

No. 77629-1

COURT OF APPEALS
DIVISION I
STATE OF WASHINGTON

JAYAKRISHNAN K. NAIR

Appellant,

vs.

RICHARD J. SYMMES, Individually and on Behalf of the Marital
Community Comprised of RICHARD J. SYMMES and JANE DOE
SYMMES, and SYMMES LAW GROUP, PLLC, a Washington
Professional Limited Liability Company,

Respondents.

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

This legal malpractice case arises out of the underlying bankruptcy proceeding of Appellant Jayakrishnan “Jay” Nair in which the Bankruptcy Court summarily approved the attorney fee application of debtor’s former counsel (Respondent Symmes), despite the existence of controverted facts relating to whether the attorney had committed malpractice, and a request for an evidentiary hearing. On Symmes’ CR 12(b)(6) motion, the King County Superior Court dismissed the Nair’s Complaint, holding that collateral estoppel bars his claims for legal malpractice, based solely on the Bankruptcy Court order approving Symmes’ fee application.

Jay Nair appeals because: (a) applicable bankruptcy and Washington law precluded him from filing the legal malpractice claim in the Bankruptcy Court, and/or (b) the Bankruptcy Court’s summary resolution of disputed factual issues, without an evidentiary hearing, denied him due process. Collateral estoppel thus does *not* bar his Complaint. This Court should therefore reverse the decision of the trial court and remand this case to the trial court for trial.

II. ASSIGNMENT OF ERROR

1. The trial court erred, as a matter of law, when it granted Defendants’ CR 12(b)(6) motion and dismissed Plaintiff’s complaint based on collateral estoppel.

Issues Pertaining to Assignment of Error:

A. Was Mr. Nair's legal malpractice claim property of his Bankruptcy Estate within the meaning of 11 USCA §541?

Answer: Yes.

B. Did Mr. Nair's Bankruptcy Trustee, and *not* Mr. Nair, have exclusive standing to assert a legal malpractice claim against Mr. Symmes in the Bankruptcy Court?

Answer: Yes.

C. Considering that only the Bankruptcy Trustee had standing to assert Mr. Nair's legal malpractice claim, prior to dismissal of his bankruptcy, would a manifest injustice occur if collateral estoppel were applied to bar Mr. Nair's legal malpractice claim after dismissal of his bankruptcy?

Answer: Yes.

III. STATEMENT OF THE CASE

A. Facts

Jay Nair is an immigrant from India, the co-founder of a biotech startup, Ratner Biomedical Inc. and a real estate entrepreneur. CP 2 ¶3.0¹
At the time of his bankruptcy filing on April 29, 2015, Mr. Nair owned

¹ For purposes of this appeal, the allegations of Mr. Nair's Complaint are accepted as true. See discussion, *infra* at pp. 9-10.

five cash-positive investment properties and other assets. *Id.* In October 2014, Mr. Nair learned that First Tech Credit Union “FTCU,” which held a second-position deed of trust on one of Mr. Nair’s five investment properties, in the amount of \$100,000 and a then-current balance of approximately \$72,000, had initiated foreclosure proceedings against that one property. CP 3 ¶3.1 At the time, Mr. Nair subscribed to a prepaid legal insurance company known as “ARAG.” *Id.* ¶3.2. Mr. Symmes’ had contracted with ARAG to offer ARAG-paid and/or below-market legal fees to ARAG members. *Id.* Mr. Symmes’ listing on the ARAG Legal Center for Members, appeared under the Legal Issue heading “Real Estate and Home Ownership” and Type of Issue heading “Foreclosure.” *Id.* The website of the Symmes’ law firm, Symmes Law Group, PLLC,² markets itself with “Stop Foreclosure. Stop Collections. End Your Stress. BE DEBT FREE!” and “Seattle Bankruptcy Attorney Who Gets Debt Relief Fast.” *Id.*

When his personal attempts to resolve the non-judicial foreclosure proceeding failed, Jay found Symmes’ listing with ARAG. CP 3¶3.2. On or about April 15, 2015, Mr. Nair retained Mr. Symmes and the Symmes Law Group, PLLC, to assist him in resolving the foreclosure through the

² Appellant will refer to Mr. Symmes and his law firm collectively as “Symmes,” for ease of reference. No disrespect is intended.

ARAG prepaid legal insurance plan, at a rate of \$187.50 per hour. *Id.*

Upon acceptance of representation, Mr. Symmes undertook a duty of competence to Nair, to meet or exceed the standard of care applicable to a reasonably prudent Washington attorney representing a client in the same or similar situation as Nair. CP 3 ¶3.4. At the time Nair first retained Symmes, Nair had approximately two weeks remaining in which to resolve the foreclosure and thus preserve Nair's ownership interest in the investment property. CP 4 ¶3.5. He also had ample cash resources readily available to pay off the FTCU debt in full, including \$20,000 in cash in liquid accounts, and \$100,000 in a 401k. *Id.* Jay could have taken money out of the 401k and re-deposited it within 60 days without any tax penalty. *Id.* He also alerted Mr. Symmes to his (Nair's) financial circumstances, including the fact that he had approximately \$6,000,000 in real estate investments and privately held shares in the Ratner Biomedical startup. *Id.*

Jay relied heavily on Symmes' professed expertise in defending foreclosures and representing clients in bankruptcy proceedings. CP 4 ¶3.6. Symmes was aware of Jay's lack of knowledge about bankruptcy and that he relied on Symmes' recommendations as to how he (*i.e.*, Nair) should proceed. *Id.* ¶3.7.

Symmes advised Jay to file Chapter 13 bankruptcy and advised

him against using his 401k funds because of the potential 10% tax penalty. CP 4 ¶3.8. Symmes and his law firm, Symmes Law Group, PLLC filed Jay's Chapter 13 bankruptcy petition on April 29, 2015. *Id.* ¶3.9. However, Jay was not eligible for relief under Bankruptcy Code §109(e). *Id.* ¶3.10. Symmes knew, or reasonably should have known, that Jay was not eligible for relief under Chapter 13 of the Bankruptcy Code. *Id.* ¶3.11.

On July 16, 2015, the Chapter 13 Bankruptcy Trustee objected to confirmation of Jay's Nair's Ch. 13 plan, citing among other problems, the fact that Jay did not qualify for Ch. 13 relief. CP 5 ¶3.12. The Trustee's Objection furthermore pointed out that Symmes had not served the Ch. 13 plan on Mr. Nair's creditors, and that the Ch. 13 plan as submitted was not confirmable. *Id.* The Trustee also objected to Symmes' Ch. 13 flat fee of \$3,500 as not reasonable. *Id.* ¶3.13.

