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IN THE
COURT OF APPEALS OF INDIANA

Reva Capalla and Mark Capalla,
Appellants-Plaintiffs,

v.

Wilbert Best and Best Vineyards, LLC,
Appellees-Defendants.

October 31, 2022

Court of Appeals Case No. 22A-CT-657

Appeal from the Harrison Circuit Court

The Honorable John T. Evans, Judge

Trial Court Cause No. 31C01-2110-CT-34

Bradford, Chief Judge.

Case Summary[1]

[1] Reva Capalla and Mark Capalla (the "Capallas") owned businesses relating to the sale and distribution of wine and alcohol. In 2017, they entered into agreements with Wilbert Best and Best Vineyards, LLC ("Best Vineyards") (collectively, the "Best Parties") to be the exclusive distributors of Best Vineyards' products in certain states. Issues arose shortly after the parties entered into the agreements. Since that time, the parties have been arguing (in various tribunals) about funds allegedly owed to the Best Parties and each side's actions as they relate to the parties' agreements and the funds. On October 5, 2021, the Capallas filed suit against the Best Parties. The trial court subsequently granted judgment on the pleadings in favor of the Best Parties. The Capallas appeal from the trial court's order. We affirm.

Facts and Procedural History

I. The Parties

[2] The Capallas owned businesses relating to the sale and distribution of alcohol, with Reva claiming ownership of Shepherd & Shepherd, Inc. ("Shepherd Distributing"), a wine and spirits distribution business, and Mark claiming ownership of West Central Beverage Co., LLC ("West Central Beverage"), a

[1] We held oral argument in this case on October 5, 2022, in our courtroom in Indianapolis. We commend counsel for the high quality of their arguments.

wine and spirits brokerage company. Wilbert is a managing member of Best Vineyards, which is involved in winemaking and spirit distillation.

II. The Distribution Agreements, Issues with Distribution, and the Closure of Shepherd Distributing

[3] In November of 2017, the parties entered into distribution agreements (the "Distribution Agreements") wherein the Best Parties contracted with West Central Beverage and Shepherd Distributing (collectively, the "Distributors") to sell and distribute the wine and spirits products of Best Vineyards (the "Products"). At some point, a dispute arose regarding whether the Distributors were adequately working on the Best Parties' behalf to distribute the Products. In April or May of 2018, allegedly due to health issues suffered by Reva, the Capallas decided to close Shepherd Distributing. At the time, Shepherd Distributing had a significant amount of the Products that had yet to be sold.

[4] Mark, acting on behalf of the Distributors, allegedly attempted to sell the remaining Products to a company in California. He claims that Wilbert refused to allow him to complete the sale. However, with regard to the attempted sale of the Products in California, the Best Parties assert that the Distributors wrongly attempted to distribute the Products in California, which was not covered by the Distribution Agreements. At some point, the Distributors asked the Best Parties "to take the Product[s] back," Appellants' App. Vol. II p. 3[2],

[2] In citing to Appellants' Appendix, unless otherwise noted, we cite to the version dated May 25, 2022.

but, allegedly believing that they were forbidden by law to accept the return of product from a distributor, the Best Parties refused.

III. Best Vineyard's Civil Litigation

[5] On July 22, 2019, Best Vineyards filed a civil lawsuit against the Capallas and the Distributors in the Floyd Superior Court under cause number 22D03-1907-CC-1072, alleging breach of contract, theft, and deception (the "Best Vineyards Litigation"). The Capallas subsequently filed a motion to stay and notice of bankruptcy, indicating that they had filed for bankruptcy on October 29, 2019. The Floyd Superior Court granted the motion to stay.

IV. Related Bankruptcy Proceedings

A. Shepherd Distributing

[6] On October 26, 2018, Shepherd Distributing filed a Chapter 7 petition for bankruptcy under cause number 18-08191-JMC-7 (the "Shepherd Distributing Bankruptcy"). The bankruptcy petition listed Best Vineyards as an unsecured creditor with a claim for nearly $50,000.00. It also listed thirty-eight other unsecured creditors, many of which appear to be wine or spirits makers. The petition did not list any of the Products as inventory assets. The Capallas claim that the Products were destroyed when the bankruptcy trustee took control of Shepherd Distributing's warehouse after a buyer could not be found for the Products.

