

JUL 15 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: BILL MARTIN PARKER,)

No. 12-60047

Debtor.)

BAP No. NC-11-1566-JuKiJo

ALBERT P. WILCOX,)

MEMORANDUM*

Appellant,)

v.)

BILL MARTIN PARKER,)

Appellee.)

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Jury, Kirscher, and Johnson, Bankruptcy Judges, Presiding

Submitted July 9, 2013**
San Francisco, California

Before: FERNANDEZ, PAEZ, and BERZON, Circuit Judges.

*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

Albert P. Wilcox appeals the Bankruptcy Appellate Panel's (BAP) decision¹ affirming the bankruptcy court's determination that he was not entitled to the benefit of judicial estoppel in his pursuit of a fraud claim against Bill Martin Parker. We affirm.²

The BAP's opinion upholding the bankruptcy court's decision is concise and persuasive. We, therefore, adopt its discussion and determination that on the facts of this case the doctrine of judicial estoppel does not apply.³

AFFIRMED.

¹Wilcox v. Parker (In re Parker), 471 B.R. 570 (B.A.P. 9th Cir. 2012).

²We review the BAP's decision de novo. See Boyajian v. New Falls Corp. (In re Boyajian), 564 F.3d 1088, 1090 (9th Cir. 2009). The bankruptcy court's legal conclusions are likewise reviewed de novo, and its "decision whether to invoke judicial estoppel is reviewed for abuse of discretion." Wolfe v. Jacobson (In re Jacobson), 676 F.3d 1193, 1198 (9th Cir. 2012).

³In his reply brief, Wilcox asserts that Parker commenced his bankruptcy action in bad faith. He did not raise that claim before the BAP or in his opening brief. We decline to consider it. See Smith v. Marsh, 194 F.3d 1045, 1052 (9th Cir. 1999).