Dated: February 28, 2023
The following is ORDERED:

M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re:

Ronald Keith Anderson and Case No.: 15-21681
Carmen Webb Anderson, Chapter 7

Debtors.

Ronald Keith Anderson and
Carmen Webb Anderson,
Plaintiffs (Realigned Defendants),

v. Adv. Proc. No.: 21-00042

United States of America and
Internal Revenue Service
Defendants (Realigned Plaintiffs).

MEMORANDUM OPINION AND ORDER ON REALIGNED DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

This matter came before the Court upon Ronald Keith Anderson's and Carmen Webb Anderson's (collectively, "the Andersons;" individually, "Mr./Mrs. Anderson") Motion for Summary Judgment [DE 80-81] filed December 9, 2022, the United States of America's and the Internal Revenue Service's ("IRS") Opposition Response to the Andersons' Motion for Summary Judgment [DE 90; 92] filed January 9, 2023, and the Andersons' Reply Brief in Support of the Motion for Summary Judgment [DE 95] filed January 24, 2023. The Court held a hearing on February 2, 2023, and upon reviewing the briefs and hearing arguments of counsel, the Court took the matter under advisement.

JURISDICTION

The underlying complaint is brought under 11 U.S.C. § 523(a)(1)(C) and FED. R. BANKR. P. 7001(6) seeking a determination that certain debts of the Andersons are nondischargeable. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Accordingly, this Court has the statutory and constitutional authority to hear and determine these proceedings subject to the statutory appellate provisions of 28 U.S.C. § 158(a)(1) and Part VIII ("Bankruptcy Appeals") of the Federal Rules of Bankruptcy Procedure. Regardless of whether specifically referred to in this decision, the Court has examined the submitted materials, considered statements of counsel, and reviewed the entire record of the case. Based upon that review, and for the following reasons, the Court hereby grants the Andersons' Motion for Summary Judgment as to quasi-estoppel.

DISCUSSION OF BACKGROUND FACTS AND PROCEDUAL HISTORY OF THE CASE

The facts relevant to the Court's determination of the Andersons' Motion are undisputed and can be summarized as follows. In 2001, Mr. Anderson's long-time accountants approached him with a proposal for a tax shelter known as a Distressed Asset/Debt Transaction in an effort to

reduce his federal income tax liability. [Corrected Complaint to Determine Dischargeability, DE 43, ¶¶ 7-10] Mr. Anderson subsequently met with representatives of BDO Seidman, LLP, one of the largest accounting firms in the world, who solicited Mr. Anderson to invest in a tax strategy based on distressed foreign debt instruments. [Statement of Undisputed Facts, DE 81, ¶ 1] The Andersons entered into two such transactions – one in 2001 and the other in 2002, [Corrected Complaint at ¶ 11], and successfully reduced their tax liability for those years. In 2005, however, the IRS initiated an audit of the Andersons' tax returns and eventually disallowed the transactions as illegitimate. *Id.* at ¶¶ 120-21. The Andersons contested the audits and participated in settlement negotiations with the IRS. *Id.* at ¶ 121. The IRS determination was challenged in the United States Tax Court and the Tax Court, in 2013, eventually entered an agreed decision which sustained the IRS's adjustments for tax year 2001. *Id.* at ¶¶ 123-24. For tax year 2002, the IRS issued a notice of tax due which was not challenged in the Tax Court. *Id.* at ¶ 125. As set forth by the IRS, the Andersons' tax liabilities for the years at issue in this case are as follows:

Tax Period	Date of Assessment	Amount of Tax Assessment
2001	June 24, 2014	$3,614,169
2002	March 6, 2013	$5,421,864
	June 24, 2014	$203,383

Id. at ¶ 132.