Upon service of the Chapter 13 Bankruptcy Trustee's motion to dismiss, Symmes could, and should, have advised Jay to agree to dismiss the bankruptcy case, rather than convert the case to either a Chapter 7 bankruptcy liquidation, or a Chapter 11 case. CP 5 ¶3.14. Symmes instead advised Mr. Nair to convert his case to Chapter 11 rather than Chapter 13. *Id.* Jay followed Symmes' advice and Symmes thus filed a motion to convert Mr. Nair's bankruptcy case to a Chapter 11 case on August 11, 2015. *Id.* The Court granted the motion to convert to Chapter

11 on September 2, 2015. *Id.*

Symmes did not provide Jay with the material information necessary to enable him to give informed consent to the conversion from Ch. 13 to Ch. 11, particularly considering the risk to Jay that he might lose control of the Ratner Biomedical start-up company, as well as the administrative and other time-consuming and costly burdens imposed on the Debtor-in-Possession in a Ch. 11 case. CP 5-6 ¶3.15.

After conversion of Jay's bankruptcy to a Chapter 11 business reorganization, Jay repeatedly asked Symmes to have the bankruptcy dismissed; however, Symmes told Jay that he could not dismiss the bankruptcy and, if he were to file a motion to dismiss, the creditors and the US Trustee might move to convert the case to a Chapter 7 liquidation. CP 6 ¶3.16. Nevertheless, on or about October 5, 2016, the Bankruptcy Court converted Jay's bankruptcy from a Chapter 11 case to a Chapter 7 case. *Id.* ¶3.18; CP 146 ¶26. Jay thereupon terminated his attorney-client relationship with Symmes effective on October 14, 2016. *Id.* ¶3.18; CP 147 ¶27. On or about January 27, 2017, Jay retained Attorney Shashi Vijay to represent him as replacement counsel in the bankruptcy proceeding. CP 6 ¶3.18. On April 5, 2017, Ms. Vijay succeeded in negotiating a settlement with the Bankruptcy Trustee, which allowed Jay to dismiss the bankruptcy proceeding filed by Symmes. *Id.* ¶3.19. Jay

alleges that Symmes breached the standard of care in numerous respects. CP 6-7 ¶4.0(A)-(H); see further, CP 75-78 ¶¶11-17.

After Jay terminated Symmes' services in the bankruptcy case, Symmes filed a motion in the Bankruptcy Court to approve his fees. CP 53-56; CP 147 ¶29. Jay, represented by replacement counsel, objected to and controverted Symmes' application. CP 58-86, 121-126. The Bankruptcy Court acknowledged that "[t]he parties here. . .dispute whether Mr. Symmes breached his duty of care, whether the debtor suffered damages, and whether the alleged breach caused the alleged damage." CP 148 ¶5. Nair requested an evidentiary hearing. CP 124. On March 23, 2017, the Bankruptcy Court summarily granted Symmes' motion and entered findings of fact and conclusions of law favorable to Symmes. CP 140. The Bankruptcy Court explicitly resolved disputed issues of fact despite conflicting accounts by Jay and Symmes as to the facts and circumstances related to the allegations of malpractice by Symmes. CP 149 ¶¶7-11.

The Bankruptcy Court dismissed Mr. Nair's bankruptcy case on April 5, 2017. CP 153.

B. Proceedings in the Trial Court

After dismissal of his bankruptcy became final, Jay filed this

Complaint for Legal Malpractice on June 26, 2017. CP 1. Symmes answered the Complaint. CP 9. On September 28, 2017, Symmes filed a CR 12(b)(6) motion to dismiss, based on collateral estoppel. CP 17. Nair opposed the motion. CP 155-202. Symmes replied. CP 203. The trial court heard oral argument on October 27, 2017 and took the motion under advisement. RP (10/27/17). Symmes filed a Supplemental Brief in support of their motion. CP 211. The trial court granted Symmes' motion and dismissed Jay's Complaint with prejudice on October 31, 2017. CP 218. Nair timely appealed. CP 220.

IV. ARGUMENT

1. Standard of Review: *De Novo*

“A trial court's ruling to dismiss a claim under CR 12(b)(6) is reviewed de novo.” *Kinney v. Cook*, 159 Wash.2d 837, 842, 154 P.3d 206 (2007), *citing Tenore v. AT & T Wireless Servs.*, 136 Wn.2d 322, 329–30, 962 P.2d 104 (1998), *quoted with approval, J.S. v. Village Voice Media Holdings, L.L.C.*, 184 Wn.2d 95, 100, 359 P.3d 714 (2015). The Court also reviews *de novo* “[w]hether collateral estoppel applies to bar relitigation of an issue.” *Christensen v. Grant Cnty. Hosp., Dist. No. 1*, 152 Wn.2d 299, 305, 96 P.3d957 (2004); accord, *Schibel v. Eymann*, 189

Wn.2d 93, 98, 399 P.3d 1129 (2017).

2. Dismissal Under CR 12(b)(6) Should Only Be Granted “Sparingly and With Care.”

“CR 12(b)(6) motions should be granted ‘sparingly and with care’ and ‘only in the unusual case in which plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief.’” *Cutler v. Phillips Petrol. Co.*, 124 Wn.2d 749, 755, 881 P.2d 216 (1994) quoting *Hoffer v. State*, 110 Wn.2d 415, 420, 755 P.2d 781 (1988), quoted with approval, *J.S. v. Village Voice*, *supra*, 184 Wn.2d at 100.

“Dismissal under CR 12(b)(6) is appropriate only if ‘it appears beyond a reasonable doubt that no facts exist that would justify recovery.’” *In re Parentage of C.M.F.*, 179 Wn.2d 411, 418, 314 P.3d 1109 (2013), quoting *Cutler*, 124 Wn.2d at 755, quoted with approval in *J.S. v. Village Voice Media* 184 Wn.2d at 100.

3. Under CR 12(b)(6), Nair’s Allegations Are Taken as True.

“We accept as true the allegations in a plaintiff’s complaint and any reasonable inferences therein.” *Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333 (1998), citing *Chambers-Castanes v. King County*, 100 Wn.2d 275, 278, 669 P.2d 451 (1983); *Corrigal v. Ball & Dodd Funeral*

Home, Inc., 89 Wn.2d 959, 961, 577 P.2d 580 (1978), *quoted with approval, J.S. v. Village Voice, supra* 184 Wn.2d at 100.

4. Symmes Had the Burden of Proving Entitlement to Dismissal Based Upon Collateral Estoppel.

Collateral estoppel is an affirmative defense. CR 8(c) (“...a party shall set forth affirmatively...estoppel...and any other matter constituting an affirmative defense”); see, *Northwest Wholesale, Inc. v. PAC Organic Fruit, LLC*, 183 Wn. App. 459, 491-492, 334 P.3d 63 (2014); *State Farm Mut. Auto. Ins. Co. v. Avery*, 114 Wn. App. 299, 304, 57 P.3d 300 (2002); *LeMond v. State DOL*, 143 Wn. App. 797, 805, 180 P.3d 829 (2008). Symmes thus had the burden of proving his entitlement to bar Nair’s complaint based upon collateral estoppel.

