SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2076-21

JOHN and MILDRED PAPANDREA,

Plaintiffs-Appellants,

v.

UNION PAVING AND CONSTRUCTION CO., INC.,

Defendant-Respondent.

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Submitted February 1, 2023 – Decided February 22, 2023

Before Judges Currier and Mayer.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-6978-19.

Haggerty, Goldberg, Schleifer & Kupersmith, PC, attorneys for appellants (Scott J. Schleifer, on the brief).

Hendrzak & Lloyd, attorneys for respondent (Christopher S. Byrnes, on the brief).

PER CURIAM

Plaintiffs John and Mildred Papandrea[1] appeal from a January 28, 2022 order granting summary judgment to defendant Union Paving and Construction Co., Inc. and dismissing their complaint with prejudice. We affirm.

We recite the undisputed facts from the summary judgment record. On November 1, 2017, plaintiff was involved in a work-related accident on defendant's work site. He suffered injuries when a set of stairs partially collapsed and received treatment for his injuries through late 2018.

On September 24, 2019, plaintiffs filed a personal injury lawsuit against defendant. In its answer and affirmative defenses, defendant asserted plaintiffs' claims were barred by the doctrine of judicial estoppel and they lacked standing to proceed with their personal injury claims based on their representations made in a bankruptcy action.

Prior to filing their personal injury action, on March 23, 2018, plaintiffs filed a petition for bankruptcy under Chapter 13 of the United States Bankruptcy Code. In the filed schedule submitted with their bankruptcy petition, plaintiffs denied having any claims against third parties. Specifically, the schedule asked whether plaintiffs had "[c]laims against third parties, whether or not you have

[1] Mildred Papandrea is John's wife. She asserted a per quod claim related to her husband's injuries. When we use the term plaintiff, we are referring solely to John.

filed a lawsuit or made a demand for payment," and provided examples of such claims, including "[a]ccidents, employment disputes, insurance claims, or rights to sue." The schedule also asked whether plaintiffs had "[o]ther contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims." Plaintiffs checked "No" in response to these questions. In addition, plaintiffs signed the following declaration: "[u]nder penalty of perjury, I declare that I have read the summary and schedules filed with this declaration and that they are true and correct."

Plaintiffs also submitted a Statement of Financial Affairs (Statement) in support of the bankruptcy petition. The Statement required plaintiffs to disclose any lawsuits filed "within [one] year before [they] filed for bankruptcy." Although plaintiffs' personal injury lawsuit had not been filed when they signed the Statement, plaintiffs failed to amend the Statement once they filed the action against defendant.

On May 24, 2018, a trustee in bankruptcy held a Section 341 Meeting of Creditors.[2] At the meeting, plaintiffs testified under oath that they reviewed

[2] "Within a reasonable time after the order for relief in a case under this title, the United States trustee shall convene and preside at a meeting of creditors." 11 U.S.C. § 341(a). "The meeting permits the bankruptcy trustee to review the debtor's petition and schedules with the debtor, and then requires the debtor to

their bankruptcy petition and schedules and the information provided was true to the best of their knowledge. The trustee directly asked plaintiffs, who were under oath, whether they "ha[d] a right to sue anybody? Any claims for money? Property damage? Personal injury? Anything of that nature?" Plaintiffs responded "[n]o" to the trustee's questions.

On August 2, 2018, the bankruptcy court confirmed plaintiffs' Chapter 13 plan, which required payments to the listed creditors over a thirty-two-month period. Under the Chapter 13 plan, plaintiffs were not required to pay any interest on their debts and many creditors elected to forego collection.

On October 23, 2018, plaintiff emailed his bankruptcy attorney about his November 2017 accident at defendant's work site. In the email, plaintiff stated his "condition ha[d] [him] very concerned," he "consulted an attorney to potentially represent [him] for a third-party claim," and he "need[ed] to know what [he] need[ed] to do with [his] Chapter 13." Plaintiffs' bankruptcy attorney

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answer questions under penalty of perjury about the debtor's conduct, property, liabilities, financial condition, and any other matter that may affect the administration of the case or the debtor's right to discharge." Kunesch v. Andover Twp., 32 N.J. Tax 407, 414 n.1 (Tax 2021). During this meeting, the trustee examines the debtors to ensure they are aware of the consequences of a discharge, their ability to file a petition under a different chapter, the consequences of receiving a discharge, and the effect of reaffirming a debt. 11 U.S.C. § 341(d)(1)-(4).

replied that plaintiffs could "review and amend [the] schedules to take possible exemptions for a possible settlement." However, the attorney explained that while plaintiff was "likely . . . correct" in that "[the personal injury action would] not settle prior to discharge," the personal injury lawsuit would not "affect the bankruptcy particularly since [plaintiff was] paying [his] creditors."