[7] Documents relating to the Shepherd Distributing Bankruptcy indicated that "Discharge [was] Not Applicable" to Shepherd Distributing. Appellants' App. Vol. II p. 70. On December 14, 2018, the Bankruptcy Trustee filed a "report of no distribution," in which the Trustee indicated that there was "no property available for distribution from the estate over and above that exempted by law." Appellants' App. Vol. II p. 72. The final decree was entered on January 30, 2019.

B. Reva and Mark

[8] On October 29, 2019, Reva and Mark jointly filed a Chapter 7 petition for bankruptcy, which was subsequently converted to Chapter 13 on November 26, 2019,[3] under cause number 19-08050-JMC-13 (the "Joint Capalla Bankruptcy"). Best Vineyards was listed as an unsecured creditor with a claim for $47,905.92. At least sixty-one other unsecured creditors were listed in the Capallas' petition. After the Capallas filed a Chapter 13 bankruptcy plan, on or about January 6, 2020, Best Vineyards objected to the confirmation of the plan, arguing that the Capallas, jointly, exceeded the Chapter 13 debt limit. As a result of Best Vineyard's objection, the Joint Capalla Bankruptcy was split in February of 2020, with Reva continuing under Chapter 13 of the bankruptcy code (the "Reva Bankruptcy") and Mark proceeding under Chapter 7 of the

[3] The Capallas moved to convert their Chapter 7 petition to a Chapter 13 petition on November 13, 2019. This motion was originally granted on November 22, 2019. A corrected order granting the motion was issued on November 26, 2019.

bankruptcy code (the "Mark Bankruptcy"). On May 12, 2020, an order of discharge was entered in the Mark Bankruptcy. The Reva Bankruptcy remains pending.

V. The Pending Criminal Cases

[9] On November 21, 2019, Wilbert spoke to Officer Thomas E. Perryman of the Harrison County Sheriff's Office. Following his conversation with Wilbert, Officer Perryman conducted an investigation into the facts and circumstances of the Best Parties' dealings with the Capallas and the Distributors. At the conclusion of his investigation, Officer Perryman determined that probable cause existed to indicate that the Capallas had committed criminal acts. On March 3, 2020, the Capallas were each charged with one count of Level 5 felony theft. The criminal cases against the Capallas remain pending, with Reva's trial scheduled to begin on November 15, 2022, and Mark's trial scheduled to begin on December 12, 2022. Wilbert is expected to be called as a witness at each trial.

VI. The Underlying Lawsuit

[10] On October 5, 2021, the Capallas initiated the underlying lawsuit, alleging abuse of process, malicious prosecution, defamation per se, fraud, deception, and intentional infliction of emotional distress.[4] On December 21, 2021, the

[4] The Best Parties argue that the underlying lawsuit is an attempt by the Capallas to intimidate Wilbert so that he will not testify against them in their upcoming criminal trials. The Best Parties point to other alleged instances of intimidation, most notably a statement made by the Capallas' attorney that the criminal charges

Best Parties filed a motion for judgment on the pleadings. The Capallas objected to the motion on February 17, 2022. On February 22, 2022, the trial court granted the Best Parties' motion and entered judgment in favor of the Best Parties.

Discussion and Decision

[11] The Capallas contend on appeal that the trial court erred in granting the Best Parties' motion for judgment on the pleadings.

I. Standard of Review

[12] A motion for judgment on the pleadings pursuant to Ind. Trial Rule 12(C) attacks the legal sufficiency of the pleadings. A judgment on the pleadings is proper only when there are no genuine issues of material fact and when the facts shown by the pleadings clearly establish that the non-moving party cannot in any way succeed under the facts and allegations therein.

