

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

Case No. 3:06-bk-2474-PMG
Chapter 7

EZ PAY SERVICES, INC.,
a/k/a EZ Pay Health Care,
a/k/a EZ Pay Dental,
a/k/a EZ Pay Medical,

Debtor.

**ORDER ON MOTION TO COMPEL DR. KEITH S.
CRAWFORD
AND CRAWFORD ORTHODONTIC CARE, P.C.
TO COMPLY
WITH FINAL ORDER GRANTING APPROVAL
OF COMPROMISE AND SETTLEMENT**

THIS CASE came before the Court for hearing to consider the Motion to Compel Dr. Keith S. Crawford and Crawford Orthodontic Care, P.C. to Comply with Final Order Granting Approval of Compromise and Settlement. The Motion was filed by Alternative Debt Portfolios, L.P. and Alternative Debt Portfolios, LLC (collectively, ADP).

Generally, the issue is whether the patients of Keith S. Crawford, D.D.S. and Crawford Orthodontic Care, P.C. (collectively, Crawford) are required to remit certain payments to ADP or ADP's agent following the entry of two Orders in this case on August 6, 2008.

Background

The Debtor, EZ Pay Services, Inc., was engaged in the business of contracting with dentists for the right to collect certain of the dentists' patient accounts, in exchange for discount fees and other fees specified in the Contracts. Crawford is a dentist who had entered into such a Contract with the Debtor for the collection of Crawford's patient accounts.

In June of 2005, the Debtor, as Seller, entered into a Purchase Agreement with ADP. Pursuant to the

Agreement, the Debtor agreed to sell certain of its Contracts, as broadly defined in the Agreement, to ADP.

In June of 2006, ADP determined that it would not purchase any additional Contracts from the Debtor pursuant to the Purchase Agreement.

The Debtor filed a Petition under Chapter 7 of the Bankruptcy Code on August 16, 2006.

After the petition was filed, a number of disputes arose in the bankruptcy case among the Trustee of the Chapter 7 estate, ADP, and numerous dentists who had contracted with the Debtor. The disputes primarily involved the issue of whether the patient accounts were owned (1) by the dentists who had performed the services, (2) by the Chapter 7 Trustee, pursuant to the Debtor's Contracts with the dentists, or (3) by ADP, pursuant to ADP's purchase of the accounts from the Debtor.

A Mediation Conference was conducted in the case on April 24 and April 25, 2008. Crawford did not participate in the Mediation Conference.

As a result of the Mediation Conference, the Trustee and ADP filed a Joint Motion for Approval and Notice of Compromise and Settlement of Controversy. (Doc. 870). A copy of a Settlement and Release Agreement was attached to the Motion.

The Settlement Agreement provides, among other terms, (1) for ADP's payment of a Settlement Amount to the Trustee in the approximate sum of \$7 million, (2) for the patient accounts purchased from the Debtor by ADP, or in which ADP asserted a security interest, to be deemed ADP's sole property, and (3) for the entry of a separate order (the "Exhibit C Order") directing the dentists to forward post-Mediation payments received on their patient accounts to ADP.

Crawford filed a Limited Objection to the Joint Motion for Approval of the Compromise and Settlement. (Doc. 875). In the Limited Objection, Crawford primarily contended that he was not a party to any litigation with ADP, and did not participate in the Mediation Conference. Consequently, Crawford asserted that he should not be subject to the Order approving the Settlement Agreement, if entered, or to the Exhibit C Order.

A hearing was conducted on June 27, 2008, to consider the Joint Motion for approval of the Settlement Agreement. ADP and the Trustee appeared at the hearing to support the Settlement, and Crawford appeared to assert his limited objection to the Settlement. At the conclusion of the hearing, the Court announced its determination that the Settlement Agreement should be approved, but that Crawford should be excluded from the effect of the Exhibit C Order. (Doc. 919, Transcript of June 27, 2008 hearing, pp. 88-89).

