

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re)	
)	
PATRICK HARLE,)	Case No. 6:09-bk-03400-KSJ
FRANCES HARLE,)	Chapter 7
)	
Debtors.)	
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CHRISTOPHER N. BAVARO,)	
FRANK J. BAVARO, JR.,)	
SUNDAY A. STEFANIW,)	Adversary No. 6:09-ap-771
)	
Plaintiffs,)	
vs.)	
)	
FRANCES HARLE,)	
PATRICK HARLE,)	
)	
Defendants.)	
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**ORDER GRANTING
DEFENDANT PATRICK HARLE’S AMENDED MOTION FOR SUMMARY JUDGMENT**

Patrick and Frances Harle are married co-debtors. They are both included as defendants in the caption of this adversary proceeding, but the plaintiffs, Frances’ siblings, only seek relief against Frances. Patrick Harle now seeks a summary judgment in his favor confirming that he is not a proper party in this adversary proceeding. The Court agrees and will grant Patrick’s Motion for Summary Judgment (Doc. No. 26).

Pursuant to Federal Rule of Civil Procedure 56, made applicable by the Federal Rule of Bankruptcy Procedure 7056, a court may grant summary judgment where “there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56. The moving party has the burden of establishing the right to summary judgment. Fitzpatrick v. Schlitz (In re Schlitz), 97 B.R. 671, 672 (Bankr. N.D. Ga. 1986). In determining entitlement to

summary judgment, a court must view all evidence and make all reasonable inferences in favor of the party opposing the motion. Haves v. City of Miami, 52 F.3d 918, 921 (11th Cir. 1995) (citing Dibrell Bros. Int'l S.A. v. Banca Nazionale Del Lavoro, 38 F.3d 1571, 1578 (11th Cir. 1994)). Therefore, a material factual dispute precludes summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

For years, Frances Harle and her siblings, the plaintiffs, Christopher Bravaro, Frank Bavaro, Jr, and Sunday Stefaniw (the “Siblings”), have disputed how Mrs. Harle administered the monies and the estate of their father, Frank J. Bavaro, Sr. In 2007, a Florida state court entered a judgment in the approximate amount of \$197,000 in favor of the Siblings and against Frances, not Patrick. The Siblings have filed this adversary proceeding asserting three counts against only Frances asserting that the judgment is not dischargeable under 11 U.S.C. Sections 523(a)(2)(A), (4), and (6). No relief is sought against Patrick, although he is included as a party in the caption.

Patrick seeks a summary judgment in his favor arguing that the plaintiffs have failed to state a claim upon which relief can be granted. The Court agrees that, after reading the amended complaint (Doc. No. 18), the plaintiffs do not even mention Patrick much less frame any allegations against him or seek any relief from him. The sole mention of Patrick is his name in the caption.

In responding to Patrick’s motion for summary judgment, the Siblings agree that “[n]o allegations were made in the...amended complaint against Patrick Harle” (Paragraph 1, Doc. No. 33). They assert that the only reason they included Patrick’s name in the caption is because of the alleged suspicious circumstances surrounding Patrick’s ownership of real property, the Dog Leg Property, transferred to him by Frances, who completed the property transfer during the time the Siblings were fighting with her in state court. (More background on the debtors’ ability to claim this real property as homestead and whether the Siblings’ judgment encumbers the real property is addressed in the Memorandum Opinion Partially Sustaining and Partially Overruling Creditors’

Objection to Debtors' Claim of Exemptions (Doc. No. 38, entered in the main case). In the state court case, the Siblings requested and received an order from the state court judge allowing them to pursue proceedings supplementary against Patrick, in order to collect the judgment debt against his wife, Frances. Nothing indicates, however, that Patrick otherwise was involved in the state court litigation, was liable for the judgment debt, or had any type of involvement, other than as a co-owner of the Dog Leg Property.

So, here we have an amended complaint that raises no claims against Patrick and seeks no relief against him. The plaintiffs *agree* that they made no allegations against him. The only argument they raise is that they question Patrick's ownership interest in the Dog Leg Property. Yet they do not seek to avoid the "shady" transfer or take any action against Patrick in connection with his ownership interest.

The plaintiffs have utterly failed to state a claim upon which relief against Patrick can be granted. The Court will grant Patrick's Motion for Summary Judgment (Doc. No. 26) to confirm that he is not a party in this adversary proceeding.

Accordingly, it is

ORDERED that the defendant Patrick Harle's Motion for Summary Judgment (Doc. No. 26) is granted.

DONE AND ORDERED in Orlando, Florida, on March 29, 2010.

/s/ Karen S. Jennemann

KAREN S. JENNEMANN
United States Bankruptcy Judge

Copies provided to:

Debtor/Defendant: Frances Harle, 820 Adler Drive, Deltona, FL 32738

Debtor/Defendant: Patrick Harle, 800 Dog Leg Trail, Osteen, FL 32764

Attorney for Debtor/Defendants: Avie Meshbesh Croce, 1301 Beville Road, Suite 8, Daytona Beach, FL 32119

Plaintiff: Christopher N. Bavaro, 430 Crossbeam Circle E, Casselberry, FL 32707

Plaintiff: Frank J. Bavaro, Jr., 214 Mimosa, Elk Grove Village, IL 60007

Plaintiff: Sunday A. Stefaniw, 1574 S. Crossbeam Drive, Casselberry, FL 32707

Attorney for Plaintiffs: Flavio E. Alvarez, 911 North Main Street, Suite 8, Kissimmee, FL 34744