

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

In re:

BRANTLEY JUSTIN GARRETT and
ERIN EILEEN GARRETT,

Debtors.

JAMES DAILY AND KATHARINE
DAILY,

Plaintiffs.

v.

BRANTLEY JUSTIN GARRETT,

Defendant.

BRANTLEY JUSTIN GARRETT,

Cross-Complainant,

v.

BEACH & O'NEILL INSURANCE
ASSOCIATES, INC.,

Cross-Defendant.

No. 2:14-cv-01639-MCE (BK)

ORDER

Adv. Pro. No. 12—02719-B
Case No. 12-36599-B-7 (Chapter 7)

1 Pending before the Court is a motion for summary judgment filed by Cross
2 Defendant Beach & O'Neill Insurance Associates, Inc. ("Beach") with respect to a cross-
3 claim (and non-core proceeding) filed against Beach by Brantley Justin Garrett
4 ("Garrett"). Garrett filed that cross-claim against Beach, his former insurance broker, on
5 grounds that Beach failed to obtain liability insurance adequate to protect Garrett, a
6 general contractor, against claims brought by James Daily and Katharine Daily ("the
7 Dailys"). Those claims resulted from Garrett's construction of the Dailys' new single
8 family home located at 10233 Sunrise Vista, Auburn, California in 2008 and 2009.
9 According to the Dailys, Garrett falsely and fraudulently represented to them that he
10 possessed the experience, skill, available personnel, liability insurance, and workers
11 compensation insurance necessary to construct their home.

12 On September 13, 2012, Garrett and his wife, Erin Eileen Garrett, instituted
13 bankruptcy proceedings by jointly filing a voluntary petition under Chapter 7. On
14 December 18, 2012, the Dailys timely commenced an adversary proceeding against
15 Garrett seeking a determination that Garrett owed a non-dischargeable debt to them in a
16 sum not less than \$190,000. Garrett subsequently filed the instant cross-claim against
17 Beach on January 24, 2013. That cross-claim alleged causes of action for negligence,
18 breach of fiduciary duty, and equitable indemnity.

19 Two separate motions to dismiss brought by Beach resulted in the elimination of
20 the negligence and equitable indemnity claims, leaving only a single cause of action for
21 breach of fiduciary duty remaining. Because the parent bankruptcy case has been fully
22 administered, with the Chapter 7 debtor receiving a discharge on January 7, 2013, the
23 case is now open solely because of the Dailys' pending adversary proceeding and
24 Garrett's related cross-claim against Beach. As indicated above, Beach has filed a
25 motion for summary judgment. Adv. Dkt. 11. On July 11, 2014, the Bankruptcy Court
26 filed a Report and Recommendation (ECF No. 1, "Recommendation") in accordance
27 with 28 U.S.C. § 157(c)(1) and Federal Rule of Bankruptcy Procedure 7052.

28 ///

1 The Recommendation recounts the procedural history and factual background of
2 this matter, and ultimately concludes that because the gravamen of Garrett's breach of
3 fiduciary duty claim against Beach actually sounds in professional negligence, the two-
4 year statute of limitation for professional negligence applies and bars the claim as
5 untimely pursuant to California Code of Civil Procedure section 339.

6 After conducting a de novo review, which included both Beach's objections and
7 Garrett's objections (ECF Nos. 2, 3), the Court finds that the Recommendation is based
8 on an accurate summary of the case and sound analysis. Accordingly, IT IS HEREBY
9 ORDERED that:

- 10 1. The Bankruptcy Court's Recommendation (ECF No. 1) is ADOPTED IN FULL;
- 11 2. Cross-Defendant Beach's Motion for Summary Judgment against Defendant
12 and Cross-Complainant Garrett is GRANTED.

13 IT IS SO ORDERED.

14 Dated: October 5, 2015

15
16
17 
18 MORRISON C. ENGLAND, JR., CHIEF JUDGE
19 UNITED STATES DISTRICT COURT
20
21
22
23
24
25
26
27
28