> In reviewing a trial court's decision on a motion for judgment on the pleadings pursuant to T.R. 12(C), this court conducts a de novo review. We look only to the pleadings in making this assessment.
>
> We will accept as true the well-pleaded material facts alleged, and we will not affirm if there are any genuine issues of material fact. The moving party is deemed to have admitted well-pleaded

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were based solely on fraudulent and deceptive claims made by Wilbert and suggests that the Best Parties' attorney should "encourage your client to set the record straight with the prosecutor." Appellees' App. Vol. II p. 26. The Best Parties argue that this statement could be read as an attempt to pressure Wilbert to change his testimony.

> facts in favor of the nonmovant, and this court will draw all reasonable inferences in favor of the non-movant. We will affirm the trial court's grant of a T.R. 12(C) motion for judgment when it is clear from the face of the pleadings that one of the parties cannot in any way succeed under the operative facts and allegations made therein.

Eskew v. Cornett, 744 N.E.2d 954, 956–57 (Ind. Ct. App. 2001) (internal citations omitted).

[13] "The pleadings consist of a complaint and an answer, a reply to any counterclaim, an answer to a cross-claim, a third-party complaint, and an answer to a third-party complaint." *Consol. Ins. Co. v. Nat'l Water Servs., LLC*, 994 N.E.2d 1192, 1196 (Ind. Ct. App. 2013) (internal quotation omitted). "Pleadings also consist of any written instruments attached to a pleading, pursuant to Ind. Trial Rule 9.2." *Id.*; *see also Eskew*, 744 N.E.2d at 957 ("Since the trial rules require the pleader to attach to its complaint the written document upon which its action is premised, *see* T.R. 9.2(A), we may look to both the complaint and the attached contract for purposes of determining the appropriateness of the court's ruling on the motion for judgment on the pleadings."); Ind. Trial Rule 10(C) ("A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.").

II. Analysis

[14] At the outset, we note that the Capallas failed to timely disclose their interest in the underlying civil claims in their bankruptcy proceedings. "Both federal courts and Indiana courts have uniformly held that a debtor who fails to

disclose a potential cause of action in a bankruptcy proceeding is precluded from pursuing such undisclosed claims in subsequent litigation." *Schlosser v. Bank of W. Ind.*, 589 N.E.2d 1176, 1179 (Ind. Ct. App. 1992). "The courts have barred subsequent litigation under the doctrines of standing, equitable estoppel, judicial estoppel, and res judicata." *Id.* In light of the facts and circumstances surrounding the instant matter, we conclude that the Capallas' claims are barred under the doctrine of judicial estoppel and because the Capallas lack standing to bring the claims.

A. Judicial Estoppel

[15] "Judicial estoppel is 'a common law doctrine by which a party who has assumed one position in his pleadings may be estopped from assuming an inconsistent position.'" *In re Coastal Plains, Inc.*, 179 F.3d 197, 205 (5th Cir. 1999) (quoting *Brandon v. Interfirst Corp.*, 858 F.2d 266, 268 (5th Cir. 1988)). "The purpose of the doctrine is 'to protect the integrity of the judicial process,' by 'prevent[ing] parties from playing fast and loose with the courts to suit the exigencies of self[-]interest.'" *Id.* (quoting *Brandon*, 858 F.2d at 268); *see also Bone v. Taco Bell of Am., LLC*, 956 F. Supp. 2d 872, 880 (W.D. Tenn. 2013) ("The doctrine of judicial estoppel is utilized in order to preserve the integrity of the courts by preventing a party from abusing the judicial process through cynical gamesmanship.").