On July 3, 2008, the Court entered an Order Conditionally Granting Joint Motion for Approval and Notice of Compromise and Settlement of Controversy between the Chapter 7 Trustee, Alternative Debt Portfolios, L.P., Alternative Debt Portfolios, LLC and the Settling Dentists. (Doc. 891).

On August 6, 2008, the Court entered a Final Order Granting Joint Motion for Approval and Notice of Compromise and Settlement of Controversy. (Doc. 921). In the Final Order, the Court found that it had jurisdiction to approve a Settlement that affected both settling parties and non-settling parties, and approved the Settlement Agreement. The Court also found, among other terms, that "ADP is deemed to own all 'ADP-Owned Accounts' and all 'Debtor-Owned Accounts' and is entitled to all right, title and interest in the accounts and monies received from the obligors on the accounts." (§ 13). Additionally, the Court found that Crawford was "affirmatively excused" from the effect of the Exhibit C Order. (§ 10).

On the same day, the Court also entered the Exhibit C Order Directing Payments Due under Patient Contracts to Continue to ADP's Designated Agent. (Doc. 922). The Exhibit C Order provided in part:

1. Alternative Debt Portfolios, L.P. is the owner of all financing agreements entered into between patients of medical providers and E-Z Pay Services, Inc. ("Patient Contracts") except as set forth herein.

2. To the extent any Settling Dentist(s) and Non-Insider Medical Provider(s) (as defined in the June 6, 2008 Settlement Agreement (DE# 870), received payments due under the Patient Contracts ("Payments") after the Mediated Settlement Date, are

receiving Payments or who have redirected Payments after the Mediated Settlement Date, or are presently redirecting payments to themselves, such parties shall immediately forward such Payments without deduction, forthwith to Duvera or any other agent designated by ADP, along with an accounting so that the particular patient account can be appropriately credited. Those Settling Dentists and Non-Insider Medical Providers shall notify their patients, in writing, to cease sending payments to them.

...

7. Keith Crawford, D.D.S. and Crawford Orthodontics, P.C. ("Crawford") . . . are specifically excluded from this Order.

(Doc. 922)(Emphasis supplied).

In November of 2008, approximately three months after the entry of the Orders related to the Settlement, an entity known as Palomar Associates, as ADP's agent, wrote a letter to one of Crawford's patients, stating that ADP was the owner of the patient's account balance, and requesting verification of the account information. (Doc. 1000, Exhibit 1).

On December 8, 2008, Crawford's attorney replied to Palomar's correspondence, and asserted that "Dr. Crawford is not one of the Settling Dentists, and as a result, no Dr. Crawford patient is required to remit any funds to Alternative Debt Portfolios LP ("ADP")." (Doc. 1000, Exhibit 1).

On January 11, 2009, ADP filed a Motion to Compel Crawford to Comply with Final Order Granting Approval of Compromise and Settlement. (Doc. 1000).

On January 14, 2009, Crawford filed an Opposition to ADP's Motion to Compel. (Doc. 1003).

Discussion

The issue presented by ADP's Motion and Crawford's Opposition to the Motion is whether the two Orders entered on August 6, 2008, require Crawford's

patients to remit their post-mediation payments to ADP or ADP's agent.

ADP contends that the Settlement Agreement and the Final Order Approving the Settlement Agreement clearly provide that ADP is the sole owner of all of the accounts that ADP had previously purchased from the Debtor, and all of the accounts in which ADP claimed a security interest as a result of its transactions with the Debtor. ADP further asserts that it had purchased Crawford's patient accounts from the Debtor, and that it therefore owns the accounts pursuant to the Settlement and Final Order.

Additionally, according to ADP, Crawford is not excluded from the provision of the Final Order that confirms ADP's ownership of the accounts. Instead, according to ADP, Crawford is excluded only from the effect of the Exhibit C Order to the extent that the Exhibit C Order requires both settling and non-settling dentists to forward payments on their patient accounts to ADP. In other words, ADP acknowledges that Crawford is not obligated to actively assist ADP in its collection of the accounts, because of Crawford's exclusion from the Exhibit C Order. ADP asserts, however, that Crawford's patients should pay ADP on the patient accounts that ADP is conclusively deemed to own pursuant to the Settlement Agreement and the Final Order approving the Settlement Agreement. (Transcript, January 21, 2009 hearing, pp. 25, 30-32, 39).

In response, Crawford contends that his patients are not required to remit their payments to ADP or ADP's agent. According to Crawford, he opposed the requirement as the "comprehensive issue" underlying his objection to the Settlement. Crawford contends that the issue was a deal breaker, and that the Trustee and ADP knew that Crawford intended to pursue his objection to the Settlement if his patients were not excluded from the requirement. Pursuant to negotiations between the parties that occurred during the hearing on the Motion to approve the Settlement, Crawford acknowledges that he made certain concessions, but contends that this issue was resolved in his favor. According to Crawford, therefore, the Final Order approving the Settlement and the Exhibit C Order expressly exclude Crawford's patients from any requirement to remit post-Mediation payments to ADP. (Doc. 1003, Transcript, January 21, 2009 hearing, pp. 33-37).

The Final Order approving the settlement provides that ADP is the owner of all of the patient accounts that it purchased from the Debtor.

The Exhibit C Order provides (1) that ADP is the owner of all financing agreements between patients of the dentists and the Debtor "except as set forth herein," (2) that all dentists shall immediately forward to ADP (or its agent) all post-Mediation payments that they have received, are receiving, or are redirecting to themselves, on their patient accounts, (3) that all dentists shall notify their patients to cease sending payments to them, and (4) that Crawford is "expressly excluded" from the effect of the Order. Therefore, according to the terms of the Exhibit C Order, Crawford is excluded from (1) the determination that ADP is the owner of all financing agreements between patients of the dentists and the Debtor, (2) the requirement to forward to ADP payments that he has received or is receiving from his patients, and (3) the requirement to notify patients to cease sending payments to him.

The issue in this case involves (1) the provision that deems ADP to be the owner of the "ADP-Owned Accounts," including Crawford's patient accounts, and (2) the provision that excludes Crawford from the determination that ADP is the owner of all financing agreements between patients of the dentists and the Debtor and releases Crawford from the obligation to remit payments received from his patients to ADP and from the requirement to notify his patients to discontinue making payments to him. To the extent that the two provisions are inconsistent, the parties have asked the Court to resolve the conflict.

Courts have the inherent authority, of course, to interpret their own orders. In re Greater Miami Neighborhoods, Inc., 2008 WL 4397425, at 1 (Bankr. S.D. Fla.). Once a dispute arises regarding a particular order, the Court may look to the original proceedings to determine the order's meaning. Further, in interpreting a specific order, the Court should attempt to give effect to the order's purpose and spirit. Grove Fresh Distributors, Inc. v. John Labatt Ltd., 888 F.Supp. 1427, 1438 (N.D.Ill. 1995)(citing United States v. Greyhound Corp., 508 F.2d 529 (7th Cir. 1974) and Chase Industries, Inc. v. Frommelt Industries, Inc., 806 F.Supp. 1381 (N.D. Iowa 1992)).

In this case, the Court has evaluated the Exhibit C Order and the Final Order approving the Settlement. Although the Final Order approving the Settlement provides that ADP owns the ADP owned accounts and

the Debtor owned accounts, the Exhibit C Order specifically excludes Crawford from the determination that ADP owns the patient contracts, and excludes Crawford from the requirements to remit payments to ADP and to notify his patients to discontinue making payments to him. The Court has considered the Orders, the purposes of the Settlement, and the parties' intent as reflected in the record, and concludes that the Orders do not require Crawford's patients to remit post-Mediation payments to ADP.

