regrettable, we agree that the bankruptcy court must  
10 revisit its turnover order.

11 The bankruptcy court's judgment requiring Debtor to turn over  
12 the Buckingham Property to Trustee rests upon § 542(a), which  
13 provides:

14 Except as provided in subsection (c) or (d) of  
15 this section, an entity, other than a  
16 custodian, in possession, custody, or control,  
17 during the case, of property that the trustee  
18 may use, sell, or lease under section 363 of  
19 this title, or that the debtor may exempt  
20 under section 522 of this title, shall deliver  
21 to the trustee, and account for, such property

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19 <sup>4</sup> At oral argument, when asked to address this predicament,  
20 Trustee's counsel argued that the bankruptcy court's summary  
21 judgment could have, perhaps should have, been based upon  
22 § 727(d)(2), not § 727(d)(1), and therefore, any jurisdiction  
23 issue is avoided. This argument misses the mark for several  
24 reasons. First, it ignores that the bankruptcy court's judgment,  
25 drafted by Trustee's counsel, expressly recites that it is based  
26 upon § 727(d)(1) and (e)(1). And second, the argument is of no  
27 moment because a request for relief under § 727(d)(2) was also  
28 untimely according to § 727(e)(2), which provides: "[t]he trustee,  
a creditor, or the United States trustee may request a revocation  
of a discharge - . . . (2) under subsection (d)(2) or (d)(3) of  
this section before the later of - (A) one year after the granting  
of such discharge; and (B) the date the case is closed." As noted  
above, the discharge in this case was entered on March 8, 2012,  
the bankruptcy case was closed on March 13, 2012, and Trustee's  
§ 727(d) action was commenced in June, 2013. In other words,  
Trustee's action was tardy regardless of which § 727(e) trigger  
date is applicable.

1 or the value of such property, unless such  
2 property is of inconsequential value or  
benefit to the estate.

3 See also In re Newman, 487 B.R. at 198-99. While the bankruptcy  
4 court's judgment contains no fact findings concerning whether the  
5 Buckingham Property "is of inconsequential value or benefit to the  
6 [bankruptcy] estate," we presume that, given the court's prior  
7 decision to disallow Debtor's homestead exemption, it concluded  
8 that the house had significant liquidation value. However, the  
9 bankruptcy court's decision disallowing Debtor's homestead  
10 exemption has been vacated by the Panel. As a result, to grant  
11 relief to Trustee pursuant to § 542(a), the bankruptcy court is  
12 obliged to reconsider whether the bankruptcy estate's interest in  
13 the Buckingham Property is sufficiently consequential. Therefore,  
14 we must also vacate the bankruptcy court's turnover judgment and  
15 remand this matter to the bankruptcy court to conduct further  
16 proceedings consistent with this decision.<sup>5</sup>

## 17 VI. CONCLUSION

18 Because Trustee's claim was not timely under § 727(e), the  
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20 <sup>5</sup> According to its docket, on March 19, 2015, the same day  
21 as the oral argument in this appeal, the bankruptcy court  
22 apparently conducted a further hearing concerning the homestead  
23 exemption issue pursuant to this Panel's remand. In a tentative  
24 decision entered on the docket, the bankruptcy court determined  
25 that Debtor was not entitled to a homestead exemption pursuant to  
26 § 522(g)(1) because the court had granted Trustee a judgment under  
27 § 542(a) to turn over the Buckingham Property. The tentative  
28 decision cites to our prior decision in In re Elliott for the  
proposition that, in this case, § 522(g)(1) would be "an important  
limitation on [Debtor's] claimed homestead exemption for the  
bankruptcy court to consider on remand." 523 B.R. at 198. On  
April 8, 2014, an order was entered by the bankruptcy court  
denying Debtor's homestead exemption pursuant to § 522(g)(1). We  
leave it to the bankruptcy court to consider on remand of  
Trustee's turnover claim, any impact this decision may have on the  
vitality of the court's latest order disallowing Debtor's  
homestead exemption.

1 bankruptcy court lacked jurisdiction to revoke Debtor's discharge  
2 under § 727(d). We therefore VACATE the bankruptcy court's  
3 summary judgment revoking Debtor's discharge and REMAND this  
4 matter to the bankruptcy court with instructions that it enter an  
5 order dismissing Trustee's § 727(d) claim.

6 We also VACATE the bankruptcy court's summary judgment  
7 granting Trustee turnover of the Buckingham Property under  
8 § 542(a). We REMAND this matter to the bankruptcy court for  
9 further proceedings concerning this claim for relief.

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