On October 9, 2013, the Andersons sued BDO Seidman, LLP, among others, alleging that the Andersons were defrauded into investing in the distressed debt tax shelter and sought damages of $65,000,000. [Statement of Undisputed Facts, DE 81, ¶ 8][1] The purpose of the BDO lawsuit was to recover damages resulting from the Tax Court decisions which disallowed the Distressed

[1] The IRS admits this statement, responding further that the Andersons also asserted professional negligence and other counts beyond fraud. [United States' Response to Debtors' Statement of Undisputed Facts, DE 92, ¶ 8]

Asset/Debt Transactions, thereby resulting in a large income tax liability for the Andersons. *Id.* at ¶ 9.

On December 22, 2014, the IRS filed a tax lien against the Andersons. *Id.* at ¶ 12. Soon thereafter and while the BDO litigation was pending, the Andersons commenced their bankruptcy case under Chapter 7 of the Bankruptcy Code on February 23, 2015. Upon commencement of the bankruptcy case, the BDO litigation became property of the bankruptcy estate and the Chapter 7 trustee stepped into the Andersons' shoes in that litigation. 11 U.S.C. §§ 541 and 704. Accordingly, on July 2, 2015, the IRS filed its proof of claim in the amount of $18,067,986.87, [Claims Register Claim 5-1] and the IRS agreed to subordinate its secured claim to the Chapter 7 administrative expense creditors on November 13, 2015. [Statement of Undisputed Facts, DE 81, ¶ 12; *In re Anderson*, Case No. 15-21681, DE 49]

As a creditor in the bankruptcy case, IRS Bankruptcy Specialist Dinita White investigated the Andersons' bankruptcy schedules and examined the Andersons at the meeting of creditors. [Statement of Undisputed Facts, DE 81, ¶ 13][2] Up to that point, there were no nondischargeability actions filed in the case, and in due course the Andersons received their Chapter 7 discharge on June 7, 2015. [*In re Anderson*, Case No. 15-21681, DE 28] The bankruptcy case remained open, however, and outside counsel and other professionals were retained and employed by the Chapter 7 trustee in pursuit of the pending BDO litigation. *Id.* at DE 38, 66.

The IRS Bankruptcy Specialist, Ms. White, noted in her log on June 15, 2015, the availability of a nondischargeability action under 11 U.S.C. § 523(a)(1)(C), and then noted on July 22, 2015 that "Tax periods 2001, 2002, 2003 and 2004 are all considered dischargeable."

[2] The IRS admits this statement, responding further that Dinita White reviewed the Andersons' schedules and concluded that the IRS tax liens attached to sufficient property to justify collection efforts on the property. [United States' Response to Debtors' Statement of Undisputed Facts, DE 92, ¶ 13]

[Statement of Undisputed Facts, DE 81, ¶ 14] Two months after entry of the discharge order, on August 11, 2015, Ms. White sent a letter acknowledging the discharge and stated: "The discharge you received under Chapter 7 of the Bankruptcy Code personally discharged you from liability for certain tax debts as outlined later in this letter. This personal discharge does not apply if we later discover that you made a fraudulent return or willfully attempted to evade or defeat the tax." *Id.* at ¶ 16, Exh. 7. The tax debt "later outlined" in the letter includes the taxes assessed for tax years 2001, 2002, 2003 and 2004. *Id.* Exh. 7. The IRS clarifies that the letter sent by Ms. White is known as Letter 4068, also referred to in the Internal Revenue Manual as a "soft letter," and that Ms. White debated whether to send the letter and in fact deferred sending the letter (for two months) because the IRS was contemplating whether to file a nondischargeability complaint under 11 U.S.C. § 523(a)(1)(C). [United States' Response to Debtors' Statement of Undisputed Facts, DE 92, ¶ 14] Apparently the IRS ultimately determined not to file a complaint against the Andersons to allege nondischargeability of the tax liability, as it never commenced such an action.[3]

