

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

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4 August Term, 2006

5
6 (Argued: October 23, 2006 Decided: August 14, 2008)

7
8 Docket Nos. 05-5988-cv(L), 05-6603-cv(xap)

9 -----X

10 PETER CHARTSCHLAA and ANGELA SAWICKI KING as personal
11 representatives of ALEX CHARTS, deceased, doing business as Alex
12 Charts Agency Inc. and Charts Insurance Associates, Inc.,¹

13
14
15 Plaintiffs-Appellees-Cross-Appellants,

16 - v. -

17
18 NATIONWIDE MUTUAL INSURANCE COMPANY, NATIONWIDE MUTUAL FIRE
19 INSURANCE COMPANY, NATIONWIDE LIFE INSURANCE CO., NATIONWIDE
20 PROPERTY AND CASUALTY COMPANY, NATIONWIDE VARIABLE LIFE INSURANCE
21 COMPANY and COLONIAL INSURANCE COMPANY OF CALIFORNIA,

22
23
24 Defendants-Appellants-Cross-Appellees,

25
26
27 HELENA CHARTS and CHRISTOPHER L. GARCIA,

28
29
30 Plaintiffs.

31
32 -----X
33

¹ Alex Charts died during the pendency of these proceedings, and by order of this Court filed June 26, 2008, Peter Chartschlaa and Angela Sawicki King were substituted as parties pursuant to Federal Rule of Appellate Procedure 43(a)(1).

1 Before: WINTER, McLAUGHLIN, and STRAUB, Circuit Judges.

2 Appeal from a judgment entered by the United States District
3 Court for the District of Connecticut (Droney, J.) upon a jury
4 verdict in favor of plaintiffs. REVERSED.

5 RAYMOND A. GARCIA (Jane I. Milas,
6 Nicole Liguori Micklich, on the
7 brief), Garcia & Milas, P.C., New
8 Haven, Connecticut, for Plaintiffs-
9 Appellees-Cross-Appellants.

10 CHRISTOPHER LANDAU, Kirkland & Ellis
11 LLP, Washington, D.C. (Michael
12 Shumsky, Kirkland & Ellis LLP,
13 Washington, D.C., Deborah S. Freeman,
14 Ann M. Siczewicz, Bingham McCutchen
15 LLP, Hartford, Connecticut, on the
16 brief), for Defendants-Appellants-
17 Cross-Appellees.

18 -----X

19
20
21 Per Curiam:

22
23 Defendants-Appellants-Cross-Appellees Nationwide Mutual
24 Insurance Company, Nationwide Mutual Fire Insurance Company,
25 Nationwide Life Insurance Company, Nationwide Property and Casualty
26 Company, Nationwide Variable Life Insurance Company, and Colonial
27 Insurance Company of California (collectively, "Nationwide"),
28 appeal from a judgment entered by the United States District Court
29 for the District of Connecticut (Droney, J.) upon a jury verdict in
30 favor of Plaintiffs-Appellees-Cross-Appellants Alex Charts and
31 Charts Insurance Associates, Inc. ("CIAI"). Charts and CIAI
32 cross-appeal the district court's denial of their motion for
33 prejudgment interest and grant of Nationwide's motion for judgment

1 as a matter of law on one of their claims.

2 Charts and CIAI, former sellers of Nationwide insurance
3 policies, sued on several claims arising out of Nationwide's
4 termination of their relationship. For the reasons that follow, we
5 hold that those claims belong to the bankruptcy estate of Alex
6 Charts and not to either of the plaintiffs. Accordingly, we
7 reverse the judgment of the district court and direct that judgment
8 be entered in favor of Nationwide.

9 **BACKGROUND**

10 We assume familiarity with the district court's and our prior
11 decisions in this case. See Charts v. Nationwide Mut. Ins. Co., 16
12 F. App'x. 44 (2d Cir. 2001) ("Charts I";) Charts v. Nationwide Mut.
13 Ins. Co., 300 B.R. 552 (D. Conn. 2003) ("Charts II"); Charts v.
14 Nationwide Mut. Ins. Co., 397 F. Supp. 2d 357 (D. Conn. 2005)
15 ("Charts III"). We recount here only those facts necessary for
16 resolution of this appeal.

17 Since at least 1979, Alex Charts has been in the business of
18 selling Nationwide insurance. He started as an individual agent
19 with an individual agent's agreement. In 1986, Charts entered into
20 a new agency agreement (the "Corporate Agency Agreement") with
21 Nationwide through a corporation called Alex Charts Agency, Inc.
22 (the "Old Agency"), of which Charts was the sole shareholder. In
23 October 1992, Charts formed CIAI as a new corporate entity for his
24 insurance business. That month, the officers and directors of
25 CIAI, including Charts, held an organizational meeting. Charts

1 prepared the incorporation papers for CIAI, but delayed filing
2 them.

