

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

KELVIN R. ZANDERS,

Plaintiff,

vs.

ARMSTRONG WOOD PRODUCTS,
INC., *dba* ARMSTRONG CABINET
PRODUCTS,

Defendant.

No. 4:07-cr-00247-JAJ

ORDER

This matter comes before the court pursuant to defendant's November 12, 2007, motion for summary judgment (docket number 14). Plaintiff resisted defendant's motion for summary judgment on December 12, 2007 (docket number 16). Defendant filed its reply brief on December 19, 2007 (docket number 17). On December 28, 2007, pursuant to court order, plaintiff filed an amended and substituted resistance to defendant's motion for summary judgment (docket number 19).

I. SUMMARY OF THE ARGUMENTS

Plaintiff claims that the defendant violated the public policy of the State of Iowa when it terminated his employment in retaliation for his pursuit of workers' compensation benefits. Defendant moves for summary judgment on plaintiff's claim, arguing that plaintiff should be judicially estopped from pursuing his public policy claim because he failed to disclose this claim either on his Chapter 7 or Chapter 13 Bankruptcy Petitions, both of which were filed following plaintiff's termination. Defendant further argues that summary judgment is appropriate because plaintiff lacks standing to pursue a public policy claim because such a claim, to the extent it exists, belongs to the Bankruptcy Trustees.

Plaintiff resists defendant's motion, arguing that he was unaware of the existence of his public policy claim against defendant and that his failure to disclose his claim as part

of his bankruptcy proceedings was inadvertent. Plaintiff further claims that he received no unfair advantage by his failure to disclose. Plaintiff argues that he does have standing to pursue his public policy claim against defendant because he has received a discharge in his Chapter 7 proceeding, which has not been revoked, and because no such request to revoke has been made by the Bankruptcy Trustee.

In reply, the defendant argues that plaintiff has not supported his “lack of knowledge” argument with admissible evidence, e.g., an affidavit.¹ Defendant further contends that plaintiff’s claim that he was “unaware” of the existence of his public policy claim is inconsistent with his claim that he “inadvertently failed to disclose it.” Defendant contends that even if plaintiff was unaware that he had a legally recognized cause of action against defendant, he was aware of the facts giving rise to his claim, which accrued as of the date of his termination. In support of this argument, defendant notes that the plaintiff previously filed a Title VII retaliation lawsuit against a different former employer, which the defendant claims demonstrates plaintiff’s familiarity with the legal theory of retaliation and supports the conclusion that he had sufficient knowledge of his public policy claims such that he had a legal duty to disclose it in his bankruptcy petitions.

II. FACTS TAKEN IN LIGHT MOST FAVORABLE TO PLAINTIFF

In February of 2005, the defendant sustained a back injury during his employment with the defendant. The defendant filed for workers’ compensation benefits. Defendant discharged plaintiff from his employment on June 8, 2005. On October 16, 2005, plaintiff filed a Chapter 7 Voluntary Petition with the United States Bankruptcy Court for the Southern District of Iowa, Case No. 05-11079-lmj-7. In the schedules attached to his Chapter 7 Voluntary Bankruptcy Petition, plaintiff did not disclose the existence of his

¹Pursuant to court order, the plaintiff submitted an evidentiary affidavit on December 28, 2007.

public policy claim against defendant regarding the separation of employment. On February 7, 2006 the Bankruptcy Court discharged plaintiff's Chapter 7 Bankruptcy Petition.

On March 14, 2007, plaintiff filed a Chapter 13 Bankruptcy Petition with the United States Bankruptcy Court for the Southern District of Iowa, Case No. 07-00712-lmj-13. In his Chapter 13 Bankruptcy Petition, plaintiff disclosed his pending workers' compensation case against defendant, but did not disclose the potential existence of this public policy lawsuit against defendant. On May 15, 2007, the Chapter 13 Bankruptcy Trustee submitted a Trustee's Objection to plaintiff's chapter 13 Plan. In the objection, the Bankruptcy Trustee noted that the plaintiff had informed the Trustee that he had retained legal counsel in a wrongful discharge in violation of public policy cause of action during a Section 341 Meeting of Creditors. The Bankruptcy Trustee's objection notes that she was awaiting further information, including information regarding the public policy lawsuit. The Bankruptcy Trustee accepted plaintiff's Chapter 13 Plan with knowledge of plaintiff's public policy claim against defendant. Plaintiff's Chapter 13 Plan provides for full payment of all creditor claims in accordance with 11 U.S.C. § 1322(a)(2), with no reference to monetary rewards resulting from plaintiff's public policy claim.