5. Subject to Constitutional Limitations, Federal Common Law Governs Application of Collateral Estoppel Issue in This Appeal.

“The preclusive effect of a federal-court judgment is determined by federal common law.” *In re Lopez*, 2017 WL 443540 *7 (B.A.P. 9th Cir. 2017), *quoting Taylor v. Sturgell*, 553 U.S. 880, 891, 128 S. Ct. 2161, 2171, 171 L. Ed. 2d 155 (2008), *citing Semtek Int’l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 507-508 (2001); accord, *Woodley v. Myers Capital Corp.*, 67 Wn. App. 328, 336-337, 835 P.2d 239 (1992)(preclusive

effect of Bankruptcy Court judgment).³

In that context, the Ninth Circuit has held that collateral estoppel “prevents a party from relitigating an issue decided in a previous action if four requirements are met: ‘(1) there was a full and fair opportunity to litigate the issue in the previous action; (2) the issue was actually litigated in that action; (3) the issue was lost as a result of a final judgment⁴ in that action; and (4) the person against whom collateral estoppel is asserted in the present action was a party or in privity with a party in the previous action.’” *Quest Integrity USA, LLC v. A.Hak Indus. Servs. US, LLC*, 2017 WL 3237372 *2 (W.D. Wash. 2017), quoting *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1050 (9th Cir. 2008) and *In re Palmer*, 207 F.3d 566, 568 (9th Cir. 2000). See further, *Restatement (Second) of Judgments* §28.⁵

³ United States Constitution, art. IV §1 provides that “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” It does not apply to federal court judgments.

⁴ Nair concedes that the Bankruptcy Court’s fee determination qualifies as a “final judgment” for purposes of collateral estoppel. *Woodley, supra*, 67 Wn. App. at 336-337. However, *Woodley*’s reliance on virtual representation may no longer apply. See, *Taylor, supra*, 553 U.S. at 900.

⁵ The *Restatement (Second) of Judgments* §28 states, in pertinent part:

“Although an issue is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the parties is not precluded in the following circumstances: . . . (3) A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relative to the allocation of jurisdiction between them; or. . . (5) There is a clear and convincing need for a new determination of the issue. . . (c) because the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an

Washington courts apply essentially the same criteria, *i.e.*, (1) the issue decided in the prior action was identical to the issue presented in the second action; (2) the prior action ended in a final judgment on the merits; (3) the party to be estopped was a party or in privity with a party in the prior action, and; (4) application of the doctrine would not work an injustice. *E.g.*, *In re Estate of Hambleton*, 181 Wn.2d 802, 834, 335 P.3d 398 (2014); *NW Wholesale*, *supra*, 183 Wn. App. at 491.

Significantly, “[t]he federal common law of preclusion is, of course, subject to due process limitations.” *Taylor v. Sturgell*, *supra*, 553 U.S. at 891, *citing Richards v. Jefferson County*, 517 U.S. 793, 797, 116 S.Ct. 1761, 135 L.Ed.2d 76 (1996). This limitation corresponds, at least generally, to Washington’s requirement that application of collateral estoppel “would not work an injustice.”⁶ In that context, *Davis v. Cox*, 183 Wn.2d 269, 289, 351 P.3d 862 (2015) recently explained that “[a]t its core, the right of trial by jury guarantees litigants the right to have a jury resolve questions of disputed material facts.”⁷ See further, *Shandola v.*

adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.”

⁶ “Collateral estoppel is, in the end, an equitable doctrine that will not be applied mechanically to work an injustice.” *Hadley v. Maxwell*, 144 Wn.2d 306, 315, 27 P.3d 600 (2001).

⁷ *Davis* explains the importance of the jury right [183 Wn.2d at 288-289]:

Henry, 198 Wn. App. 889, 902-905, 396 P.3d 395 (2017)(denial of right to jury trial constituted extraordinary circumstances warranting CR 60(b)(11) order vacating final judgment).

6. The Bankruptcy Trustee, Not Mr. Nair, Owned the Legal Malpractice Claim at the Time of the Symmes' Fee Hearing.

A bankruptcy estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 USCA §541(a)(1). See, e.g., *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 709 (9th Cir. 1986)(Personal injury claims become part of the bankruptcy estate). Property of the bankruptcy estate thus includes a bankruptcy debtor’s legal malpractice claim. E.g., *Suter v. Goedert*, 396 B.R. 535, 550 (D. Nev. 2008), *cited with approval*, *In re Flores*, 2010 WL 6259989 *3 (B.A.P. 9th Cir. 2010). Moreover, the Ninth Circuit has held that a debtor's contingent interest in an asset at the time an estate is created, that subsequently vests into a complete interest only

“Under the Washington Constitution, “[t]he right of trial by jury shall remain inviolate.” Wash. Const, Art. I, § 21. “The term ‘inviolable’ connotes deserving of the highest protection” and “indicates that the right must remain the essential component of our legal system that it has always been.” *Sofie v. Fibreboard Corp.*, 112 Wash.2d 636, 656, 771 P.2d 711, 780 P.2d 260 (1989). The right “must not diminish over time and must be protected from all assaults to its essential guaranties.” *Id.*

subsequently, becomes the property of the estate at the time it vests. See, *In re Neuton*, 922 F.2d 1379, 1382–1383 (9th Cir.1990); *In re Ryerson*, 739 F.2d 1423, 1425 (9th Cir.1984); *Ellwanger v. Budsberg*, 140 B.R. 891, 897–898 (Bankr.W.D.Wash.1992).⁸

Mr. Nair's legal malpractice claim against Symmes was therefore property of his bankruptcy estate at the time of the hearing on the Symmes' fee application.

7. Collateral Estoppel Does Not Apply Because Nair Could Not Have Sued Symmes for Legal Malpractice Prior to Dismissal of His Bankruptcy.

Under the federal bankruptcy code, a bankruptcy petitioner must disclose pre-petition claims, including contingent and unliquidated claims, in the bankruptcy reorganization plan, or in the debtor's schedules or disclosure statements. 11 U.S.C. § 521(a). Pursuant to 11 USCA §323, the Bankruptcy Trustee, *not* the Debtor, is the representative of the Chapter 7 bankruptcy estate, charged with a fiduciary duty to take control of all

⁸ When a reorganization bankruptcy is converted to a Chapter 7 liquidation, property in the debtor's possession at the time of conversion to Chapter 7 liquidation is included in the Debtor's bankruptcy estate. 11 USCA §348(f)(1)(A).

property of the bankruptcy estate. 11 USCA §704.⁹ Property not abandoned or administered remains property of the bankruptcy estate.