The Andersons heard nothing from the IRS for the next five and a half years. [Statement of Undisputed Facts, DE 81, ¶ 18] The Chapter 7 trustee entered into a series of settlements with all defendants in the BDO litigation between May 2017 and December 2019, which resulted in the BDO litigation defendants paying $6,665,000. *Id.* at ¶¶ 19-20. The bankruptcy estate received nothing from the settlements (besides certain administrative expense claims relating to the BDO litigation). The IRS was the sole prepetition creditor who benefitted from the BDO litigation, and the IRS did not object to any of the settlements. *Id.* at ¶¶ 21, 23. After paying the administrative expenses of the BDO litigation, the IRS was paid $3,678,641.20. *Id.* at ¶ 23. The final payment

[3] The Court notes that this adversary proceeding was commenced by the Andersons, who then moved, with objection from the IRS, to have the parties realigned.

from the BDO defendants was made on July 2, 2020 in the amount of $1,416,667. [*In re Anderson,* Case No. 15-21681, DE 68]

After the bankruptcy estate received the final settlement payment, at some point "before February of 2021," counsel for the IRS contacted the Andersons' bankruptcy counsel in "an attempt to resolve matters without the need for litigation," and the possibility of identifying other issues "in discovery to show a willful attempt to evade or defeat tax liabilities." [United States Answer to Complaint, DE 8, ¶ 26] On March 26, 2021, the Andersons initiated this adversary proceeding seeking a declaratory judgment that the remainder of the tax debt was discharged in their Chapter 7 bankruptcy case by the order of discharge entered on June 7, 2015 [*In re Anderson*, Case No. 15-21681, DE 28], and that the IRS is equitably estopped from asserting that the taxes are nondischargeable by virtue of its agreement to subordinate its claim to the Chapter 7 trustee and its acceptance of the settlement proceeds from the BDO litigation. [Complaint to Determine Dischargeability of Personal Income Taxes, DE 1] The IRS filed its Answer generally denying the allegations in the Complaint [DE 8], and the Andersons moved to realign the parties with the United States deemed to be the Plaintiff, with the burden of carrying the burden of proof. [DE 20] The Court granted the Motion [DE 33] over the opposition of the IRS. [DE 23] It is against this factual background that the Court now considers the Andersons' Motion for Summary Judgment and Statement of Undisputed Facts [DE 80, 81], the IRS' Opposition to the Motion and Response to Statement of Undisputed Facts [DE 90, 92] and the Andersons' Reply. [DE 95]

SUMMARY JUDGMENT STANDARD

Summary judgment is proper when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. BANKR. P. 7056; FED. R. CIV. P. 56(a). The moving party bears the burden of showing no genuine issue of

material fact remains. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Leary v. Daeschner*, 349 F.3d 888, 897 (6th Cir. 2003) (citation omitted).

If the moving party meets its initial burden, "the non-moving party must go beyond the pleadings and come forward with specific facts to demonstrate that there is a genuine issue for trial." *Chao v. Hall Holding Co., Inc.*, 285 F.3d 415, 424 (6th Cir. 2002) (citations omitted). A genuine issue for trial exists if there is "evidence on which the jury could reasonably find for the plaintiff." *Rodgers v. Banks*, 344 F.3d 587, 595 (6th Cir. 2003) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)) (internal quotations omitted). In addition, should the nonmoving party fail to provide evidence to support an essential element of its case, the movant can meet its burden by pointing out such failure to the court. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479 (6th Cir. 1989).

The court's role is limited to determining whether the case contains sufficient evidence from which a jury could reasonably find for the nonmovant. *Anderson*, 477 U.S. at 248-49. The court should view the evidence, including all reasonable inferences, in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986) (citation omitted); *Nat'l Satellite Sports, Inc. v. Eliadis, Inc.*, 253 F.3d 900, 907 (6th Cir. 2001) (citation omitted). If the court concludes, based on the record, that a fair-minded jury could not return a verdict in favor of the nonmovant, the court should grant summary judgment. *Anderson*, 477 U.S. at 251-52; *Lansing Dairy, Inc. v. Espy*, 39 F.3d 1339, 1347 (6th Cir. 1994) (citation omitted).