[16] "Judicial estoppel is applicable when a bankrupt debtor fails to disclose a cause of action as an asset in bankruptcy proceedings and then pursues the omitted

cause of action in a subsequent proceeding." *Robson v. Tex. E. Corp.*, 833 N.E.2d 461, 466 (Ind. Ct. App. 2005), *trans. denied*. A debtor seeking shelter under the bankruptcy laws has a statutory duty to disclose all assets, or potential assets, to the bankruptcy court. *In re Coastal Plains*, 179 F.3d at 207–08. The United States Bankruptcy Code provides that a debtor in bankruptcy proceedings *shall* file "a list of creditors" and "a schedule of assets and liabilities." 11 U.S.C. § 521(a)(1). Upon commencement of bankruptcy proceedings, the bankruptcy estate is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case" as well as "[a]ny interest in property that the estate acquires after the commencement of the case." 11 U.S.C. § 541(a)(1) & (a)(7); *see also Hammes v. Brumley*, 659 N.E.2d 1021, 1025 n.4 (Ind. 1995) (providing that the bankruptcy estate consists of all legal or equitable interests of the debtor). "'*Any claim with potential must be disclosed*, even if it is contingent, dependent, or conditional.'" *In re Coastal Plains*, 179 F.3d at 208 (emphasis in original) (quoting *Youngblood Grp. v. Lufkin Fed. Sav. & Loan Ass'n*, 932 F. Supp. 859, 867 (E.D. Tex. 1996)).

[17] "The duty of disclosure in a bankruptcy proceeding is a continuing one, and a debtor is required to disclose all potential causes of action." *In re Coastal Plains*, 179 F.3d at 208; *Smith v. Haynes & Haynes P.C.*, 940 F.3d 635, 643 (11th Cir. 2019) ("That duty to disclose is a continuing one that does not end once the forms are submitted to the bankruptcy court; rather, a debtor must amend her financial statements if circumstances change."); *Youngblood*, 932 F. Supp. at 868 ("[P]arties in a bankruptcy proceeding are bound to disclose any litigation

which has the potential of arising in a non-bankruptcy context."). "This duty applies to proceedings under Chapter 13 and Chapter 7 alike because 'any distinction between the types of bankruptcies available is not sufficient enough to affect the applicability of judicial estoppel because the need for complete and honest disclosure exists in all types of bankruptcies.'"[5] *Robinson v. Tyson Foods, Inc.*, 595 F.3d 1269, 1274 (11th Cir. 2010) (quoting *De Leon v. Comcar Indus., Inc.*, 321 F.3d 1289, 1291 (11th Cir. 2003)). Courts have emphasized the importance of full and honest disclosure in bankruptcy proceedings, stating that it is crucial to the system's effective functioning. *Robinson*, 595 F.3d at 1274. Stated differently, "[v]iewed against the backdrop of the bankruptcy system and the ends it seeks to achieve, the importance of this disclosure duty cannot be overemphasized." *In re Coastal Plains*, 179 F.3d at 208. The doctrine of judicial estoppel is "often applied to ensure strict adherence with common law and statutory concepts of complete and candid disclosures." *Youngblood*, 932 F. Supp. at 868.

[18] Applying the above-discussed authority to the instant matter, we conclude that the Capallas had a continuing duty to disclose their cause of action against the Best Parties to the bankruptcy court and to include it as an estate asset. The

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[5] We acknowledge that there are distinctions between the make-up of estates in Chapter 7 and Chapter 13 bankruptcies. Despite these distinctions, however, we note that the bankruptcy code does not distinguish between the two types of bankruptcies when setting forth the debtor's duty to file a schedule of assets and liabilities, and we are convinced by the 11th Circuit's holding in *Robinson* that the duty to amend one's assets and liabilities extends to both Chapter 7 and Chapter 13 bankruptcies, as a full and honest disclosure is essential to both.

record demonstrates that the Capallas failed to do so.[6] As such, we must determine whether, in light of their failure to disclose the cause of action, they are judicially estopped from bringing the action in the trial court. We consider "two primary factors in determining whether to apply judicial estoppel." *Ajaka v. Brooksamerica Mortg. Corp.*, 453 F.3d 1339, 1344 (11th Cir. 2006). "First, the allegedly inconsistent positions must have been taken under oath in a prior proceeding, and second, they must have been calculated to make a mockery of the judicial system." *Id.* (internal quotation omitted).