Bartley-Williams v. Kendall, 134 Wn. App. 95, 101, 138 P.3d 1103 (2006) accord, 11 USCA § 554(d).¹⁰

In that context, Rule 7017 of the Federal Rules of Bankruptcy Procedure incorporates Rule 17 of the Federal Rules of Civil Procedure, and requires that any lawsuit on behalf of the Chapter 7 debtor-in-bankruptcy, “must be prosecuted” in the name of the real party in

⁹ Personal reorganization through a Chapter 13 “wage-earner” bankruptcy and business reorganization through a Chapter 11 bankruptcy differ from Chapter 7 liquidation in that the Debtor-in-Possession normally fulfills the duties of the Chapter 7 Trustee, including retaining control over the assets of the Debtor-in-Possession, including unliquidated and contingent claims. This case is therefore inapposite to cases in which a reorganization Debtor-in-Possession or a Bankruptcy Trustee asserted the legal malpractice claim following a Bankruptcy Court fee determination. Examples of such cases include *Grausz v. Englander*, 321 F.3d 467 (4th Cir. 2003)(Ch. 11 Debtor-in-Possession); *D.A. Elia Const. Corp. v. Damon & Morey*, 389 B.R. 314 (W.D.N.Y. 2008); *Intelogic Trace, Inc. v. Buccino & Associates, Inc.*, 226 B.R. 382 (W.D. Tex. 1998)(Ch. 7 Trustee); *In re Iannochino*, 242 F.3d 36 (1st Cir. 2001)(fee application by Ch.13 debtor’s counsel filed after conversion to Ch. 7; legal malpractice lawsuit filed two years later by debtors; no indication of whether Trustee had abandoned the malpractice claim).

¹⁰ *Bartley-Williams, supra*, 134 Wn. App. at 100 explains that “dismissal of Hamilton's bankruptcy and the vacation of the discharge of his debts had the effect of transferring Hamilton's claim from the bankruptcy estate back to the petitioner. A dismissal of a bankruptcy case reverts property of the estate to the original holder of the property. 11 U.S.C. § 349(b)(3). Hamilton therefore brought suit for his own benefit, not for the benefit of his bankruptcy estate or his creditors.” Nair presents the identical situation in that the Trustee owned the legal malpractice claim until the Bankruptcy Court dismissed Nair’s bankruptcy on April 5, 2017. Mr. Nair had no standing to assert a claim for legal malpractice damages prior to that date.

interest.” Thus, until the Bankruptcy Court either dismissed Jay’s bankruptcy, or his Chapter 7 Bankruptcy Trustee abandoned his legal malpractice claim, Jay could not have commenced an Adversary Proceeding¹¹ against Symmes in the Bankruptcy Court to assert an affirmative claim for legal malpractice.¹² Accord, *In re Hickman*, 384 B.R. 832, 839-840 (B.A.P. 9th Cir. 2008)(“To the extent that the counter-claim could lead to affirmative relief, it is . . .property of the estate controlled by the trustee as to which Hickman has no authority to bind the trustee.”), *citing Restatement (Second) of Judgments* §§ 27–29, 34 & 40.

Moreover, unlike *Intellogic, supra* 226 B.R. at 384, Jay Nair had no capacity to force the Bankruptcy Court to continue the fee application hearing and call for commencement of an adversary proceeding to resolve the legal malpractice allegations, because he had no ability to file such

¹¹ Jay’s legal malpractice claim would have required the filing of an Adversary Proceeding pursuant to Fed. R. Bkrpty. P. 7001(1).

¹² In similar fashion, judicial estoppel bars a debtor/litigant from taking inconsistent positions by failing to disclose a pre-petition claim during bankruptcy proceedings and later attempting to pursue that claim. *Bartley-Williams, supra*, 134 Wn. App. at 100. However, judicial estoppel does *not* bar the Bankruptcy Trustee from asserting the same claim because “bankruptcy debtors and trustees have separate identities for purposes of judicial estoppel.” *Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 540–41, 160 P.3d 13 (2007).

a legal malpractice case at that point in time.

Furthermore, consistent with *Restatement (Second) of Judgments* §29 (1982), courts consider eight factors (in addition to those set forth in *Restatement* §28)¹³ to determine whether Symmes satisfied the threshold requirement for application of collateral estoppel, *i.e.*, that Mr. Nair had a full and fair opportunity to litigate his legal malpractice claim in the Bankruptcy Court.¹⁴

¹³ See n. 3, *supra*.

¹⁴ *Restatement (Second) of Judgments* § 29 (1982) provides:

A party precluded from relitigating an issue with an opposing party, in accordance with §§ 27 and 28, is also precluded from doing so with another person unless the fact that he lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue. The circumstances to which considerations should be given include those enumerated in § 28 and also whether:

- (1) Treating the issue as conclusively determined would be incompatible with an applicable scheme of administering the remedies in the actions involved;
- (2) The forum in the second action affords the party against whom preclusion is asserted procedural opportunities in the presentation and determination of the issue that were not available in the first action and could likely result in the issue being differently determined;
- (3) The person seeking to invoke favorable preclusion, or to avoid unfavorable preclusion, could have effected joinder in the first action between himself and his present adversary;
- (4) The determination relied on as preclusive was itself inconsistent with another determination of the same issue;
- (5) The prior determination may have been affected by relationships among the parties to the first action that are not present in the subsequent action, or apparently was based on a compromise verdict or finding;
- (6) Treating the issue as conclusively determined may complicate determination of issues in the subsequent action or prejudice the interests of another party thereto;

Collateral estoppel is particularly inappropriate when the party to be estopped (*i.e.*, Nair) had “no incentive [or] initiative to litigate the malpractice issue” in the Bankruptcy Court. See, *Penthouse Media Group, Inc. v. Pachulski Stang Ziehl & Jones, LLP*, 406 B.R. 453, 460-461 (S.D.N.Y. 2009)(rejecting application of legal malpractice); accord, *Forston-Kemmerer v. Allstate Ins. Co.*, 198 Wn. App. 387, 406-407, 393 P.3d 849 (2017)(significant difference exists in the “quality” of the parties when party to be estopped has disincentive to pursue the first litigation);¹⁵ see further, Trautman, *Claim and Issue Preclusion in Civil Litigation in Washington*, 60 Wash. L. Rev. 805, 842 (1985).

Here, beyond an inability to seek affirmative relief from Symmes in the Bankruptcy Court, Nair could not obtain the dismissal of the bankruptcy, which he so desperately needed, without obeying the Bankruptcy Court order that he pay Symmes. *Id.* See, *Restatement*,

-
- (7) The issue is one of law and treating it as conclusively determined would inappropriately foreclose opportunity for obtaining reconsideration of the legal rule upon which it was based;
 - (8) Other compelling circumstances make it appropriate that the party be permitted to relitigate the issue.

