

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DARSHALL PATTON,)
)
 Plaintiff,) C.A. No. N20C-07-285 FWW
)
 v.)
)
 BANK OF AMERICA NATIONAL)
 ASSOCIATION CORP.,)
)
 Defendant.)

Submitted: July 7, 2021

Decided: July 9, 2021

*Upon Bank of America National Association Corp.'s Motion for Summary
Judgment*
DENIED.

ORDER

Kenneth M. Roseman, Esquire, Kenneth M. Roseman, P.A., 1300 N. King Street,
P.O. Box 1126, Wilmington, DE, 19801; Attorney for Plaintiff Darshall Patton.

Amy M. Taylor, Esquire, Heckler & Frabizzio, 800 Delaware Avenue, Suite 200,
P.O. Box 128, Wilmington, DE, 19899; Attorney for Defendant Bank of America
National Association Corp.

WHARTON, J.

This 9th day of July 2021, upon consideration of Defendant Bank of America National Association Corp.'s ("BOA") Motion for Summary Judgment,¹ and the Response of Plaintiff Darshall Patton ("Patton")²; it appears to the Court that:

1. Patton brought this action on July 29, 2020, alleging personal injuries arising from a fall on property owned by BOA.³ BOA answered on October 27, 2020 denying liability and asserting affirmative defenses.⁴

2. BOA moves for summary judgment, arguing that Patton, who has filed for bankruptcy, has failed to disclose the existence of this action to the bankruptcy court. As a result, she lacks standing to bring this action on behalf of the bankruptcy estate. Additionally, BOA argues that Patton is judicially estopped from pursuing any interest in this case for the same reason - she failed to disclose the existence of this litigation in the bankruptcy proceeding.

3. Patton responds that she was unaware of her obligation to disclose a post-petition lawsuit in her bankruptcy matter, but she has now amended her bankruptcy schedules to add this cause of action. She has also moved to retain her counsel in this case as "Special Counsel" in the bankruptcy case. Further, her

¹ D.I. 28.

² D.I. 31.

³ Complaint, D.I. 1.

⁴ Answer, D.I. 7.

bankruptcy case is still pending and will remain so for approximately 20 months, enabling her creditors to benefit from any recovery in this matter.

4. Summary judgment is appropriate if, when viewing the facts in the light most favorable to the non-moving party, “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”⁵ When considering a motion for summary judgment, the Court’s function is to examine the record to determine whether genuine issues of material fact exist “but not to decide such issues.”⁶ The moving party bears the initial burden of demonstrating that the undisputed facts support its claims or defenses.⁷ If the moving party meets its burden, then the burden shifts to the non-moving party to demonstrate that there are material issues of fact to be resolved by the ultimate fact-finder.⁸

5. Here, both of BOA’s arguments in support of its motion for summary judgment are premised on Patton’s failure to disclose this action to the bankruptcy court. That failure appears to have been remedied.⁹ Disclosure enables the

⁵ Super. Ct. Civ. R. 56(c); *Buckley v. State Farm Mut. Auto. Ins. Co.*, 139 A.3d 845, 847 (Del. Super. Ct. 2015), aff’d, 140 A.3d 431 (Del. 2016) (quoting *Moore v. Sizemore*, 405 A.2d 679, 680 (Del.1979).

⁶ *Merrill v. Crothall-Am., Inc.*, 606 A.2d 96, 99-100 (Del. 1992).

⁷ *Sizemore*, 405 A.2d at 681.

⁸ *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995).

⁹ Or, at a minimum, there is a genuine issue as to whether it has been remedied.

bankruptcy estate to benefit from this litigation, this conferring standing on Patton to bring the action. Further, judicial estoppel is not appropriate where the bankruptcy court has not been influenced by the belated disclosure in any meaningful way, the failure to disclose appears unintentional, and there does not appear to be any harm to this Court or interested party in either this case or the bankruptcy case.

THEREFORE, Defendant Bank of America National Association Corp.'s Motion for Summary Judgment is **DENIED**.

IT IS SO ORDERED.

/s/ Ferris W. Wharton
Ferris W. Wharton, J.