Plaintiff retained counsel to represent him in regards to his public policy lawsuit against defendant on approximately June 14, 2006. Plaintiff's complaint, which was filed initially in state court and subsequently removed to this court, was filed on May 3, 2007.

III. CONCLUSIONS OF LAW

Standing

Defendant argues that the plaintiff lacks standing to pursue his public policy claim, as plaintiff's claim is the sole property of the bankruptcy estate and may be pursued only by the Bankruptcy Trustee. Plaintiff counters that all of the property of the bankruptcy

estate is vested in him upon confirmation of his Chapter 13 Plan, and that the Chapter 7 Bankruptcy Trustee has made no effort to revoke the Chapter 7 discharge, which vests all interests of the bankruptcy estate in the plaintiff.

A plaintiff may lack standing to bring a claim if that claim is not disclosed in a bankruptcy petition. When a party files a bankruptcy petition, all of that party's legal and equitable interests are transferred to the bankruptcy estate. 11 U.S.C. 541(a)(1); Mixon v. Anderson, 816 F.2d 1222, 1225 (8th Cir. 1987). Thus, all causes of action belonging to the debtor at the time of the bankruptcy proceedings are included bankruptcy estate's property. Id. In certain contexts, however, a plaintiff may regain standing. For example, when a Chapter 13 plan is confirmed, "all of the property in an estate is vested in the debtor." 11 U.S.C. 1327(b). In such a context, a plaintiff would have standing to bring the claim because he/she would have regained their interest in the suit. As plaintiff's Chapter 13 plan has been confirmed, all of plaintiff's property, including the public policy suit has vested in him.

What plaintiff has failed to demonstrate however, is that he regained standing with respect to his Chapter 7 bankruptcy. The court construes plaintiff's argument regarding the Chapter 7 Trustee's failure to revoke the discharge to mean that the Trustee abandoned any interest it had in plaintiff's public policy suit against the defendant.

The undisclosed cause of action is still property of the estate even after the Chapter 7 bankruptcy case is closed. Property that is not correctly scheduled remains property of the estate forever, until administered or formally abandoned by the trustee. Thus, in the case of an omitted cause of action, the trustee is the real party interest and the correct defense is one of standing, i.e., the action is not being prosecuted by the real party in interest which is the trustee, not the debtor.

In re Carolyn Denise Upshur, 317 B.R. 446, 451-52 (Bankr. N.D. Ga. 2004); see also 11 U.S.C. §§554(a)-(d) (noting that all three forms of "abandonment" require notice and

hearing); In re Wiesner, 267 B.R. 32 (Bankr. D. Mass. 2001) (noting that intent to abandon asset must be clear and unequivocal); In re Phoenix Petroleum Co., 278 B.R. 385 (Bankr. E.D. Pa. 2001) (noting that, in the Chapter 7 context, property a trustee fails to administer is abandoned back to the debtor when the case is closed, but only with respect to property of the estate which has been “scheduled” by the debtor); In Re Hat, 363 B.R. 123 (Bankr. E.D. Cal. 2007) (holding that there is no informal abandonment of property of the bankruptcy estate); In re Kopp, 374 B.R. 842 (Bankr. D. Kan. 2007) (noting that trustee must know that property exists before it can be abandoned).

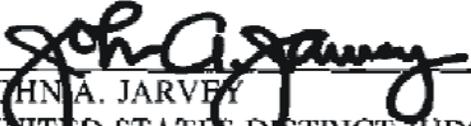
Based upon the record provided the court, the court cannot find that the Chapter 7 trustee has even been notified of the potential asset, let alone formally abandoned it. To the court’s knowledge, the plaintiff has not moved to reopen his Chapter 7 proceeding and properly disclosed his public policy claim against the defendant. There has been no notice to creditors and opportunity for hearing. As such, plaintiff’s cause of action remains the property of the Chapter 7 bankruptcy estate and the plaintiff lacks standing to maintain this cause of action. As such, the court will not address defendant’s judicial estoppel argument. Defendant’s motion for summary judgment is granted.

Upon the foregoing,

IT IS ORDERED

Defendant’s Motion for Summary Judgment is granted. This matter is dismissed. The Clerk of Court shall enter judgment in favor of the defendant.

DATED this 4th day of February, 2008.



JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA