

Will the Real Party in Interest Please Stand Up?

October 30, 2020

In Michigan, the general rule is that only a real party in interest may initiate a lawsuit. MCR 2.201(B). Although it is usually easy to identify the proper party (or parties), it becomes harder if a would-be plaintiff files for bankruptcy protection before initiating the lawsuit. A recent decision by the Michigan Court of Appeals illustrates the difficulty, and highlights how important it is to pay attention to the debtor's bankruptcy schedules.

In *Karas v Mercy Health Physician Partners East Beltline*, unpublished per curiam opinion of the Court of Appeals, issued October 15, 2020 (Docket No. 348943), the plaintiff, Mr. Karas, allegedly suffered a personal injury as a result of medical malpractice. Mr. Karas and his wife retained counsel to investigate a possible malpractice action against a nurse practitioner and her medical group. Before filing their lawsuit, Mr. Karas and his wife filed for bankruptcy protection under chapter 7 of the Bankruptcy Code.

When a debtor files for chapter 7 bankruptcy protection, all of the debtor's assets become property of the bankruptcy estate, including any rights the debtor may have to initiate a civil action. However, the debtor may list some property as "exempt"; and this property reverts back to the debtor to allow the debtor his or her "fresh start" after discharge. Relevant here, under § 522(d)(11) of the Bankruptcy Code, a debtor may claim an exemption for a potential cause of action for personal bodily injury in an amount not to exceed \$25,150. Creditors must object if they believe a debtor is claiming an improper exemption.

In the *Karas* case, Mr. and Mrs. Karas claimed an exemption for the potential medical malpractice action. No one objected. After their bankruptcy case closed, they filed suit on the medical malpractice claim. The defendants moved for summary disposition, asserting that the action belonged to the bankruptcy estate, claiming that the plaintiffs were not the real parties in interest, and only the bankruptcy trustee had standing to sue. The trial court agreed, granting summary disposition for the defendants, dismissing the complaint and denying a subsequent motion for reconsideration.

The Court of Appeals reversed, noting that "it is undisputed that plaintiffs claimed an exemption for this medical malpractice claim when they filed their petition for [c]hapter 7 bankruptcy without objection." The Court of Appeals held that, when a debtor claims an exemption in a cause of action and no one objects, the debtor remains a real party in interest and may file a lawsuit to pursue that action.

This case demonstrates the importance of reviewing bankruptcy schedules carefully and in advance of the expiration of the time to object to claimed exemptions in a bankruptcy proceeding. If you have any questions, please contact one of the authors or your Miller Canfield attorney.