LAW AND ANALYSIS

The Andersons set forth four legal arguments (equitable estoppel, judicial estoppel, quasi-estoppel and waiver) which they assert entitle them to summary judgment. The Court will only address the doctrine of quasi-estoppel, as this Court finds it to be convincing and conclusive.

Estoppel can operate against the government.

As an initial matter,[4] the Court must address the IRS's argument that estoppel (whether equitable estoppel, judicial estoppel or quasi-estoppel) cannot operate against the government. *See* United States' Opposition to Debtors' Motion for Summary Judgment, DE 90, p.1 ("the Supreme Court has not countenanced applying estoppel against the Government in recent memory"). While it is true that estoppel is rarely invoked against the government, the cases appearing to hold that estoppel cannot be used against the government can be distinguished as stating one or more of the many exceptions to the application of the doctrine of estoppel as against the government. *See Fed. Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384 (1947) (government cannot be estopped by an unauthorized act of one of its agents); *Ritter v. United States*, 28 F.2d 265 (3d Cir. 1928) (same); *Utah Power & Light Co. v. United States*, 243 U.S. 389 (1917) (where a government agent purports to authorize that which is forbidden by law). Estoppel may apply against the government in

[4] The Court will also address the government's argument that this Court's prior order denying the IRS's motion for partial summary judgment already determined that there are material issues of genuine fact. *See* DE 58. Specifically, the IRS argues that the Court already found that there were material issues of genuine fact as to whether the August 11, 2015 letter of Dinita White was "erroneous" and whether the Andersons relied on the letter, the damages sustained by the Andersons and whether the passage of time from the issuance of the letter until the IRS asserted that the taxes were non-dischargeable may give rise to a defense of equitable estoppel. *Id*. However, the language of this order is taken out of context because one must look at the underlying motion to determine what was actually before the Court. [DE 30] The order only addressed the IRS's motion for partial summary judgment as it related to the Andersons' equitable estoppel defense. The underlying motion did not seek partial summary judgment as to the Andersons' quasi-estoppel defense (which has very distinct elements from those of equitable estoppel). This Memorandum Opinion and Order is limited to the Andersons' quasi-estoppel defense.

appropriate situations.[5] *See Walsonavich v. U.S.*, 335 F.2d 96 (3rd Cir. 1964); *Schuster v. Commissioner*, 312 F.2d 311, 317 (9th Cir. 1962); *see also Gehl Co. v. Commissioner,* 795 F.2d 1324 (7th Cir. 1986) (reliance on statements in U.S. Treasury pamphlet); *The Exch. & Sav. Bank of Berlin v. United States*, 226 F.Supp. 56 (D.Md. 1964) (Government estopped from asserting tax refund action was barred where IRS inadvertently mailed notice of disallowance with wrong statute of limitations and taxpayer relied on statement).

In fact, "[t]he IRS is not the only federal agency against which courts have applied the doctrine of estoppel. Case law demonstrates that courts have invoked estoppel against the Post Office Department, the Department of Housing and Urban Development, the Land Management Office, the Postal Service, the Parole Commission, the Farmer's Home Administration, the War Department, the Department of Interior, the Department of Commerce and Labor and the General Land Office." *Fredericks v. C.I.R.*, 126 F.3d 433, 448 (3rd Cir. 1997) (footnote omitted collecting cases).

Contrary to the IRS's argument, there is sufficient caselaw to suggest that estoppel, in proper circumstances, may be invoked against the government. *Simmons v. United States,* 308 F.2d 938, 945 (5th Cir. 1962); *see also Shekinah Gold Mines, Inc. v. United States (In re Knopf)*,

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[5] The United States has long consented to respond to liability for and to be sued on claims for tax refunds, 26 U.S.C. (I.R.C. 1939) § 3772; *Lowe Bros. Co. v. United States*, 304 U.S. at pages 305-06, 58 S.Ct. at pages 897-898, and the authorities cited lead to the conclusion that a taxpayer should be permitted to invoke the doctrine of equitable estoppel against the [g]overnment in cases where: (1) there has been a waiver of sovereign immunity both as to liability and as to suit, *cf. Hopkins v. Clemson Agricultural College*, 1911, 221 U.S. 636, 646, 31 S.Ct. 654, 55 L.Ed. 890, (2) the agent whose conduct is relied upon to work an estoppel acted within the scope of his [or her] authority lawfully conferred, and (3) application of the doctrine would not bring a result that is either inequitable or contrary to law.

