IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	In Proceedings
	)	Under Chapter 11
CHARLES ROBERT JONES and	)	
PATRICIA ANN JONES,	)	No. BK 87-40614
	)	
Debtor(s).	)	
	)	
CHARLES ROBERT JONES and	)	
PATRICIA ANN JONES,	)	
	)	
v.	)	ADVERSARY NO.
	)	87-0298
BANK OF MT. CARMEL,	)	
	)	
Defendant(s).	)	

MEMORANDUM AND ORDER

This matter is before the Court on a motion for summary judgment filed by defendant, Bank of Mt. Carmel (Bank), against plaintiffs, Charles and Patricia Jones (debtors). The Bank's motion was filed in response to debtors' complaint "to avoid lien, compel turnover, and compel endorsement," in which debtors alleged that the Bank wrongfully received proceeds from the sale of debtors' 1986 and 1987 crops and livestock during the pendency of debtors' previous Chapter 11 proceeding. The Bank's motion for summary judgment alleged that all of the acts complained of in debtors' complaint had been done with the approval of debtors in their capacity as debtors-in-possession and that debtors should be estopped from benefiting from their failure to comply with the Bankruptcy Court's rules while insisting upon strict compliance of the rules by the Bank.

Debtors' previous bankruptcy proceeding was filed on April 21, 1986, and was dismissed on September 10, 1987, upon motion of

a creditor. On September 30, 1987, debtors filed the instant Chapter 11 proceeding and subsequently brought suit against the Bank. In their complaint debtors alleged that the Bank had attempted to perfect a pre-petition security interest in debtors' 1986 and 1987 crops by filing financing statements during the pendency of their previous bankruptcy proceeding in violation of the automatic stay of section 362. Debtors further alleged that grain checks for the 1986 and 1987 crops, made jointly to themselves and to the Bank, had been endorsed by them to the Bank and applied by the Bank to their pre-petition debts. Government payments received during the 1987 crop year, as well as livestock proceeds obtained post-petition, had likewise been paid to the Bank. All of these payments were made to the Bank without authorization or approval of the Bankruptcy Court. Since, debtors asserted, monies received by the Bank during debtors' previous bankruptcy proceeding constituted an unauthorized disbursement from post-petition assets toward a pre-petition debt, the Bank should be required to return payments made to the Bank by debtors during this time.

In support of its motion for summary judgment, the Bank asserts that it relied on the fact that debtors as debtors-in-possession approved the transactions now complained of and that debtors should be estopped from pursuing claims resulting from their own ineptness and mismanagement. In particular, the Bank alleges that debtors represented that they could borrow money and pledge collateral without court approval and that debtors signed notes, endorsed checks, and executed UCC's in their capacity as debtors-in-possession or trustee of the bankruptcy estate. The Bank maintains that if debtors had properly

prosecuted the prior bankruptcy proceeding by addressing the court and getting approval for their action, the acts complained of in their complaint would not have occurred. While conceding that it loaned money to debtors and received funds from post-petition crops during the course of the prior proceeding in violation of the automatic stay, the Bank asserts that debtors should be precluded from taking advantage of the Bank's actions which they themselves had agreed to as trustee.

The doctrine of equitable estoppel applies to prevent a party from asserting rights against another party who has relied to his detriment on the former's misrepresentation or failure to disclose some material fact. Portmann v. U.S., 674 F.2d 1155 (7th Cir. 1982). Before the doctrine can apply it must appear that the party claiming estoppel was himself, not only destitute of knowledge of facts, but was also without the means for ascertaining and acquiring such knowledge. A representation, in order to constitute an estoppel, must relate to a matter of fact, and one cannot be estopped by an admission as to the law. See, Grodsky v. Sipe, 30 F.Supp. 656 (E.D. Ill. 1940); Denton Enterprises, Inc. v. Illinois State Toll Highway Authority, 77 Ill.App. 3d 495, 396 N.E. 2d 34 (1979).

In the instant case, the Bank claims estoppel based on debtors' representation that, as debtors-in-possession with the powers of a trustee, they did not need court approval to pledge collateral and transfer estate assets to the Bank during the prior bankruptcy proceeding. While this representation may have lulled the Bank into dealing with debtors without court approval, the Bank was not justified in relying on such representation, as the Bank was capable of

ascertaining the true extent of the trustee's powers under the Bankruptcy Code and must be presumed to have knowledge of the law.

The Bankruptcy Code requires that a trustee obtain court approval for certain transfers from the bankruptcy estate that are not in the ordinary course of business. See 11 U.S.C. §363. The purpose of the Code provision is to allow businesses to continue daily operations without the burden of obtaining court approval for minor transactions, while protecting secured creditors and others from dissipation of estate assets. In re Dant & Russell, Inc., 67 B.R. 360 (Bankr. D. Or. 1986). Thus, transfers of post-petition assets made to satisfy a debtor's pre-petition debts may be set aside where the debtor-in-possession has neither sought nor obtained court approval for such transfers. In re White Beauty View, Inc., 70 B.R. 90 (Bankr. M.D. Pa. 1987).

Because of the requirements of the Bankruptcy Code governing the transfer of estate assets by the trustee during the course of a bankruptcy proceeding, the Bank cannot complain that it was misled by debtors' representations that they could deal with estate assets without court approval in their capacity as debtors-in-possession. While a litigant will be estopped from taking inconsistent positions during the course of a legal proceeding or disputing something in litigation to which he has consented or stipulated (see Citation Cycle Co., Inc. v. Yorke, 693 F.2d 691 (7th Cir. 1982)), this rule is not applicable in the instant case where debtors had no authority as trustee to consent to the transactions complained of and where such transactions were potentially prejudicial to other creditors of the

estate. The Bank has failed to show that debtors are estopped from pursuing their claims against the Bank, and this Court, accordingly, finds that the Bank's motion for summary judgment should be denied.

In argument on the Bank's motion for summary judgment, both debtors and the Bank asserted that there are numerous factual questions remaining with regard to the specific allegations of debtors' complaint. As there are genuine issues of material fact requiring trial on debtors' complaint, summary judgment is inappropriate and the cause should proceed to trial.

IT IS ORDERED that the Bank's motion for summary judgment is DENIED.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: June 8, 1988