A. The Orders

It is a general rule of construction that a specific provision on a subject controls over a general provision on the same subject matter. In re Bateman, 331 F.3d 821, 825 (11th Cir. 2003)(statutes); Hometown Financial, Inc. v. United States, 409 F.3d 1360, 1369 (Fed.Cir. 2005)(contracts). In this case, the Final Order approving the settlement provides that ADP is the owner of all ADP and Debtor owned accounts. The specific provisions of the Exhibit C Order, however, exclude Crawford from the determination that ADP owns the patient contracts, and exclude Crawford from the requirements to remit payments made or due under patient contracts to ADP and to notify his patients to discontinue sending such payments to him.

B. The purpose of the Settlement

The most valuable asset claimed by the estate in this case was its right to recover the patient accounts that had been acquired by the Debtor pursuant to its contracts with numerous dentists. The scheduled value of the contract receivables totaled the approximate amount of \$25 million. (Doc. 31). The Trustee asserted that the accounts were property of the Chapter 7 estate by virtue of the Debtor's prepetition contracts with the dentists for the right to collect the accounts.

ADP also asserted an ownership interest in the accounts, however, based upon its purchase of the Debtor's contracts with the dentists in 2005 and 2006. In response to ADP's claim of ownership, the Trustee filed a multi-count Complaint against ADP and alleged, among other causes of action, that the sale to ADP was avoidable as a fraudulent transfer.

Further, the accounts were subject to a number of competing claims by the dentists who had performed the services, and who claimed that they had retained ownership of the underlying patient accounts. The

competing claims involved numerous dentists throughout the United States, and generated multiple lawsuits both in this Court and in other jurisdictions. The lawsuits included, for example, (1) at least twelve separate adversary proceedings that were commenced by dentists either in the Bankruptcy Court, or in other courts and transferred to the Bankruptcy Court, (2) an action by at least eight dentists that was pending in the District Court in Texas, and (3) an action by a dentist that was pending in the state court in South Carolina.

The litigation, of course, promised to be extensive, time-consuming, and costly to the estate and to the parties. The Trustee's claims against ADP, for example, involved fact-intensive allegations that would have required significant discovery, a number of pre-trial proceedings, and a complex evidentiary hearing. Obviously, the Trustee was also required to respond to all of the claims asserted against him in the dentists' lawsuits, and to defend against certain of the dentist's efforts to remove the disputes to alternative venues.

On June 6, 2008, the Trustee and ADP signed the Settlement and Release Agreement that attempted to resolve the competing claims and disputes. The named parties to the Settlement Agreement include forty dentists identified as "Settling Dentists," six individual non-dentists, the Trustee, and ADP. The Settlement Agreement was reached after an intense two-day Mediation Conference in April of 2008, and states that the compromises set forth in the Agreement were "the product of good-faith, arm's length negotiations," and were "reasonable in light of the costs and risks faced if the Trustee's Lawsuit and the Adversary Proceedings were to continue."

The overriding purposes of the Settlement Agreement were to conclude the costly litigation and to reach a fair resolution of the competing claims to the accounts. As stated by the Trustee at the hearing on the Motion to approve the Settlement, the objective of the Settlement was to

bring[] some resolution to the vast majority of the claims and disputes in this Chapter 7 case with regard specifically to the relationship between the debtor, E-Z Pay; the defendant, ADP; as well as numerous adversary proceedings that were filed by various dentists across the country that were subsequently brought into this court.

(Transcript, June 27, 2008 hearing, p. 15).

C. The parties' intent

The Settlement Agreement is signed by the Trustee and ADP. The Trustee and ADP jointly filed the Motion for approval of the Settlement, and vigorously supported the Settlement at the hearing on June 27, 2008.

Crawford did not participate in the Mediation Conference, and is not among the Settling Dentists listed in the Settlement Agreement.

On June 23, 2008, Crawford filed a Limited Objection to the Joint Motion for Approval of the Settlement. (Doc. 875). In his Limited Objection, Crawford asserts:

Crawford does not object to the granting of the Joint Motion as to all of the parties to it. Because Crawford was not a party to the mediation and is not party to any of the adversary proceedings listed in the Joint Motion and attached Settlement Agreement, however, Crawford submits that it should not be subject to the Joint Motion nor to any order granting or pursuant to same, including without limitation the proposed order attached as paragraph C to the Joint Motion.