Smale & Robinson, Inc. v. United States, 123 F.Supp. 457, 466 (S.D. Cal. 1954); *see also Interstate Fire Ins. Co. v. U.S.*, 215 F.Supp. 586, 599 (E.D. Tenn. 1963).

190 B.R. 647, 652 (Bankr. D. Mont. 1995) (government judicially estopped from taking position that property was worth a lesser amount than that to which parties had agreed).

The Andersons are entitled to summary judgment as to quasi-estoppel.

"Quasi-estoppel describes a situation in which an individual is not permitted to 'blow both hot and cold,' taking a position inconsistent with prior conduct, if this would injure another, regardless of whether that person actually relied thereon. The party seeking to invoke the doctrine has the burden of proving that the other party should be estopped." *PACE Indus. Union–Mgmt. Pension Fund v. Dannex Mfg. Co., Inc.,* 394 F. App'x 188, 199 (6th Cir. 2010) (citations omitted) (applying New Jersey law); *Kelley v. Kelley (In re Kelley),* 216 B.R. 806, 808 (Bankr. E.D. Tenn. 1998) ("The doctrine of quasi-estoppel 'forbids a party from accepting the benefits of a transaction or statute and then subsequently taking an inconsistent position to avoid the corresponding obligations or effects.'") (quoting *Davidson v. Davidson* (*In re Davidson*), 947 F.2d 1294, 1297 (5th Cir. 1991)); *see also Johnson v. Ga. Dep't of Human Res.,* 983 F.Supp. 1464, 1470 (N.D. Ga. 1996) (admonishing that a party advocating two sharply contradictory positions "will not be permitted to 'speak out of both sides of his mouth with equal vigor and credibility before this court'") (citations omitted).

While quasi-estoppel is a "species of equitable estoppel," *Anderson v. Anderson*, 585 P.2d 938, 947 (Haw. 1978), unlike equitable estoppel, it does not require a misrepresentation by one party or actual reliance by another party. *Long v. Turner*, 134 F.3d 312 (5th Cir. 1998) (citations omitted); *Neiman-Marcus Group, Inc. v. Dworkin*, 919 F.2d 368 (5th Cir. 1990) (citation omitted). Similar to judicial estoppel, and unlike equitable estoppel, quasi-estoppel does not require a detrimental reliance per se by anyone, but instead, quasi-estoppel is directly grounded upon a

party's acquiescence or acceptance of a payment or benefit, by virtue of which that party is thereafter prevented from maintaining a position that is inconsistent with those acts.

Quasi-estoppel is inherently flexible and its application depends upon a case-by-case analysis of the equities involved, rather than upon precise definitional standards, like equitable estoppel. Some of the factors that courts have considered include (1) whether the party asserting the inconsistent position has gained an advantage or produced some disadvantage through the first position, (2) the magnitude of the inconsistency, (3) whether changed circumstances tend to justify the inconsistency, (4) whether the party claiming estoppel relied on the inconsistency to his or her detriment, and (5) whether the first assertion was made with full knowledge of the facts. *See, e.g., Rockstad v. Erikson,* 113 P.3d 1215, 1223 (Alaska 2005) (citing *Jamison v. Consol. Utils., Inc.,* 576 P.2d. 97, 102-03 (Alaska 1978)).