3 In December 1992, Charts and his wife filed a Chapter 7
4 bankruptcy petition in the United States Bankruptcy Court for the
5 District of Connecticut. As required in a Chapter 7 bankruptcy
6 proceeding, Charts filed various schedules of assets and
7 liabilities. See 11 U.S.C. § 521. Charts listed the Old Agency as
8 the name of his insurance business. He did not list his interest
9 in CIAI as an asset of his estate.

10 In January 1993, Charts formally filed the certificate of
11 organization for CIAI with the Connecticut Secretary of State.

12 In May 1993, while still in bankruptcy proceedings, Charts
13 executed a new agency agreement with Nationwide on behalf of CIAI
14 (the "CIAI Agreement"). The CIAI Agreement, which had an effective
15 date retroactive to January 1, 1980, allowed CIAI to market and
16 service Nationwide insurance contracts as Charts had done in the
17 past individually and through the Old Agency.

18 In 1995, Nationwide launched an internal investigation into
19 potential misconduct by its Connecticut agents. During that
20 investigation, several agents alleged that Charts engaged in
21 prohibited business practices.

22 In January 1996, Nationwide terminated the CIAI Agreement.

23 In February 1996, Charts obtained an order of discharge in his
24 bankruptcy proceedings, and the bankruptcy court closed the case.

25

1 In August 1997, Charts and CIAI sued Nationwide in the United
2 States District Court for the District of Connecticut (Droney, J.).
3 The plaintiffs alleged that Nationwide terminated the CIAI
4 Agreement because of Charts's age and in retaliation for Charts's
5 own reporting of misconduct by Nationwide employees to Nationwide
6 management. The plaintiffs contended that these actions violated
7 the covenant of good faith and fair dealing implied in the CIAI
8 Agreement as well as Connecticut statutory law. Nationwide moved
9 for summary judgment on the ground that the CIAI Agreement and any
10 cause of action based on that contract were part of the bankruptcy
11 estate.

12 In August 2000, a Magistrate Judge (Garfinkel, M.J.)
13 recommended that the district court grant Nationwide's motion,
14 finding that Charts's claims belonged to the bankruptcy estate and
15 that his failure to disclose the existence of CIAI in the
16 bankruptcy case was "clearly not inadvertent." In September 2000,
17 the district court adopted this recommendation. Charts appealed
18 that judgment to this Court, and we vacated the judgment, without
19 reaching the merits, on the ground that the estate should have been
20 joined as a party to the suit. Charts I, 16 F. App'x at 44.

21 On remand, the district court reopened the bankruptcy case for
22 the purpose of appointing a trustee to represent the estate's
23 interests in this litigation. Nationwide thereafter renewed its
24 motion for summary judgment, iterating its position that the claims
25 belonged to the bankruptcy estate. The trustee then entered an

1 appearance and expressed his intent to abandon the claims against
2 Nationwide under 11 U.S.C. § 554(a) by filing a notice of proposed
3 abandonment. Nationwide objected to the proposed abandonment.

4 At a December 2002 hearing, the trustee informed the district
5 court that he had entered negotiations to sell the claims to
6 Nationwide, and soon planned to file a proposed notice of sale of
7 the claims. On that basis, the trustee requested that the court
8 take no action with respect to the proposed abandonment.

9 In September 2003, the district court denied Nationwide's
10 renewed motion for summary judgment, reversing its earlier
11 position. This time, the district court held that Charts owned the
12 disputed claims after all, because the claims arose after the
13 bankruptcy filing and such "post-petition" claims generally do not
14 belong to the estate. Charts II, 300 B.R. at 556-58. In its
15 ruling, the district court noted its understanding that the trustee
16 had sold, rather than abandoned, whatever interest it held in the
17 claims. Id. at 556 n.5. Thus, the court observed, "if the Court
18 were to hold that these claims were property of the estate, . . .
19 Charts would not have standing to assert them because any claim
20 owned by the estate is now held by Nationwide." Id. In fact,
21 however, the proposed sale of the claims to Nationwide was never
22 finalized.