1. Inconsistent Statement

[19] "To support a finding of judicial estoppel, we must find that the plaintiff-debtor assumed a position that was contrary to the one that he asserted under oath in the bankruptcy proceedings." *Stephenson v. Mallow*, 700 F.3d 265, 272 (6th Cir. 2012) (internal quotation and brackets omitted). "It is well-established that at a minimum, a party's later position must be clearly inconsistent with its earlier position for judicial estoppel to apply." *Bone*, 956 F. Supp. 2d at 881 (internal quotation and brackets omitted). Further, "[b]ecause the doctrine [of judicial estoppel] is intended to protect the judicial system, *rather than the litigants*, detrimental reliance by the opponent of the party against whom the doctrine is

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[6] Counsel for the Capallas indicated at oral argument that Reva updated her assets in the still-pending Chapter 13 bankruptcy case to include the cause of action *after* the trial court entered judgment on the pleadings in favor of the Best Parties. Mark did not update his assets to include the cause of action before his Chapter 7 bankruptcy case closed.

applied is not necessary." *In re Coastal Plains*, 179 F.3d at 205 (emphasis in original) (citing *Matter of Cassidy*, 892 F.2d 637, 641 (7th Cir. 1990), *cert. denied*).

[20] > Courts consider the omission of a legal claim from a bankruptcy asset schedule to be a denial that the claim exists. And a complaint in district court seeking damages on the same claim is considered an assertion that the claim does indeed exist. By failing to disclose a pending district court claim to the bankruptcy court, a plaintiff is thus deemed to be taking inconsistent positions. And that inconsistency can satisfy the first prong of the judicial estoppel test. Under those circumstances, it is presumably the bankruptcy court that is being deceived and its proceedings that are being manipulated, but judicial estoppel can nonetheless be raised as a defense in the district court.

Smith, 940 F.3d at 644 (internal citations omitted); *see also Chandler v. Samford Univ.*, 35 F. Supp. 2d 861, 863 (N.D. Ala. 1999) ("Courts of various jurisdictions have held that a debtor's assertion of legal claims not disclosed in earlier bankruptcy proceedings constitutes an assumption of inconsistent positions."). Litigants have also been found to have taken inconsistent positions when they failed to timely amend their bankruptcy documents to include civil claims. *See Robinson*, 595 F.3d at 1275; *Ajaka*, 453 F.3d at 1344.

[21] In *Robinson*, the United States Court of Appeals for the Eleventh Circuit explained that

> By failing to update her bankruptcy schedule to reflect her pending claim, Robinson represented that she had no legal claims to the bankruptcy court while simultaneously pursuing her legal claim against Tyson in the district court. These actions, both taken under oath, are clearly inconsistent. Therefore, …

> Robinson took inconsistent positions under oath and the issue of judicial estoppel centers on her intent.

Robinson, 595 F.3d at 1275. We find the Eleventh Circuit's decisions in *Smith* and *Robinson* to be instructive and likewise conclude that by failing to timely update their bankruptcy cases to include their cause of action against the Best Parties, the Capallas took two inconsistent positions under oath. The issue of judicial estoppel, therefore, centers on their intent.

2. Mockery of the Judicial System

[22] "When considering a party's intent for the purpose of judicial estoppel, we require 'intentional contradictions, not simple error or inadvertence.'" *Robinson*, 595 F.3d at 1275 (quoting *Am. Nat'l Bank of Jacksonville v. FDIC*, 710 F.2d 1528, 1536 (11th Cir. 1983)). A "debtor's failure to satisfy its statutory disclosure duty is 'inadvertent' only when, in general, the debtor either lacks knowledge of the undisclosed claims *or* has no motive for their concealment." *In re Coastal Plains*, 179 F.3d at 210 (emphasis in original).