Plaintiffs never amended their bankruptcy schedules to disclose their personal injury action against defendant. On April 1, 2020, the bankruptcy court discharged plaintiffs' debts and closed the bankruptcy case on May 1, 2020.

Based on the bankruptcy court proceedings, defendant filed a motion for summary judgment. Defendant argued plaintiffs represented under oath in the Chapter 13 bankruptcy action that they had no claims against third parties. Defendant also contended plaintiffs lacked standing to proceed with their personal injury action based on representations they made in the bankruptcy matter.

After hearing the arguments of counsel, the motion judge issued a nineteen-page written decision, finding plaintiffs' claims were barred by the doctrine of judicial estoppel. He first determined the matter was ripe for summary judgment because there were no genuine issues of material fact based on the summary judgment motion record, which included the materials filed in

the bankruptcy court. The judge found plaintiffs took a position under oath in their written filings with the bankruptcy court and oral testimony to the bankruptcy trustee that they had no claims against third parties. The motion judge noted plaintiffs' representations were accepted by the bankruptcy court because plaintiffs were discharged and their bankruptcy case was closed.

In plaintiff's certification in opposition to summary judgment, plaintiff explained that he "had no anticipation or intention of having a viable personal injury claim or lawsuit to pursue against third parties" and "[i]t was not until [his] injury condition worsened to the point of having surgery in late 2018 that [he] bec[a]me cognizant of a potential future financial recovery through a personal injury claim or lawsuit." Regardless of plaintiff's asserted lack of bad faith, the judge found plaintiffs took a position in their personal injury action "directly contrary to their previous position" in the bankruptcy matter regarding the absence of claims against third parties.

After considering plaintiff's certification in the light most favorable to plaintiffs, the judge concluded plaintiffs' personal injury case was barred by the doctrine of judicial estoppel. The judge noted the issue was "whether plaintiffs in this lawsuit [were] taking a position contrary to the position they took in [b]ankruptcy [c]ourt" and not "[w]hether plaintiffs had any 'anticipation or

intention of having a viable personal injury claim or lawsuit to pursue against third parties.'"

Additionally, the judge explained not only was "plaintiffs' bankruptcy case . . . still open when [plaintiff]'s 'injury condition worsened to the point of having surgery in late 2018,'" it "was still open[] when they filed their complaint in this court." The judge wrote, "[a]t no time did plaintiffs amend their bankruptcy filings to reflect the position they now take in this court" despite plaintiffs' continuing obligation to do so under 11 U.S.C. § 521 of the Bankruptcy Code.

The judge found the bankruptcy court accepted plaintiffs' position that they had no claims against third parties. As a result of plaintiffs' representations in the bankruptcy matter, the judge explained the bankruptcy court "confirmed plaintiffs' bankruptcy plan, granted an order of discharge, and closed plaintiffs' bankruptcy case." Thus, the judge concluded "[t]hose judicial events constitute[d] acceptance of the position taken by plaintiffs" in the bankruptcy case.

While plaintiff certified that he had no intent to "conceal or mislead . . . the trustee, creditors, or officers of the [bankruptcy] [c]ourt," the judge found the "issue before this court is not what effect disclosure of the claims might have

had on plaintiffs' bankruptcy case. Plaintiffs knew they had claims against third parties" and "filed their [personal injury] complaint while their bankruptcy case was pending." As the judge wrote:

> To allow plaintiffs to proceed in this court with claims against third parties, after they took the position in [b]ankruptcy [c]ourt that they had no such claims – and received from that [c]ourt an Order of Discharge and other relief, would be a miscarriage [of justice] and serve to undermine the integrity of the judicial system.

On appeal, plaintiffs argue they are not estopped from bringing their personal injury claims based on prior statements made in their bankruptcy matter. In support of their argument, plaintiffs assert they disclosed the potential claims against defendant to their bankruptcy counsel and were assured by counsel that their personal injury claims would not affect their bankruptcy matter. Additionally, plaintiffs contend there is nothing in the record to infer that the bankruptcy court relied on their representations in confirming the Chapter 13 plan. Also, plaintiffs claim their inconsistent positions in the two litigations did not constitute bad faith or offend the integrity of the judicial system to support dismissal of their personal injury action. We disagree.

We review an order granting summary judgment de novo and apply the same legal standard as the motion judge. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). Rule 4:46-2 provides that a court should grant summary

judgment when the pleadings, depositions, answers to interrogatories, and admissions on file, along with any affidavits, show there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Whether a genuine issue of material fact exists requires "the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

We review a trial court's decision applying judicial estoppel for abuse of discretion. In re Declaratory Judgment Actions filed by Various Muns., City of Ocean, 446 N.J. Super. 259, 291 (App. Div. 2016).