23 The case proceeded to a jury trial. At trial, Charts
24 testified that CIAI was simply the new name and corporate identity
25 of the very same insurance business he had previously operated

1 through the Old Agency:

2 Q: So that business from Alex Charts Agency,
3 Inc., the Nationwide policies for which that
4 company was receiving commissions, that was
5 all rolled over to the new company?
6

7 A: Everything stayed the same. . . .
8
9 . . .

10
11 Q: When you say everything stayed the same, am I
12 characterizing this fairly by essentially
13 saying—and tell me if I'm wrong—that all of
14 the business that you had been doing as Alex
15 Charts Agency, Inc. for which you were
16 receiving ongoing commissions, that . . . was
17 simply moved over to the new company, Charts
18 Insurance Associates, Inc.?
19

20 A: Yes.

21
22 Q. Did you have employees of Alex Charts Agency,
23 Inc.?
24

25 A. Yes.

26
27 Q. Did all of those individuals who were
28 employees of Alex Charts Agency, Inc. at the
29 time you wound down that business, that
30 corporation, become employees of Charts
31 Insurance Associates, Inc.?
32

33 A. Yes.

34
35 The jury returned a verdict for Charts on all counts,
36 awarding \$2.3 million in damages.

37 Nationwide filed a post-verdict motion for judgment as a
38 matter of law. The plaintiffs moved for prejudgment interest and
39 for attorneys' fees. The district court denied Nationwide's
40 motion except as to the plaintiffs' claim for breach of the
41 implied covenant of good faith and fair dealing; denied the

1 plaintiffs' motion for prejudgment interest; and awarded the
2 plaintiffs \$750,000 in attorneys' fees. Charts III, 397 F. Supp.
3 2d at 370, 372, 374, 385-86.

4 On appeal, Nationwide continues to press its argument that
5 the claims belong to Charts's bankruptcy estate, and not to the
6 plaintiffs. We agree. Because ownership of the claims is a
7 threshold issue, we need not reach the numerous other arguments
8 raised in the appeal and cross-appeal.

9 **DISCUSSION**

10 This Court reviews de novo a district court's resolution of
11 a motion for judgment as a matter of law under Federal Rule of
12 Civil Procedure 50(b), applying the same standard that the
13 district court was required to apply. Diesel v. Town of
14 Lewisboro, 232 F.3d 92, 103 (2d Cir. 2000). Thus, we "consider
15 the evidence in the light most favorable to the non-moving party
16 and give that party the benefit of all reasonable inferences from
17 the evidence that the jury might have drawn in that party's
18 favor." Id. Whether a cause of action belongs to a bankruptcy
19 estate is a question of law, which we review de novo. See In re
20 Swift, 129 F.3d 792, 795 (5th Cir. 1997).

21 Our analysis begins with 11 U.S.C. § 541(a)(1), which
22 defines the bankruptcy estate as including "all legal or
23 equitable interests of the debtor in property as of the
24 commencement of the case." "It would be hard to imagine language
25 that would be more encompassing" than this broad definition. 4

1 Collier on Bankruptcy ¶ 541.01 (15th ed. 2001). “[E]very
2 conceivable interest of the debtor, future, nonpossessory,
3 contingent, speculative, and derivative, is within the reach of §
4 541.” In re Yonikus, 996 F.2d 866, 869 (7th Cir. 1993).
5 Contractual rights clearly fall within the reach of this section,
6 see, e.g., Cohen v. Drexel Burnham Lambert Group, Inc. (In re
7 Drexel Burnham Lambert Group, Inc.), 138 B.R. 687, 701 (Bankr.
8 S.D.N.Y. 1992), as do causes of action owned by the debtor or
9 arising from property of the estate, see Seward v. Devine, 888
10 F.2d 957, 963 (2d Cir. 1989)

11 Given the wide scope of § 541, the debtor’s obligation to
12 disclose all his interests at the commencement of a case is
13 equally broad. See 11 U.S.C. § 521(a)(1)(B)(i), (iii) (requiring
14 debtor to “file . . . a schedule of assets and liabilities . . .
15 and a statement of the debtor’s financial affairs”). Because
16 full disclosure by debtors is essential to the proper functioning
17 of the bankruptcy system, the Bankruptcy Code severely penalizes
18 debtors who fail to disclose assets: While properly scheduled
19 estate property that has not been administered by the trustee
20 normally returns to the debtor when the bankruptcy court closes
21 the case, undisclosed assets automatically remain property of the
22 estate after the case is closed. See 11 U.S.C. § 554(c), (d);
23 Collier, supra, ¶ 554.03. “A debtor may not conceal assets and
24 then, upon termination of the bankruptcy case, utilize the assets
25 for [his] own benefit.” Kunica v. St. Jean Fin., Inc., 233 B.R.

1 46, 53 (S.D.N.Y. 1999).

2 Because assets within the estate are those that exist "as of
3 the commencement of the case," 11 U.S.C. § 541(a), property
4 acquired by the debtor after the filing of a bankruptcy petition
5 generally does not become part of the estate. Benjamin Weintraub
6 & Alan N. Resnick, Bankruptcy Law Manual § 5:6 (5th ed. 2008).
7 However, "[a]fter-acquired" property will vest in the estate if
8 it is derived from property that was part of the estate as of the
9 commencement of the bankruptcy. See 11 U.S.C. § 541(a)(6)
10 (making "[p]roceeds, product[s], offspring, rents or profits of
11 or from property of estate" part of bankruptcy estate). Post-
12 petition property will become property of the estate only if it
13 is "sufficiently rooted in the pre-bankruptcy past." Segal v.
14 Rochelle, 382 U.S. 375, 380 (1966)) (interpreting Bankruptcy Act
15 of 1898).

