STATE OF MICHIGAN

COURT OF APPEALS

KRZYSZTOF OBRZUT and EWA OBRZUT,

Plaintiffs-Appellants,

v

POLISH DELI & BAKERY, INC., POLISH MARKET, DANUTA KOLYNICZ, and MAREK KOLYNICZ,

Defendants-Appellees.

UNPUBLISHED
December 13, 2012

No. 306382
Wayne Circuit Court
LC No. 10-014145-CK

Before: JANSEN, P.J., and SAWYER and FORT HOOD, JJ.

PER CURIAM.

Plaintiffs appeal by right the trial court order granting defendants' motion for summary disposition. We affirm.

The parties were involved in litigation in 2003, which subsequently settled in 2005. However, the settlement agreement provided that defendants were to pursue an insurance claim from which plaintiffs would be entitled to certain proceeds. The agreement also stated that plaintiffs were entitled to participate in the insurance proceedings contingent upon the amount of the coverage provided by the insurance company. On November 14, 2006, plaintiffs filed a voluntary petition for bankruptcy and listed the settlement agreement on their schedule of assets. The bankruptcy trustee and her attorney learned of the potential payments to be made by the insurance company and obtained a court order preventing the release to preclude dissipation of the estate's interest. However, after defendants filed a motion to release the funds, the bankruptcy trustee withdrew her objections. Additionally, by letter dated July 18, 2007, defendants' counsel advised the bankruptcy trustee's attorney that plaintiffs were entitled to participate in the settlement process. Despite that notice, the bankruptcy trustee did not take an active role in the underlying litigation, but did accept the settlement proceeds to which plaintiffs were entitled. Plaintiffs received the exempted amount, and the trustee paid the remainder to creditors.

After the bankruptcy proceeding was closed, plaintiffs filed this action for breach of the settlement agreement and breach of fiduciary duty, alleging defendants failed to comply with the terms of the settlement agreement and failed to pursue statutory interest. Defendants filed a motion for summary disposition, asserting that plaintiffs lacked standing to sue, MCR

2.116(C)(5), because the settlement agreement was an asset of the bankruptcy estate and any claim belonged to the bankruptcy estate, MCR 2.116(C)(7). Plaintiffs opposed the motion for summary disposition, alleging that there were genuine issues of material fact regarding whether the bankruptcy estate acquired the cause of action that accrued after the bankruptcy filing and whether the asset had been abandoned by the bankruptcy trustee. The trial court held that plaintiffs lacked standing to sue, MCR 2.116(C)(5), and granted defendants' motion without prejudice to allow plaintiffs to return to bankruptcy court and raise these issues. Plaintiffs appeal by right.

Plaintiffs contend that the trial court erred by ruling that they did not have standing to pursue this litigation. We disagree. The lower court's decision regarding a motion for summary disposition is reviewed de novo with the evidence examined in the light most favorable to the nonmoving party. *In re Egbert R Smith Trust*, 480 Mich 19, 23-24; 745 NW2d 754 (2008). Issues involving statutory interpretation present questions of law reviewed de novo. *Klooster v City of Charlevoix*, 488 Mich 289, 295-296; 795 NW2d 578 (2011). If the plain language of the statute is clear and unambiguous, it is presumed that the Legislature intended the meaning expressed in the statute. *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 76; 780 NW2d 753 (2010). Whether a party has standing presents a question of law that the appellate court reviews de novo. *Manuel v Gill*, 481 Mich 637, 642-643; 753 NW2d 48 (2008). When reviewing a motion for summary disposition premised on MCR 2.116(C)(5), this Court examines the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties. *Int'l Union UAW v Central Mich Univ Trustees*, 295 Mich App 486, 493; 815 NW2d 132 (2012).

The bankruptcy estate is comprised of all legal or equitable interests in property held by the debtor at the commencement of the estate. 11 USC § 541(a)(1). In *Young v Independent Bank*, 294 Mich App 141, 143-145; 818 NW2d 406 (2011), this Court delineated the following rules governing known and potential causes of action as assets of the bankruptcy estate:

> A debtor loses all rights to his or her property when he or she files for bankruptcy. 11 USC 541(a). A party filing for bankruptcy must list all of his or her assets on the bankruptcy schedule, 11 USC 521(a)(1), including "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 USC 541(a)(1). "[I]t is well established that the interests of the debtor in property include causes of action." *Bauer v Commerce Union Bank*, 859 F2d 438, 441 (CA 6, 1998) (quotation marks and citations omitted). Moreover, "the right to pursue causes of action formerly belonging to the debtor . . . vests in the trustee for the benefit of the estate. The debtor has no standing to pursue such causes of action." *Id*. (quotation marks and citation omitted). The debtor can only bring suit on a vested asset if the trustee abandons it or the court gives permission. *Kuriakuz v Community Nat'l Bank of Pontiac*, 107 Mich App 72, 75; 308 NW2d 658 (1981).
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> A cause of action that is known about and filed before the filing of bankruptcy is an asset and properly belongs to the bankruptcy estate whether or not it was listed on the schedule. *Id*. at 74-75. A cause of action is also an asset that properly belongs to the estate where a party has reason to know of the