¹⁵ Professor Trautman observed that “[t]here is a danger that in seeking to relieve the crowded dockets and backlog of litigation, courts will too readily turn to the rules of res judicata and collateral estoppel. It is critical to remember that the doctrines of claim and issue preclusion are court-created concepts. Accordingly, they can be adjusted to accommodate whatever considerations are necessary to achieve the final objective—doing justice. Trautman, *Claim and Issue Preclusion in Civil Litigation in Washington*, 60 Wash. L. Rev. 805, 842 (1985).

supra, § 28(1); *Wehrli v. County of Orange*, 175 F.3d 692, 695 (9th Cir. 1999)(availability of judicial review is pre-requisite for preclusive effect); *Sprague v. Spokane Valley Fire Dept.*, __ Wn.2d __, 409 P.3d 160, 185 ¶92 (2018)(collateral estoppel inapplicable due to disparity of relief available in the two different proceedings). Moreover, the Bankruptcy Court had broad discretion when considering Symmes' fee application. 11 USCA §§329, 330; Fed. R. Bkrptcy. P. 2016. Symmes' fee application was thus "triable only in equity"¹⁶ (which may explain the Bankruptcy Court's decision to resolve disputed issues of fact without affording Nair an evidentiary hearing).¹⁷

Under these circumstances, application of collateral estoppel to bar Mr. Nair from asserting a legal malpractice claim, which he could not have asserted in the Bankruptcy Court and which conflicted with his need

¹⁶ See, *Langenkamp v. C.A. Culp*, 498 U.S. 42, 111 S. Ct. 330, 112 L. Ed.2d 343 (1991).

¹⁷ *United States v. Utah Const. & Min. Co.*, 384 U.S. 394, 422, 86 S. Ct. 1545, 16 L. Ed. 2d 642 (1966)(administrative *res judicata* applies "when an administrative agency is acting in a judicial capacity **and resolved disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate**). Although summary procedures for making an equitable fee determination in Bankruptcy Court may be adequate for that limited purpose, they do not provide an adequate opportunity for a client to assert the client's legal malpractice claims, *unless* the client has a right to initiate an Adversary Proceeding. See discussion, p. 12, *supra*.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April, 2018, I caused a true and correct copy of the foregoing Appellant's Opening Brief to be delivered to Respondents, through their attorneys in the manner indicated below:

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Dated: April 3, 2018.

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BY: /s/ Brian J. Waid
BRIAN J. WAID
WSBA No. 26038
Attorney for Appellant

RAP 10.4(c) APPENDIX OF STATUTES

United States Code Annotated
Title 11. Bankruptcy (Refs & Annos)
Chapter 3. Case Administration (Refs & Annos)
Subchapter II. Officers

11 U.S.C.A. § 323

§ 323. Role and capacity of trustee

Currentness

- (a) The trustee in a case under this title is the representative of the estate.
- (b) The trustee in a case under this title has capacity to sue and be sued.

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2562.)

11 U.S.C.A. § 323, 11 USCA § 323
Current through P.L. 115-140.

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United States Code Annotated
Title 11. Bankruptcy (Refs & Annos)
Chapter 3. Case Administration (Refs & Annos)
Subchapter II. Officers

11 U.S.C.A. § 329

§ 329. Debtor's transactions with attorneys

Currentness

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to--

(1) the estate, if the property transferred--

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

(2) the entity that made such payment.

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2564; Pub. L. 98-353, Title III, § 432, July 10, 1984, 98 Stat. 370; Pub.L. 99-554, Title II, § 257(c), Oct. 27, 1986, 100 Stat. 3114.)

11 U.S.C.A. § 329, 11 USCA § 329
Current through P.L. 115-140.

United States Code Annotated Title 11. Bankruptcy (Refs & Annos) Chapter 3. Case Administration (Refs & Annos) Subchapter II. Officers

11 U.S.C.A. § 330

§ 330. Compensation of officers

Currentness

(a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103--

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including--

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in subparagraph **(B)**, the court shall not allow compensation for--

(i) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate; or

(II) necessary to the administration of the case.

(B) In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

(5) The court shall reduce the amount of compensation awarded under this section by the amount of any interim compensation awarded under section 331, and, if the amount of such interim compensation exceeds the amount of compensation awarded under this section, may order the return of the excess to the estate.

(6) Any compensation awarded for the preparation of a fee application shall be based on the level and skill reasonably required to prepare the application.

(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

(b)(1) There shall be paid from the filing fee in a case under chapter 7 of this title \$45 to the trustee serving in such case, after such trustee's services are rendered.

(2) The Judicial Conference of the United States--

(A) shall prescribe additional fees of the same kind as prescribed under section 1914(b) of title 28; and

(B) may prescribe notice of appearance fees and fees charged against distributions in cases under this title;

to pay \$15 to trustees serving in cases after such trustees' services are rendered. Beginning 1 year after the date of the enactment of the Bankruptcy Reform Act of 1994, such \$15 shall be paid in addition to the amount paid under paragraph **(1)**.

(c) Unless the court orders otherwise, in a case under chapter 12 or 13 of this title the compensation paid to the trustee serving in the case shall not be less than \$5 per month from any distribution under the plan during the administration of the plan.

(d) In a case in which the United States trustee serves as trustee, the compensation of the trustee under this section shall be paid to the clerk of the bankruptcy court and deposited by the clerk into the United States Trustee System Fund established by section 589a of title 28.

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2564; Pub.L. 98-353, Title III, §§ 433, 434, July 10, 1984, 98 Stat. 370; Pub.L. 99-554, Title II, §§ 211, 257(f), Oct. 27, 1986, 100 Stat. 3099, 3114; Pub.L. 103-394, Title I, § 117, Title II, § 224(b), Oct. 22, 1994, 108 Stat. 4119, 4130; Pub.L. 109-8, Title II, § 232(b), Title IV, §§ 407, 415, Title XI, § 1104(b), Apr. 20, 2005, 119 Stat. 74, 106, 107, 192.)

11 U.S.C.A. § 330, 11 USCA § 330
Current through P.L. 115-140.

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United States Code Annotated Title 11. Bankruptcy (Refs & Annos) Chapter 3. Case Administration (Refs & Annos) Subchapter III. Administration
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11 U.S.C.A. § 348

§ 348. Effect of conversion

Effective: December 22, 2010
Currentness

(a) Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

(b) Unless the court for cause orders otherwise, in sections 701(a), 727(a)(10), 727(b), 1102(a), 1110(a)(1), 1121(b), 1121(c), 1141(d)(4), 1201(a), 1221, 1228(a), 1301(a), and 1305(a) of this title, “the order for relief under this chapter” in a chapter to which a case has been converted under section 706, 1112, 1208, or 1307 of this title means the conversion of such case to such chapter.

(c) Sections 342 and 365(d) of this title apply in a case that has been converted under section 706, 1112, 1208, or 1307 of this title, as if the conversion order were the order for relief.