16 The plaintiffs argue that Charts had no duty to disclose the
17 existence of CIAI because it was not formally incorporated until
18 after the date of the bankruptcy petition, and therefore is not
19 part of the bankruptcy estate. We disagree. Charts readily
20 admitted in deposition testimony that CIAI was formed in October
21 1992, prior to filing his bankruptcy petition. Charts also
22 conceded that CIAI was incorporated simply to change the name of
23 his preexisting insurance business, and that this change occurred
24 in October 1992, when CIAI was organized. The Bankruptcy Code is
25 premised on full and complete disclosure of the debtor's

1 finances. A debtor who "elects to avail himself of the benefits
2 of the federal bankruptcy laws by the filing of a petition . . .
3 can no longer expect to have any financial secrets." In re
4 Trout, 108 B.R. 235, 238 (Bankr. D.N.D. 1989). The existence of
5 CIAI—the formal incorporation of which Charts delayed until soon
6 after filing for bankruptcy and which was intended as simply a
7 renamed successor to Charts's Old Agency—should have been
8 disclosed to the bankruptcy trustee.² And because CIAI's
9 existence was not disclosed, it remains part of the bankruptcy
10 estate. See Kunica, 233 B.R. at 53.

11 Further, the CIAI Agreement is also an asset of the
12 bankruptcy estate, even though it was not signed until May 1993.
13 During his deposition, Charts conceded that Nationwide issued a
14 new contract to CIAI at his request because of the change of his
15 business's name. Even more telling, the CIAI Agreement had a
16 retroactive effective date of January 1, 1980—the approximate
17 date that Charts began doing business with Nationwide. The
18 parties thus perceived the CIAI Agreement as merely a

² When he filed for bankruptcy, Charts listed the Old Agency as an exemption under 11 U.S.C. § 522(d)(5), valuing the business at a mere \$1. That provision allows debtors to exempt from the bankruptcy estate up to \$11,200 in estate property. 11 U.S.C. § 522(d)(5). The plaintiffs have not argued that CIAI was subject to this exemption or that the CIAI Agreement is not a product of the bankruptcy estate by virtue of the exemption. In a dispute that has entered its second decade, we will not take up this argument for them. See Norton v. Sam's Club, 145 F.3d 114, 117 (2d Cir. 1998) (issues not sufficiently argued considered waived).

1 continuation of their longstanding business relationship. See
2 Weintraub & Resnick, supra, § 5:6 n.1 (“It is important to
3 distinguish between property that is acquired after the case is
4 commenced and property that merely changes in form.”).

5 Accordingly, the CIAI Agreement is deeply rooted in the pre-
6 bankruptcy past, and should be considered part of the bankruptcy
7 estate.

8 Because the claims asserted by the plaintiffs arose from
9 CIAI and the CIAI Agreement, they are also property of the
10 bankruptcy estate, and those claims may not be brought by the
11 plaintiffs.

12 Finally, we reject the plaintiffs’ argument that the rights
13 in Charts’s insurance business were abandoned to Charts after the
14 trustee filed and served on creditors a notice of proposed
15 abandonment of the claims. Abandonment is not a process to be
16 taken lightly. Once an asset is abandoned, it is removed from
17 the bankruptcy estate, and this removal is irrevocable except in
18 very limited circumstances. See Catalano v. Comm’r, 279 F.3d
19 682, 686 (9th Cir. 2002). In light of the impact of abandonment
20 on the rights of creditors, a trustee’s intent to abandon an
21 asset must be clear and unequivocal. See In re Sire Plan, Inc.,
22 100 B.R. 690, 693 (Bankr. S.D.N.Y. 1989).

23 Here, the trustee informed the district court that it
24 intended to sell the claims to Nationwide. This representation

1 was inconsistent with the trustee's previously evinced intent to
2 abandon the property to Charts. Indeed, the trustee specifically
3 requested that the court take no action on the abandonment issue
4 while the negotiations were pending. Although the sale was never
5 consummated, there is no indication that the trustee ever renewed
6 its request to abandon the claims. Under these circumstances,
7 the trustee's intent to abandon the claims was ambiguous. Absent
8 an unambiguous intent to abandon estate property, the proposed
9 abandonment is not effective.

10 **CONCLUSION**

11 For the foregoing reasons, the judgment of the district
12 court is REVERSED. We direct the district court to enter
13 judgment for Nationwide.
14