

Case Summary

Grochocinski v. Schlossberg

402 B.R. 825, 2009 U.S. Dist. LEXIS 19523 (N.D. Ill. 2009)

Bankruptcy Court Affirms Bad Faith Spoliation of Electronic Evidence

On an appeal from the bankruptcy court, the Northern District affirmed an order of sanctions for bad faith spoliation of electronic evidence. During a bankruptcy proceeding, the debtor's trustee filed a complaint to recover two allegedly fraudulent transfers of real estate made to the appellants. The trustee then filed a motion to compel the production of electronic data related to the transfers.

Pursuant to the parties' protective order, a computer forensics expert was hired to mirror and analyze the appellants' hard drives. During this analysis, the expert discovered that one appellant had installed a disk cleaning program and had used it to destroy at least 16,000 files. Another program was then installed to verify that the data had been deleted, and new operating systems were installed on two of the hard drives.

On the trustee's motion for sanctions, the bankruptcy court found that the deletion amounted to spoliation. The court issued an adverse inference instruction and required the appellant to pay costs for counsel and the computer expert.

Decision

On appeal, the Northern District affirmed the imposition of sanctions. The appellant argued that the bankruptcy court had failed to make a finding that he acted in bad faith. The court, reviewing for an abuse of discretion, deferred to the bankruptcy court's finding that the appellant had acted with reckless disregard for his discovery obligations. Such a disregard was sufficient to establish bad faith, and the imposition of sanctions was reasonable under the circumstances.