

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**ADVOCATE FINANCIAL, LLC**

**CIVIL ACTION**

**VERSUS**

**NO: 14-946**

**H. EDWARD SHERMAN AND H.  
EDWARD SHERMAN, APLC**

**SECTION: "S" (4)**

**ORDER AND REASONS**

**IT IS HEREBY ORDERED** that Defendants' Motion to Vacate December 11, 2014 Judgment Pursuant to Federal Rule of Civil Procedure 60(b)(6) (Doc. #43) is **DENIED**.


**IT IS FURTHER ORDERED** that Defendants' Motion to Re-Open Case (Doc. #44) is **DENIED**.

Defendants seek to reopen this case and assert counterclaims against Advocate Financial, LLC. On September 1, 2015, H. Edward Sherman, APLC and H. Edward Sherman each filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Eastern District of Louisiana. On December 22, 2015, the bankruptcy court converted both cases into Chapter 7 bankruptcy proceedings. Trustees have been appointed in both cases.

An estate comprised of, among other things, "all legal or equitable interest of the debtor in property as of the commencement of the case" is created when a bankruptcy case is filed under 11 U.S.C. §§ 301, 302 or 303. 11 U.S.C. § 541(a)(1). "The legislative history of section 541(a)(1) indicates that the definition of property of the estate is to be interpreted broadly, and includes causes of action existing at the time of the commencement of the bankruptcy action." Drew v. Anderson, 988 F.2d 1212 (5th Cir. 1993) (citations omitted). In a Chapter 7 case, the trustee, not the debtor, represents the estate, and "the trustee succeeds to all causes of action held by the debtor at the time the bankruptcy petition is filed." Id. (citations omitted). Thus, "once a trustee is appointed in a Chapter 7 case, only the trustee has the capacity to represent the estate and prosecute claims

formerly belonging to the debtor." Id. Defendants bankruptcy cases have been converted to Chapter 7 cases, and trustees have been appointed. Therefore, defendants lack capacity to pursue claims in this litigation, and the motions to vacate and reopen are DENIED.

New Orleans, Louisiana, this 27<sup>th</sup> day of January, 2016.

  
**MARY ANN VIAL LEMMON**  
**UNITED STATES DISTRICT JUDGE**