The doctrine of judicial estoppel provides "[a] party who advances a position in earlier litigation that is accepted and permits the party to prevail in that litigation is barred from advocating a contrary position in subsequent litigation to the prejudice of the adverse party." Bhagat v. Bhagat, 217 N.J. 22, 36 (2014). The doctrine has two components: "First, the estopping position and the estopped position must be directly inconsistent, that is, mutually exclusive. Second, the responsible party must have succeeded in persuading a court to accept its prior position." City of Atlantic City v. California Ave. Ventures,

LLC, 23 N.J. Tax 62, 68 (App. Div. 2006). Stated differently, New Jersey requires there be a position in a prior proceeding inconsistent with the current position, and that position must have been actually advanced and accepted by the prior court. Bhagat, 217 N.J. at 37.

The doctrine of judicial estoppel is an extraordinary remedy and should be applied sparingly. Hanisko v. Billy Casper Golf Mgmt., Inc., 437 N.J. Super. 349, 356 (App. Div. 2014). "At the heart of the doctrine is protection of the integrity of the judicial process." Bhagat, 217 N.J. at 37 (citing Cummings v. Bahr, 295 N.J. Super. 374, 387 (App. Div. 1996)).

New Jersey does not require that the inconsistent positions taken in the different judicial proceedings be the result of bad faith. California Ave. Ventures, LLC, 23 N.J. Tax at 68-69 (citing Kimball Int'l, Inc v. Northfield Metal Prods., 334 N.J. Super. 596, 608 n.4 (App. Div. 2000)) (finding bad faith is not a requirement in New Jersey when applying judicial estoppel). Our case law simply requires the position taken in two different legal proceedings be inconsistent, regardless of whether the inconsistent position was intentional or inadvertent. Ibid.

As to the first component, there are no New Jersey cases invoking judicial estoppel based on representations made in a federal bankruptcy court proceeding

that are inconsistent with a state court litigation. However, a majority of federal courts considering the issue have found that "failure to identify a claim as an asset in a bankruptcy proceeding is a prior inconsistent position that may serve as the basis for the application of judicial estoppel, barring the debtor from pursuing the claim in a later proceeding." Guay v. Burack, 677 F.3d 10, 17 (1st Cir. 2012). See also In re Superior Crewboats, 374 F.3d 330, 335 (5th Cir. 2004) ("Such blatant inconsistency readily satisfies the first prong of the judicial estoppel inquiry.").

In assessing the second component involving acceptance of a position in a bankruptcy matter, a bankruptcy court "'accepts' a position taken in the form of omissions from bankruptcy schedules when it grants the debtor relief, such as discharge, on the basis of those filings." Guay, 677 F.3d at 18. Thus, by obtaining an order for discharge in bankruptcy, the parties filing for bankruptcy protection necessarily succeeded in persuading the bankruptcy court accept their position. Ibid.

Also, as applicable here, the Bankruptcy Code requires debtors to file a "schedule of assets and liabilities" and a "statement of the [their] financial affairs." 11 U.S.C. § 521(a)(1)(B)(i), (iii). The estate in bankruptcy is comprised of "all legal or equitable interests of the debtor in property as of the

commencement of the case." 11 U.S.C. § 541(a)(1). The assets to be disclosed in bankruptcy include all contingent and unliquidated claims. In re Coastal Plains, Inc., 179 F.3d 197, 207-08 (5th Cir. 1999).

For disclosure purposes, "[t]he debtor need not know all the facts or even the legal basis for the cause of action." Id. at 208 (quoting Youngblood Group v. Lufkin Fed. Sav. & Loan Ass'n, 932 F. Supp. 859, 867 (E.D. Tex. 1996)). "[R]ather, if the debtor has enough information . . . prior to confirmation to suggest that it may have a possible cause of action, then that is a 'known' cause of action such that it must be disclosed." Ibid.

Regardless of whether an individual discloses a claim at the commencement of a Chapter 13 proceedings, the Bankruptcy Code imposes a continuing duty to disclose potential causes of action. In re Flugence, 738 F.3d 126, 129 (5th Cir. 2013). It is the duty of the debtors to disclose potential causes of action, not their counsel, and "bad legal advice [will] not relieve the client of the consequences of [their] own acts." Cannon-Stokes v. Potter, 453 F.3d 446, 449 (7th Cir. 2006) (holding that judicial estoppel applies where the debtor failed to disclose potential legal claims notwithstanding the fact that she informed counsel of her potential claims).

Here, plaintiffs concede they failed to disclose their potential claim against defendant to the bankruptcy court. That plaintiffs did not anticipate nor plan to file a personal injury action is legally irrelevant under the doctrine of judicial estoppel. At the time plaintiffs filed their Chapter 13 bankruptcy petition, they possessed sufficient information regarding a potential claim against defendant. Plaintiffs had a duty to disclose all information in their bankruptcy submissions and that duty encompassed potential and contingent claims—not merely claims that were definite or pending. In discharging plaintiffs' debts and closing the bankruptcy matter, the bankruptcy court accepted plaintiffs' representations there were no third-party claims.

Affirmed.