[23] With respect to the Capallas' knowledge, it is uncontested that the Best Vineyard Litigation was filed on July 22, 2019, approximately three months before the Capallas filed the Joint Capalla Bankruptcy on October 29, 2019. Nothing in the record indicates that the Capallas were unaware of the Best Vineyard Litigation when they filed their initial bankruptcy petition. Consequently, the Capallas' claims against the Best Parties relating to and arising out of the Best Vineyard Litigation were known to the Capallas at the

time they filed their initial bankruptcy petition. Further, while Wilbert's conversation with law enforcement did not occur until November 21, 2019, it is uncontested that the Capallas became aware of the conversation, which they allege gives rise to various claims for relief, by March 3, 2020, if not before, when criminal charges were filed against them. The Capallas, however, failed to timely update their bankruptcy cases once they had knowledge of their claims.

[24] With respect to motive, "[t]here is a general motive to keep a claim from becoming part of the bankruptcy estate because, if the civil claim became a part of the bankruptcy estate, then the proceeds from it could go towards paying the debtor's creditors, rather than simply to paying the debtor." *Bone*, 956 F. Supp. 2d at 883 (internal quotation and brackets omitted); *see also Robinson*, 595 F.3d at 1275–76 (noting that a debtor had a motive for failing to disclose her interest in a civil lawsuit, *i.e.*, wanting to keep any settlement or judgment to herself). We conclude that this general motive applies to the Capallas. By failing to disclose their interest in the underlying civil case to the bankruptcy court, the Capallas would be able to keep any funds they might recover as opposed to having such funds applied to their debt. For these reasons, we conclude that the Capallas were judicially estopped from bringing the underlying lawsuit.

B. Standing

[25] In addition, "[o]nce a debtor files bankruptcy, any unliquidated lawsuits, including any personal injury cause of action, become part of the bankruptcy estate." *Hammes*, 659 N.E.2d at 1025 n.4.

> When a debtor files a petition in bankruptcy, the debtor is divested of all of his or her assets, including any potential causes of action, and the assets are transferred to the bankruptcy estate. As stated in 11 U.S.C. § 541(a), the bankruptcy estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." Once a cause of action becomes property of the bankruptcy estate, the debtor may not pursue the claim until it is abandoned from the estate. A property interest can be abandoned from the bankruptcy estate *only* if it has been listed in the debtor's schedule, has been disclosed to all the creditors, and is ordered abandoned by the bankruptcy court.

Schlosser, 589 N.E.2d at 1179 (internal citations omitted, emphasis added). Stated differently, "[a]bandonment presupposes knowledge. There can, as a rule, be no abandonment by mere operation of law of property that was not listed in the debtor's schedule or otherwise disclosed to the creditors." *Boucher v. Exide Corp.*, 498 N.E.2d 402, 403 (Ind. Ct. App. 1986) (internal quotation omitted).

[26] "The lack of standing effectively prevents a plaintiff from pursuing an action and restrains the court from exercising its general jurisdiction over any issue in the case." *Schlosser*, 589 N.E.2d at 1179. In *Schlosser*, we concluded that "[b]ecause the Schlossers failed to list in their bankruptcy schedule the cause of action against BWI, they later lacked standing to pursue the claim" and "[t]he

suit must be brought exclusively by the trustee of the Schlossers' bankruptcy estate." *Id.* We reach the same conclusion in this case. Once the Capallas filed bankruptcy, their claims against the Best Parties belonged to the bankruptcy estate and could only have been brought by the trustee of their bankruptcy estates. Further, because the Capallas failed to disclose their interests in the civil suit, the bankruptcy trustee cannot be said to have abandoned the claim. Because the claim remained exclusively with the bankruptcy trustee, the Capallas lacked standing to bring the underlying lawsuit.

[27] The Capallas were both judicially estopped from bringing and lacked standing to bring the claims presented in this matter. We therefore conclude that the trial court did not err in granting judgment on the pleadings to the Best Parties.

[28] The judgment of the trial court is affirmed.

Bailey, J., and Najam, Sr.J., concur.