> potential for the cause of action before the filing of bankruptcy and the suit is filed during the bankruptcy proceedings. See *Miller v Chapman Contracting*, 477 Mich 102, 104; 730 NW2d 462 (2007). . . .
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> While no Michigan cases have considered this exact situation, other jurisdictions agree that any potential causes of action must be listed on the schedule. The United States Court of Appeals for the Sixth Circuit held that where the party clearly knew the factual basis for the allegations of a sexual harassment claim but did not disclose that information to the bankruptcy court, that claim was an asset properly belonging to the bankruptcy estate. *White v Wyndham Vacation Ownership, Inc*, 617 F3d 472, 484 (CA 6, 2010). The United States Court of Appeals for the Fifth Circuit is even more explicit describing the debtor's "duty to disclose all assets, *including contingent and unliquidated claims*." *In re Coastal Plains, Inc*, 179 F3d 197, 208 (CA 5, 1999). [*Young*, 294 Mich App at 143-145.]

In *Young*, the defendants, the plaintiff's bank and mortgage financing company, initiated foreclosure proceedings against the plaintiff regarding her residence. The defendants also filed a motion to proceed with the foreclosure outside the bankruptcy court. Before and during the bankruptcy proceeding, plaintiff contested the foreclosure with the bank, but did not file a lawsuit and did not list the cause of action on her schedule of assets. The plaintiff's bankruptcy attorney and the trustee were aware of the dispute with the bank regarding the foreclosure. Within a month after the plaintiff's discharge in bankruptcy, she filed suit against the defendants seeking to quiet title to her residence. The trial court granted the defendants' motion to dismiss, holding that the plaintiff did not have standing to bring the cause of action because the interest belonged to the bankruptcy estate. *Young*, 294 Mich App at 142-143. On appeal, this Court held that the debtor had an obligation to disclose all known causes of action and potential causes of action, including contingent claims. *Id*. at 144-145. Ultimately, this Court concluded that "[b]ecause [the] plaintiff clearly was aware that she was in a dispute with the bank regarding the foreclosure when she filed for bankruptcy, the trial court properly considered it an asset of the bankruptcy estate." *Id*. at 146.

Applying the *Young* decision to the present case, we conclude that the trial court properly held that plaintiff lacked standing to pursue the claims for breach of contract and breach of fiduciary duty arising from the settlement agreement. The documentation from the bankruptcy proceeding indicated that the bankruptcy trustee and her attorney were aware of the settlement agreement. At the trustee's request, the bankruptcy court precluded the payment of funds arising from the settlement agreement until the estate's interest was determined and protected. Despite the fact that the settlement agreement was subject to a confidentiality provision, the bankruptcy court ordered plaintiffs to disclose the terms of the settlement to the trustee. The documentation further reveals that defendants apprised the bankruptcy trustee and her attorney of the negotiations with the insurance company and the right to participate in those proceedings. Because plaintiffs were aware of the terms of the settlement agreement and the negotiations to resolve the insurance matter that could have included their participation or the trustee's involvement in their place, the trial court properly held that plaintiffs lacked standing to pursue these claims. *Young*, 294 Mich App at 146.

Next, plaintiffs assert that the trial court erred by failing to hold that there were genuine issues of material fact regarding whether the bankruptcy trustee abandoned the asset, thereby allowing plaintiffs to bring this action. We disagree. The burden is on the debtors to list the assets of the bankruptcy estate. *Young*, 294 Mich App at 147. "After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 USC § 554(a). "Abandonment is the method used by the trustee to relieve the estate of any property . . . that is burdensome to the estate or that is of inconsequential value and benefit to the estate." *Szyszlo v Akowitz*, 296 Mich App 40, 49; 818 NW2d 424 (2012) (further citation and quotation omitted). When an asset is not scheduled, there is no such doctrine as "assumed abandonment." *Young*, 294 Mich App at 147. That is, the failure to list an asset on the schedule does not indicate that the asset was abandoned. *Id*.

In *Young*, the plaintiff alleged that she could proceed with her cause of action because the trustee abandoned the claim when he filed his report that did not list the potential lawsuit. *Id*. at 147. The trial court and this Court rejected that argument, and this Court held that "[a]n unscheduled asset cannot be abandoned even if the trustee knows of its existence." *Id*. at 147-148.

The plain language of 11 USC § 554(a) provides that "after notice and a hearing," the trustee may abandon any estate property that presents a burden to the estate or that is of inconsequential value and benefit to the estate. *Briggs Tax Serv, LLC*, 485 Mich at 76. In the present case, plaintiffs failed to present evidence[1] that the trustee abandoned the property after notice and a hearing. *Id*.; *Int'l Union UAW*, 295 Mich App at 493. Moreover, the trustee was aware of the asset and accepted the proceeds of the settlement, dispersing the exempted amount to plaintiffs and the remainder to the creditors. Accordingly, plaintiffs' challenge is without merit.

Affirmed.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Karen M. Fort Hood

[1] In *Szyszlo*, 296 Mich App at 45, the plaintiff presented evidence, specifically an affidavit from the bankruptcy trustee, that the underlying medical malpractice action was abandoned because the trustee determined that it was not worth pursuing on behalf of the estate. Our plaintiffs did not present evidence to support the claim of trustee abandonment.