...

For the reasons set forth above, to the extent that the Court grants the proposed form of order attached as Exhibit "C" to the Joint Motion or any other order granting the Joint Motion, such order should specifically exclude Crawford from such order in all respects.

(Doc. 875, pp. 5, 6, 9). It is clear from the Limited Objection that Crawford was not asking the Court to disapprove the Settlement in its entirety. Rather, Crawford was only asserting that he should not be bound by the Settlement or any of its provisions.

In his Limited Objection, Crawford also objected specifically to paragraph 14 of the Settlement Agreement. Paragraph 14 provides that ADP was entitled to assert

subrogation claims against twenty dentists who had previously collected money from their patients that should have been paid to the estate. If it is established that the "Subrogated Dentists" improperly collected the payments, ADP would have subrogation rights against them to the extent of the Dentists' distribution from the estate. (Transcript, June 27, 2008 hearing, pp. 20-21). Crawford asserted in his Limited Objection that he should not be subject to any subrogation claim filed pursuant to paragraph 14, because he was not a party to the Settlement. (Doc. 875, p. 8).

Crawford reiterated his position at the hearing on the Joint Motion to approve the Settlement. Specifically, Crawford contended at the hearing that he did not "seek to rain on the parade of the trustee and ADP" or "stop this settlement." (Transcript, June 27, 2008 hearing, p.66). Instead, Crawford objected only to the scope of the Settlement as extending beyond the parties to the Agreement, and requested that he be excluded from the application of any order approving the Settlement Agreement. (Transcript, June 27, 2008 hearing, pp. 70-71). He also objected specifically to any application of ADP's subrogation rights that were not directly related to an adversary proceeding involving a party to the Settlement. (Transcript, June 27, 2008 hearing, pp. 69-70).

After all of the parties had stated their positions at the hearing on the Joint Motion to Approve the Settlement, a recess was taken to allow the proponents of the Settlement to confer with the objecting dentists, including Crawford. After the hearing reconvened, the parties advised the Court of the results of their negotiations.

As to Crawford's objection to the scope of ADP's subrogation rights, it appears that ADP and Crawford reached an accommodation whereby Crawford agreed that ADP could retain its right to file a subrogation claim against Crawford, and Crawford retained the right to assert defenses to the subrogation claim. (Transcript, June 27, 2008 hearing, pp. 81-83; Doc. 918, ¶ 11).

As to Crawford's objection to the scope of the entire Settlement as extending beyond the parties to the Mediation, ADP's attorney reported the status of the negotiations as follows:

Your Honor, my proposal – I'll let them speak for themselves – was to carve those two objecting dentists or

groups out of Exhibit C to the extent that we're going to subrogate against them. We'll know that by August 1st. They disagree, and they can come up here and tell you why. Both the objecting dentists want to be extricated from Exhibit C regardless of whether we subrogate, and I believe the trustee supports the dentists' position that they should be extricated from Exhibit C regardless of whether my client subrogates. I'm in no position to agree with that or settle that, but my position would be the former, and they can tell you about the latter.

(Transcript, June 27, 2008 hearing, pp. 82-83). Crawford's attorney agreed generally with ADP's summary of the negotiations, and stated:

In the course of discussing that, there is a quid pro quo. Our side, and I think I can speak for my colleagues, agree to give up any counterclaims, if any, that they might have against ADP. So there's definitely a quid pro quo there, as well as the agreement to attorneys fees for the prevailing party.

We would also ask the Court's consideration in making unconditional the carveout as to Exhibit C for the Utah and Crawford defendants. The logistics of trying to comply for our clients would be extremely difficult. I know I can speak for Dr. Crawford in saying that, if a subrogated claim is successfully lodged against him and adjudicated, he'll be good for it. So I don't think that there's a necessity for the Exhibit C order as to Dr. Crawford, and I would imagine the Utah dentists would make the same case.

(Transcript, June 27, 2008 hearing, pp. 83-84).