Here, the Court finds the IRS in a situation in which it cannot "eat [its] cake and have it too." *Western Res., Inc. v. Union Pacific R.R. Co.,* No. 00-2043-CM, 2002 WL 1462004, *7 (D. Kan. 2002) (citation omitted). The IRS is maintaining a position which is completely at odds with the benefits it already received from the BDO litigation. *See In re Guterl Special Steel Corp*., 316 B.R. 843, 856 (Bankr. W.D. Pa. 2004) (*citing Erie Telecommunications, Inc. v. City of Erie,* 659 F.Supp. 580, 585 (W.D.Pa.1987)).

It is undisputed that the IRS held a tax lien on the BDO litigation as of December 22, 2014. [Statement of Undisputed Facts, DE 81, ¶ 12] Once the bankruptcy petition was filed, the Chapter 7 trustee succeeded only to the rights and title of property that the Debtors had and took the property subject to the same restrictions that existed at the time the Debtors filed the petition. 11 U.S.C. § 541; *Demczyk v. Mutual Life Ins. Co. of N.Y.* (*In re Graham Square, Inc.*)*,* 126 F.3d 823, 831 (6th Cir. 1997)*,* citing *Calvert v. Bongards Creameries (In re Schauer),* 835 F.2d 1222, 1225

(8th Cir.1987). In other words, while the Chapter 7 trustee stood in the shoes of the Andersons and their rights in the BDO litigation (and had standing to pursue the BDO litigation), the Chapter 7 trustee was subject to the IRS tax lien on the BDO litigation.

Because of this restriction, the Chapter 7 trustee entered into an agreed order with the IRS in which the IRS agreed that its claim and tax lien on the Andersons' property (including the BDO litigation) would be subordinated to any and all allowed Chapter 7 administrative expense claims and the IRS consented to the Chapter 7 trustee's surcharge of any collateral securing the IRS's claim in the bankruptcy case under 11 U.S.C. § 506(c). [*In re Anderson,* Case No. 15-21681, DE 49] The Court notes that this is done in cases in which the trustee will not undertake litigation (or selling of property that is under secured) without such an agreement, because of the risk of not being compensated for efforts made (and in most cases will abandon the property under 11 U.S.C. § 554). In this case, the IRS's lien on assets totaled more than $18M, and the estate (i.e. the trustee) likely could not fund on-going litigation without the IRS subordinating its lien. However, the IRS could have, because of its December 2014 tax lien, pursued the BDO litigation itself thru a receiver or sold its lien on the litigation. *See* IRM 5.17.3.10.5; *see e.g., U.S. v. Antiques Ltd. P'ship*, 760 F.3d 668 (7th Cir. 2014); *U.S. v. Zabka*, 900 F.Supp.2d 864 (C.D. Ill. 2012). The IRS chose not to exercise its lien rights, but instead subordinated its rights to the Chapter 7 trustee to pursue the BDO litigation.

Even if the IRS pursued the litigation, thru its lien rights, the IRS, like the Chapter 7 trustee, steps into the shoes of the Andersons. *See United States v. Bank of Shelby*, 68 F.2d 538 (5th Cir. 1934) (since the government's lien rights are derivative of those of the depositor, the government takes subject to the defenses and equities affecting the depositor, so that even if the depositor has a claim, if it is not a claim which could have been maintained successfully by him, the government

is in no better position). As such, the IRS (like the Chapter 7 trustee) would be subject to the same defenses that could have been raised by the defendants in the BDO litigation against the Andersons. It is here that the Court must pause and recognize that the IRS would not have wanted to file an 11 U.S.C. § 523(a)(1)(C) action against the Andersons in the underlying bankruptcy case during the time the BDO litigation was pending because this would have allowed the defendants in the BDO litigation to have viable defenses against the Andersons. Any one of these defenses would have jeopardized the value of the BDO litigation (essentially making the $64M BDO litigation worthless).