(d) A claim against the estate or the debtor that arises after the order for relief but before conversion in a case that is converted under section 1112, 1208, or 1307 of this title, other than a claim specified in section 503(b) of this title, shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition.

(e) Conversion of a case under section 706, 1112, 1208, or 1307 of this title terminates the service of any trustee or examiner that is serving in the case before such conversion.

(f)(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title--

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion;

(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12 reduced to the extent that they have been paid in accordance with the chapter 13 plan; and

(C) with respect to cases converted from chapter 13--

(i) the claim of any creditor holding security as of the date of the filing of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter 13; and

(ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2568; Pub.L. 99-554, Title II, § 257(i), Oct. 27, 1986, 100 Stat. 3115; Pub.L. 103-394, Title III, § 311, Title V, § 501(d)(5), Oct. 22, 1994, 108 Stat. 4138, 4144; Pub.L. 109-8, Title III, § 309(a), Title XII, § 1207, Apr. 20, 2005, 119 Stat. 82, 194; Pub.L. 111-327, § 2(a)(11), Dec. 22, 2010, 124 Stat. 3558.)

11 U.S.C.A. § 348, 11 USCA § 348
Current through P.L. 115-140.

United States Code Annotated Title 11. Bankruptcy (Refs & Annos) Chapter 3. Case Administration (Refs & Annos) Subchapter III. Administration
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11 U.S.C.A. § 349

§ 349. Effect of dismissal

Currentness

(a) Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title--

(1) reinstates--

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2569; Pub.L. 98-353, Title III, § 303, July 10, 1984, 98 Stat. 352; Pub.L. 103-394, Title V, § 501(d)(6), Oct. 22, 1994, 108 Stat. 4144.)

11 U.S.C.A. § 349, 11 USCA § 349
Current through P.L. 115-140.

United States Code Annotated Title 11. Bankruptcy (Refs & Annos) Chapter 5. Creditors, the Debtor, and the Estate (Refs & Annos) Subchapter II. Debtor's Duties and Benefits

11 U.S.C.A. § 521

§ 521. Debtor's duties

Effective: December 19, 2014
Currentness

(a) The debtor shall--

(1) file--

(A) a list of creditors; and

(B) unless the court orders otherwise--

(i) a schedule of assets and liabilities;

(ii) a schedule of current income and current expenditures;

(iii) a statement of the debtor's financial affairs and, if section 342(b) applies, a certificate--

(I) of an attorney whose name is indicated on the petition as the attorney for the debtor, or a bankruptcy petition preparer signing the petition under section 110(b)(1), indicating that such attorney or the bankruptcy petition preparer delivered to the debtor the notice required by section 342(b); or

(II) if no attorney is so indicated, and no bankruptcy petition preparer signed the petition, of the debtor that such notice was received and read by the debtor;

(iv) copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor;

(v) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and

(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition;

(2) if an individual debtor's schedule of assets and liabilities includes debts which are secured by property of the estate--

(A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property; and

(B) within 30 days after the first date set for the meeting of creditors under section 341(a), or within such additional time as the court, for cause, within such 30-day period fixes, perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph;

except that nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title, except as provided in section 362(h);

(3) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title;

(5) appear at the hearing required under section 524(d) of this title;

(6) in a case under chapter 7 of this title in which the debtor is an individual, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in such personal property unless the debtor, not later than 45 days after the first meeting of creditors under section 341(a), either--

(A) enters into an agreement with the creditor pursuant to section 524(c) with respect to the claim secured by such property; or

(B) redeems such property from the security interest pursuant to section 722; and

(7) unless a trustee is serving in the case, continue to perform the obligations required of the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan if at the time of the commencement of the case the debtor (or any entity designated by the debtor) served as such administrator.

If the debtor fails to so act within the 45-day period referred to in paragraph (6), the stay under section 362(a) is terminated with respect to the personal property of the estate or of the debtor which is affected, such property shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by

applicable nonbankruptcy law, unless the court determines on the motion of the trustee filed before the expiration of such 45-day period, and after notice and a hearing, that such property is of consequential value or benefit to the estate, orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee.

(b) In addition to the requirements under subsection (a), a debtor who is an individual shall file with the court--

(1) a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor; and

(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the approved nonprofit budget and credit counseling agency referred to in paragraph (1).

(c) In addition to meeting the requirements under subsection (a), a debtor shall file with the court a record of any interest that a debtor has in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986), an interest in an account in a qualified ABLÉ program (as defined in section 529A(b) of such Code,¹ or under a qualified State tuition program (as defined in section 529(b)(1) of such Code).

(d) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h), with respect to property which a lessor or bailor owns and has leased, rented, or bailed to the debtor or as to which a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agreement that has the effect of placing the debtor in default under such lease or agreement by reason of the occurrence, pendency, or existence of a proceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to justify limiting such a provision in any other circumstance.

(e)(1) If the debtor in a case under chapter 7 or 13 is an individual and if a creditor files with the court at any time a request to receive a copy of the petition, schedules, and statement of financial affairs filed by the debtor, then the court shall make such petition, such schedules, and such statement available to such creditor.

(2)(A) The debtor shall provide--

(i) not later than 7 days before the date first set for the first meeting of creditors, to the trustee a copy of the Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed; and

(ii) at the same time the debtor complies with clause (i), a copy of such return (or if elected under clause (i), such transcript) to any creditor that timely requests such copy.

(B) If the debtor fails to comply with clause (i) or (ii) of subparagraph (A), the court shall dismiss the case unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor.

(C) If a creditor requests a copy of such tax return or such transcript and if the debtor fails to provide a copy of such tax return or such transcript to such creditor at the time the debtor provides such tax return or such transcript to the trustee, then the court shall dismiss the case unless the debtor demonstrates that the failure to provide a copy of such tax return or such transcript is due to circumstances beyond the control of the debtor.

(3) If a creditor in a case under chapter 13 files with the court at any time a request to receive a copy of the plan filed by the debtor, then the court shall make available to such creditor a copy of the plan--

(A) at a reasonable cost; and

(B) not later than 7 days after such request is filed.

(f) At the request of the court, the United States trustee, or any party in interest in a case under chapter 7, 11, or 13, a debtor who is an individual shall file with the court--

(1) at the same time filed with the taxing authority, a copy of each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) with respect to each tax year of the debtor ending while the case is pending under such chapter;

(2) at the same time filed with the taxing authority, each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) that had not been filed with such authority as of the date of the commencement of the case and that was subsequently filed for any tax year of the debtor ending in the 3-year period ending on the date of the commencement of the case;

(3) a copy of each amendment to any Federal income tax return or transcript filed with the court under paragraph (1) or (2); and

(4) in a case under chapter 13--

(A) on the date that is either 90 days after the end of such tax year or 1 year after the date of the commencement of the case, whichever is later, if a plan is not confirmed before such later date; and

(B) annually after the plan is confirmed and until the case is closed, not later than the date that is 45 days before the anniversary of the confirmation of the plan;

a statement, under penalty of perjury, of the income and expenditures of the debtor during the tax year of the debtor most recently concluded before such statement is filed under this paragraph, and of the monthly income of the debtor, that shows how income, expenditures, and monthly income are calculated.