The Trustee's attorney then informed the Court that the Trustee did not oppose Crawford's exclusion from the Exhibit C Order:

We would support the assertions of Dr. Crawford and the Utah group

and those related groups that they should be excluded from Exhibit C. We believe that in this very limited instance it poses no significant risk or harm to any of the parties in order to get this settlement approved, and it seems like that's the only stumbling block.

(Transcript, June 27, 2008 hearing, p. 85).

Based on this record, the Court concluded that "Crawford and Utah should be excluded from Exhibit C." (Transcript, June 27 hearing, p. 88). The Order Conditionally approving the Settlement provided:

10. Crawford and Utah are affirmatively excused from the Order attached as Exhibit C to the Settlement Agreement. The Order attached as Exhibit C shall be modified to exclude the imposition of the Order on Crawford and Utah.

(Doc. 891, ¶ 10). The Final Order approving the Settlement also provided that Crawford was affirmatively excused from the effect of the Exhibit C Order, and the Exhibit C Order provided:

7. Keith Crawford, D.D.S. and Crawford Orthodontics, P.C. ("Crawford") . . . are specifically excluded from this Order.

D. Conclusion

The purpose of the Settlement was to resolve a large number of adversary proceedings that had been filed by or against the Trustee, or that otherwise impacted the estate, and also to resolve the numerous competing claims that had been asserted against the estate's primary asset. Approval of the Settlement was critical to the estate and to the parties who were burdened by the litigation.

Crawford did not object to the Court's approval of the Settlement as between the parties who had participated in the Mediation. Instead, Crawford contended only that the Settlement should not apply to him because he was not a Settling Dentist under the terms of the Agreement.

The Trustee, ADP, and Crawford fully presented their respective positions at the hearing to consider approval of the Settlement on June 27, 2008. Pursuant to negotiations that occurred during that hearing, certain accommodations were made regarding ADP's right to assert a subrogation claim against Crawford. Crawford, however, continued to maintain that he should be unconditionally excluded from the proposed Exhibit C Order that related to post-Mediation payments on patient accounts. ADP appeared to understand Crawford's position, although it was unable to consent to Crawford's request for an unconditional exclusion. The Trustee supported Crawford's exclusion in the interest of obtaining approval of the Settlement.

The Exhibit C Order entered on August 6, 2008, determines that ADP is the owner of the patient accounts and requires Settling Dentists and non-settling dentists to remit post-Mediation payments received on patient accounts to ADP. The Exhibit C Order and the Final Order approving the Settlement, however, expressly exclude Crawford from the effect of the Exhibit C Order.

Because of the express exclusion, Crawford is not obligated to forward to ADP any post-Mediation account payments that he has received or is receiving from his patients, and is not obligated to notify his patients to discontinue making such payments to him. ADP asks the Court, however, to determine that Crawford's patients are required to remit post-Mediation payments to ADP or ADP's agent. In other words, ADP contends that the exclusion only means that Crawford cannot be sanctioned if he fails to forward a patient's payment to ADP, but that Crawford's patients should nevertheless remit their payments to ADP.

In evaluating this issue, the Court has examined the Court's Orders, ADP's motions and pleadings, Crawford's Objections and Memoranda, and the representations made to the Court at the hearing that was conducted on June 27, 2008. Crawford is excluded from the determination that ADP is the owner of all patient accounts, and from the obligations to forward payments to ADP and to notify his patients to cease sending payments to him. The Court is satisfied that the Orders do not require Crawford's patients to remit post-Mediation payments to ADP.

Accordingly:

IT IS ORDERED that the Motion to Compel Dr. Keith S. Crawford and Crawford Orthodontic Care, P.C. to Comply with Final Order Granting Approval of Compromise and Settlement, filed by Alternative Debt Portfolios, L.P. and Alternative Debt Portfolios, LLC, is denied.

DATED this 2nd day of April, 2009.

BY THE COURT

/s/ Paul M. Glenn

PAUL M. GLENN

Chief Bankruptcy Judge