During the course of the BDO litigation, the Chapter 7 trustee settled all claims against the defendants for a total of $6,665,000. [*In re Anderson,* Case No. 15-21681, DE 154, p. 3] Because of the pending bankruptcy case, the Chapter 7 trustee had to seek Bankruptcy Court approval and give notice and opportunity to all interested parties to object to the proposed settlement under FED. R. BANKR. P. 9019. The IRS received notice of each of the five settlements and did not object to any of the settlements. [*In re Anderson,* Case No. 15-21681, DE 73, 101, 107, 121, 132][6] The largest of the settlements was with BDO, USA, LLP, Mark Puckett and Paul Shanbrom which provided for payment of $5,250,000 to be paid in four installments. [*In re Anderson,* Case No. 15-21681, DE 68 and 73] The last installment payment occurred on July 2, 2020, *id*., which was the final payment received by the Chapter 7 trustee from any of the BDO defendants.

[6] Order approving Motion to Approve Compromise and Settlement with BDO for $5,250,000 [DE 73]; Order approving Motion to Approve Compromise and Settlement with Gramercy for $630,000 [DE 101]; Order approving Motion to Approve Compromise and Settlement with FSG for $135,000 [DE 107]; Order approving Motion to Approve Compromise and Settlement with DeCastro for $250,000 [DE 121]; and Order approving Motion to Approve Compromise and Settlement with Proskauer for $400,000 [DE 132].

The IRS was the sole prepetition creditor who benefitted from the BDO litigation, and the IRS did not object to any of the settlements. [Statement of Undisputed Facts ¶¶ 21, 23] After paying the administrative expenses of the BDO litigation, the IRS was paid $3,678,641.20.[7] [*Id.* at ¶ 23] The final payment from the BDO defendants was made on July 2, 2020 in the amount of $1,416,667. [*In re Anderson,* Case No. 15-21681, DE 68] "Curiously," or rather very strategically, the IRS sat back and waited for all payments to be made to the Chapter 7 trustee under the five settlement agreements before it attempted to contact the Andersons in "an attempt to resolve matters without the need for litigation," and the possibility of identifying other issues "in discovery to show a willful attempt to evade or defeat tax liabilities." [United States' Answer to Complaint, DE 8, ¶ 26]

The IRS gained an advantage by sitting back and waiting for the Chapter 7 trustee to (1) proceed with the BDO litigation, (2) settle the BDO litigation and (3) fully collect all proceeds of the settlement before it attempted to proceed with any 11 U.S.C. § 523(a)(1)(C) action. The IRS not only gained an advantage in the BDO litigation, but it gained an advantage by allowing the Andersons to believe the IRS was not pursuing a § 523(a)(1)(C) nondischargeability action. As a result, the Andersons missed their opportunity to object to the BDO settlements and potentially seek abandonment of the BDO litigation from the estate.[8] This is the classic "you cannot have your

[7] The IRS received from the bankruptcy estate $597,609.73 on or about March 5, 2018 [*In re Anderson*, Case No. 15-21681, DE 154, p. 14] and $3,081,031.47 on or about July 30, 2021, *id.* at p. 19, for a total of $3,678,641.20. *Id.* at p. 6.

[8] If any 11 U.S.C. § 523(a)(1)(C) complaint was contemplated, the Andersons could have sought to have the property – the lawsuit - abandoned by the Chapter 7 trustee under 11 U.S.C. § 554 and proceeded with litigation themselves. Alternatively, the Andersons may have objected to the BDO settlements as being too low if they suspected any 11 U.S.C. § 523(a)(1)(C) complaint by the IRS was on the horizon. Now, all actions relating to the subordination and the settlements are the subject of final orders which are no longer subject to appeal.

cake and eat it too," and therefore, this Court must grant the Anderson's Motion for Summary Judgment as to quasi-estoppel.

CONCLUSION

For the reasons stated herein, after considering all of the undisputed facts and considering all disputed facts in the IRS's favor, the Court hereby grants the Andersons' Motion for Summary Judgment as it relates to quasi-estoppel.

IT IS SO ORDERED.

The Bankruptcy Court Clerk shall serve a copy of this Opinion and Order on the following interested parties:

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