(g)(I) A statement referred to in subsection (f)(4) shall disclose--

(A) the amount and sources of the income of the debtor;

(B) the identity of any person responsible with the debtor for the support of any dependent of the debtor; and

(C) the identity of any person who contributed, and the amount contributed, to the household in which the debtor resides.

(2) The tax returns, amendments, and statement of income and expenditures described in subsections (c)(2)(A) and (f) shall be available to the United States trustee (or the bankruptcy administrator, if any), the trustee, and any party in interest for inspection and copying, subject to the requirements of section 315(c) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

(h) If requested by the United States trustee or by the trustee, the debtor shall provide--

(1) a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor; or

(2) such other personal identifying information relating to the debtor that establishes the identity of the debtor.

(i)(1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.

(2) Subject to paragraph (4) and with respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 7 days after such request.

(3) Subject to paragraph (4) and upon request of the debtor made within 45 days after the date of the filing of the petition described in paragraph (1), the court may allow the debtor an additional period of not to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.

(4) Notwithstanding any other provision of this subsection, on the motion of the trustee filed before the expiration of the applicable period of time specified in paragraph (1), (2), or (3), and after notice and a hearing, the court may decline to dismiss the case if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case.

(j)(1) Notwithstanding any other provision of this title, if the debtor fails to file a tax return that becomes due after the commencement of the case or to properly obtain an extension of the due date for filing such return, the taxing authority may request that the court enter an order converting or dismissing the case.

(2) If the debtor does not file the required return or obtain the extension referred to in paragraph (1) within 90 days after a request is filed by the taxing authority under that paragraph, the court shall convert or dismiss the case, whichever is in the best interests of creditors and the estate.

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2586; Pub.L. 98-353, Title III, §§ 305, 452, July 10, 1984, 98 Stat. 352, 375; Pub.L. 99-554, Title II, § 283(h), Oct. 27, 1986, 100 Stat. 3117; Pub.L. 109-8, Title I, § 106(d), Title II, § 225(b), Title III, §§ 304(1), 305(2), 315(b), 316, Title IV, § 446(a), Title VI, § 603(c), Title VII, § 720, Apr. 20, 2005, 119 Stat. 38, 66, 78, 80, 89, 92, 118, 123, 133; Pub.L. 111-16, § 2(5), (6), May 7, 2009, 123 Stat. 1607; Pub.L. 111-327, § 2(a)(16), Dec. 22, 2010, 124 Stat. 3559; Pub.L. 113-295, Div. B, Title I, § 104(c), Dec. 19, 2014, 128 Stat. 4064.)

Footnotes

1 So in original. A closing parenthesis probably should precede the comma.

11 U.S.C.A. § 521, 11 USCA § 521

Current through P.L. 115-140.

United States Code Annotated Title 11. Bankruptcy (Refs & Annos) Chapter 5. Creditors, the Debtor, and the Estate (Refs & Annos) Subchapter III. The Estate (Refs & Annos)

11 U.S.C.A. § 541

§ 541. Property of the estate

Effective: April 1, 2016
Currentness

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is--

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date--

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

(b) Property of the estate does not include--

(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor;

(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case;

(3) any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; 42 U.S.C. 2751 et seq.), or any accreditation status or State licensure of the debtor as an educational institution;

(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that--

(A)(i) the debtor has transferred or has agreed to transfer such interest pursuant to a farmout agreement or any written agreement directly related to a farmout agreement; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 544(a)(3) of this title; or

(B)(i) the debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 542 of this title;

(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but--

(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

(B) only to the extent that such funds--

(i) are not pledged or promised to any entity in connection with any extension of credit; and

(ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed \$6,425¹;

(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of the filing of the petition in a case under this title, but--

(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were paid or contributed;

(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(6) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition in a case under this title by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed \$6,425¹;

(7) any amount--

(A) withheld by an employer from the wages of employees for payment as contributions--

(i) to--

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such title; or

(B) received by an employer from employees for payment as contributions--

(i) to--

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income, as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such title;

(8) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where--

(A) the tangible personal property is in the possession of the pledgee or transferee;

(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b);

(9) any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made--

(A) on or after the date that is 14 days prior to the date on which the petition is filed; and

(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor),

unless the money order issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition; or

(10) funds placed in an account of a qualified ABL program (as defined in section 529A(b) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but--

(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

(B) only to the extent that such funds--

(i) are not pledged or promised to any entity in connection with any extension of credit; and

(ii) are not excess contributions (as described in section 4973(h) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed \$6,225.

Paragraph (4) shall not be construed to exclude from the estate any consideration the debtor retains, receives, or is entitled to receive for transferring an interest in liquid or gaseous hydrocarbons pursuant to a farmout agreement.

(c)(1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law--

(A) that restricts or conditions transfer of such interest by the debtor; or

(B) that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.

(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

(d) Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the

debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

(e) In determining whether any of the relationships specified in paragraph (5)(A) or (6)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child has as the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.

(f) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2594; Pub.L. 98-353, Title III, §§ 363(a), 456, July 10, 1984, 98 Stat. 363, 376; Pub.L. 101-508, Title III, § 3007(a)(2), Nov. 5, 1990, 104 Stat. 1388-28; Pub.L. 102-486, Title XXX, § 3017(b), Oct. 24, 1992, 106 Stat. 3130; Pub.L. 103-394, Title II, §§ 208(b), 223, Oct. 22, 1994, 108 Stat. 4124, 4129; Pub.L. 109-8, Title II, § 225(a), Title III, § 323, Title XII, §§ 1212, 1221(c), 1230, Apr. 20, 2005, 119 Stat. 65, 97, 194, 196, 201; Pub.L. 111-327, § 2(a)(22), Dec. 22, 2010, 124 Stat. 3560; Pub.L. 113-295, Div. B, Title I, § 104(a), Dec. 19, 2014, 128 Stat. 4063.)

Footnotes

1 Dollar amount as adjusted by the Judicial Conference of the United States. See Adjustment of Dollar Amounts notes set out under this section and 11 U.S.C.A. § 104.

11 U.S.C.A. § 541, 11 USCA § 541

Current through P.L. 115-140.

