

Determining bankruptcy status of plaintiff provides advantage for defense

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With the number of bankruptcies being filed as a result of today's economy, the status of a plaintiff's standing in bankruptcy is more important than ever to defendants involved in state and federal litigation.

Careful examination of a plaintiff's bankruptcy status may just result in a favorable judgment or dismissal for the defendant. The following cases demonstrate how some extra due diligence on the part of defense attorneys paid off for their clients.

Plunkett Cooney client granted Rule 56 summary judgment against plaintiff who concealed personal injury claim in bankruptcy

In *Rodriguez v Mustang Manufacturing Company*, Case No. 07-CV-13828, WL 2605471 (ED Mich June 2008), Rodriguez lost his leg in a skid steer loader incident. Between the time of the incident and filing suit, Rodriguez filed for and was granted a discharge in bankruptcy.

In the bankruptcy, he filed a "summary of schedules," which declared he had no "contingent and unliquidated claims" of any nature. Additionally, he did not list the loader in question as personal property.

Six months before his bankruptcy the loader was examined by his tort counsel and then less than two weeks after his discharge, Rodriguez and the same attorney examined the loader with an expert. The court's opinion that Rodriguez concealed his personal injury claim in the bankruptcy was based on the timing of attorney and expert inspections, his failure to list the claim and the failure to disclose the loader.

The court held under FRCP 17(a) that Rodriguez could not bring the claim because, upon filing bankruptcy, all of the debtor's legal and equitable interests in property become part of his estate. Therefore, the bankruptcy trustee was the real party in interest.

Rodriguez was not allowed an opportunity under FRCP 17(a) to substitute the trustee as the real party in interest. The court reasoned that Rodriguez had almost two years to ascertain and add the trustee as the real party in interest. Further, in the 30 days since the objection was raised, Rodriguez had not taken action to substitute the trustee. "...Rodriguez has been given sufficient opportunity to ensure his claim is brought by the real party in interest."

DETERMINING BANKRUPTCY STATUS OF PLAINTIFF PROVIDES ADVANTAGE FOR DEFENSE Cont.

The court, independent of the lack of standing under FRCP 17, found the doctrine of judicial estoppel barred the Rodriguez claim. Having determined that Rodriguez had concealed his claim, the court noted:

“...judicial estoppel is an equitable doctrine that preserves the integrity of the courts by preventing a party from abusing the judicial process through cynical gamesmanship, achieving success on one position, then arguing the opposite to suit an exigency of the moment.” “...Rodriguez’s omission of his personal injury claim against Mustang is a ‘contrary position [taken] under oath in a prior proceeding and...accepted by the court’ such that he should be estopped from pursuing the present claim.”

Summary judgment in favor of the defendant was granted.

Defendant granted Rule MCR 2.116 (C)(5) summary disposition against plaintiff who failed to name bankruptcy trustee as real party in interest

Under state law, the Michigan Supreme Court in *Miller v Chapman Contracting*, 477 Mich 102, 730 N.W.2d 462 (2007) upheld summary disposition and would not allow the plaintiff bankruptcy debtor to amend the plaintiff’s complaint to substitute the bankruptcy trustee as the plaintiff in a personal injury action after the statute of limitation had expired.

When the complaint was first filed, the plaintiff’s attorney erroneously named the plaintiff instead of the bankruptcy trustee as the party plaintiff. After the period of limitations had expired the defendant moved to dismiss the lawsuit for failure to bring the case in the name of the real party in interest.

In response, the plaintiff filed a motion to amend the complaint to substitute the bankruptcy trustee in as the plaintiff. The court ruled the individual plaintiff was not the real party in interest, and the case was dismissed pursuant to MCR 2.116(c)(5) because the plaintiff lacked standing to commence the suit.

The plaintiff’s motion to amend to name the bankruptcy trustee was also denied as futile because the statute of limitations barred a new claim. The Michigan Supreme Court further held that the relation back rule found at MCR 2.118(A)(2), does not pertain to the addition of new parties.