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United States Code Annotated
Title 11. Bankruptcy (Refs & Annos)
Chapter 5. Creditors, the Debtor, and the Estate (Refs & Annos)
Subchapter III. The Estate (Refs & Annos)

11 U.S.C.A. § 554

§ 554. Abandonment of property of the estate

Effective: December 22, 2010
Currentness

(a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(c) Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

(d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2603; Pub.L. 98-353, Title III, § 468, July 10, 1984, 98 Stat. 380; Pub.L. 99-554, Title II, § 283(p), Oct. 27, 1986, 100 Stat. 3118; Pub.L. 111-327, § 2(a)(23), Dec. 22, 2010, 124 Stat. 3560.)

11 U.S.C.A. § 554, 11 USCA § 554
Current through P.L. 115-140.

United States Code Annotated
Title 11. Bankruptcy (Refs & Annos)
Chapter 7. Liquidation (Refs & Annos)
Subchapter I. Officers and Administration (Refs & Annos)

11 U.S.C.A. § 704

§ 704. Duties of trustee

Effective: December 22, 2010

Currentness

(a) The trustee shall--

- (1)** collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;
- (2)** be accountable for all property received;
- (3)** ensure that the debtor shall perform his intention as specified in section 521(a)(2)(B) of this title;
- (4)** investigate the financial affairs of the debtor;
- (5)** if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;
- (6)** if advisable, oppose the discharge of the debtor;
- (7)** unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;
- (8)** if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires;
- (9)** make a final report and file a final account of the administration of the estate with the court and with the United States trustee;
- (10)** if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c);

(11) if, at the time of the commencement of the case, the debtor (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator; and

(12) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that--

(A) is in the vicinity of the health care business that is closing;

(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and

(C) maintains a reasonable quality of care.

(b)(1) With respect to a debtor who is an individual in a case under this chapter--

(A) the United States trustee (or the bankruptcy administrator, if any) shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and

(B) not later than 7 days after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.

(2) The United States trustee (or bankruptcy administrator, if any) shall, not later than 30 days after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707(b) or file a statement setting forth the reasons the United States trustee (or the bankruptcy administrator, if any) does not consider such a motion to be appropriate, if the United States trustee (or the bankruptcy administrator, if any) determines that the debtor's case should be presumed to be an abuse under section 707(b) and the product of the debtor's current monthly income, multiplied by 12 is not less than--

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner; or

(B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals.

(c)(1) In a case described in subsection (a)(10) to which subsection (a)(10) applies, the trustee shall--

(A)(i) provide written notice to the holder of the claim described in subsection (a)(10) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466

of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;

(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency; and

(iii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter;

(B)(i) provide written notice to such State child support enforcement agency of such claim; and

(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

(C) at such time as the debtor is granted a discharge under section 727, provide written notice to such holder and to such State child support enforcement agency of--

(i) the granting of the discharge;

(ii) the last recent known address of the debtor;

(iii) the last recent known name and address of the debtor's employer; and

(iv) the name of each creditor that holds a claim that--

(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

(II) was reaffirmed by the debtor under section 524(c).

(2)(A) The holder of a claim described in subsection (a)(10) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2605; Pub.L. 98-353, Title III, §§ 311(a), 474, July 10, 1984, 98 Stat. 355, 381; Pub.L. 99-554, Title II, § 217, Oct. 27, 1986, 100 Stat. 3100; Pub.L. 109-8, Title I, § 102(c), Title II, § 219(a), Title IV, §

§ 704. Duties of trustee, 11 USCA § 704

446(b), Title XI, § 1105(a), Apr. 20, 2005, 119 Stat. 32, 55, 118, 192; Pub.L. 111-16, § 2(7), May 7, 2009, 123 Stat. 1607; Pub.L. 111-327, § 2(a)(24), Dec. 22, 2010, 124 Stat. 3560.)

11 U.S.C.A. § 704, 11 USCA § 704
Current through P.L. 115-140.

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United States Code Annotated Federal Rules of Bankruptcy Procedure (Refs & Annos) Part II. Officers and Administration; Notices; Meetings; Examinations; Elections; Attorneys and Accountants
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Federal Rules of Bankruptcy Procedure, Rule 2016

Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses

Currentness

(a) Application for compensation or reimbursement

An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation previously received has been shared and whether an agreement or understanding exists between the applicant and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any sharing of compensation or agreement or understanding therefor, except that details of any agreement by the applicant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other entity. Unless the case is a chapter 9 municipality case, the applicant shall transmit to the United States trustee a copy of the application.

(b) Disclosure of compensation paid or promised to attorney for debtor

Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously disclosed.

(c) Disclosure of compensation paid or promised to bankruptcy petition preparer

Before a petition is filed, every bankruptcy petition preparer for a debtor shall deliver to the debtor, the declaration under penalty of perjury required by § 110(h)(2). The declaration shall disclose any fee, and the source of any fee, received from or on behalf of the debtor within 12 months of the filing of the case and all unpaid fees charged to the debtor. The declaration shall also describe the services performed and documents prepared or caused to be prepared by the bankruptcy petition preparer. The declaration shall be filed with the petition. The petition preparer shall file a supplemental statement within 14 days after any payment or agreement not previously disclosed.

CREDIT(S)

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Mar. 27, 2003, eff. Dec. 1, 2003; Mar. 26, 2009, eff. Dec. 1, 2009.)

Fed.Rules Bankr.Proc. Rule 2016, 11 U.S.C.A., FRBP Rule 2016
Including Amendments Received Through 4-1-18

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United States Code Annotated Federal Rules of Bankruptcy Procedure (Refs & Annos) Part VII. Adversary Proceedings

Federal Rules of Bankruptcy Procedure, Rule 7001

Rule 7001. Scope of Rules of Part VII

Currentness

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

- (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002;
- (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);
- (3) a proceeding to obtain approval under § 363(h) for the sale of both the interest of the estate and of a co-owner in property;
- (4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§¹ 727(a)(8), (a)(9), or 1328(f);
- (5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;
- (6) a proceeding to determine the dischargeability of a debt;
- (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
- (8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;
- (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or
- (10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. § 1452.

CREDIT(S)

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 27, 2017, eff. Dec. 1, 2017.)

Footnotes

1 So in original. Probably should be only one section symbol.

Fed.Rules Bankr.Proc. Rule 7001, 11 U.S.C.A., FRBP Rule 7001

Including Amendments Received Through 4-1-18

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United States Code Annotated Federal Rules of Bankruptcy Procedure (Refs & Annos) Part VII. Adversary Proceedings

Federal Rules of Bankruptcy Procedure, Rule 7017

Rule 7017. Parties Plaintiff and Defendant; Capacity

Currentness

Rule 17 F.R.Civ.P. applies in adversary proceedings, except as provided in Rule 2010(b).

CREDIT(S)

(As amended Apr. 30, 1991, eff. Aug. 1, 1991.)

Fed.Rules Bankr.Proc. Rule 7017, 11 U.S.C.A., FRBP Rule 7017
Including Amendments Received Through 4-1-18

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