

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re)
)
STANLEY ALLEN BOSTON, SR.,) Case No. 6:98-bk-08958-KSJ
) Chapter 7
Debtor.)
)
_____)

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON MOTION TO VACATE ORDER REOPENING CASE

This case came on for hearing on September 20, 2010, to consider the Motion by Bridgeport Roman Catholic Diocesan Corporation to Vacate Order Reopening Case.¹ Because the Diocese initially did not receive notice of the debtor's request to reopen this bankruptcy case, the Court granted the Diocese's motion to vacate the prior reopening of this case.² The Court then allowed the parties to present evidence in support and opposition to the underlying Motion to Reopen.³ After considering the evidence and based on the oral findings of fact and conclusions of law made pursuant to Bankruptcy Rule 7052, the Court again granted the debtor's motion to reopen, finding that judicial estoppel did not apply to prevent the debtor from reopening his bankruptcy case and litigating his claims against the Diocese. The Diocese subsequently notified the Court of its intent to appeal the Court's ruling and requested the Court issue supplemental written findings of fact and conclusions of law to further explain the oral ruling, pursuant to *In re Mosley*, 494 F.3d 1320 (11th Cir. 2007). These are the Court's supplemental written findings and conclusions.

¹ Doc. No. 31.

² Doc. No. 62.

³ Doc. No. 15.

Mr. Boston filed a bankruptcy petition under Chapter 7 of the Bankruptcy Code⁴ on October 14, 1998. He did not list any unliquidated or pending claims on his schedules and stated that he had no such claims at his § 341 meeting of creditors. After the § 341 meeting, the Chapter 7 trustee, Ms. Henkel, deemed Mr. Boston's case a "no asset" case, and Mr. Boston received his discharge on January 27, 1999.

Over eleven years later, on April 20, 2010, Mr. Boston filed a motion to reopen his bankruptcy case to amend Schedule B of his bankruptcy petition to include a claim against the Diocese now pending in a Connecticut court.⁵ The trustee and the debtor are working jointly in the prosecution of this claim on behalf of both the estate and the debtor individually. Hearing no objection, and there being sufficient cause shown, on April 26, 2010, the Court granted Mr. Boston's motion to reopen.⁶ The trustee then filed a notice of recovery of assets on May 3, 2010, and set a claims bar date of August 9, 2010.⁷ Twelve proofs of claims were filed by creditors, or by the Chapter 7 trustee on behalf of creditors, seeking an aggregate amount of \$17,871.38.

On July 21, 2010, the Diocese filed its Motion to Vacate Order Reopening Case,⁸ attempting ultimately to have Mr. Boston's Connecticut lawsuit against it dismissed on judicial estoppel grounds. Mr. Boston filed a response on September 17, 2010,⁹ and the Diocese filed a reply on September 20, 2010,¹⁰ the day of the final evidentiary hearing on its motion to vacate.

The Diocese argues Mr. Boston is judicially estopped from pursuing his claims against it because he abandoned his claims by failing to timely disclose them on his bankruptcy schedules and at his meeting of creditors. At the evidentiary hearing, counsel for the Diocese moved to

⁴ All references to the Bankruptcy Code shall be to Title 11 of the United States Code.

⁵ Doc. No. 15.

⁶ Doc. No. 18.

⁷ Doc. No. 24.

⁸ Doc. No. 31.

⁹ Doc. No. 48.

¹⁰ Doc. No. 59.

modify this request so as to allow Mr. Boston to pursue his claims, but asked that the Court use the doctrine of judicial estoppel to limit Mr. Boston's recovery of damages only to the extent of any claims against his bankruptcy estate.

The purpose of judicial estoppel is "to protect the integrity of the judicial process by prohibiting parties from changing positions according to the exigencies of the moment."¹¹ The Eleventh Circuit has enunciated two primary factors for establishing the appropriate application of judicial estoppel: (1) the party's inconsistent positions were made under oath in a prior proceeding, and (2) such inconsistencies must be shown to have "been calculated to make a mockery of the judicial system."¹² This standard thus requires intentional contradictions, not simple "inadvertence or good faith mistake."¹³

In bankruptcy proceedings, a debtor "seeking shelter under the bankruptcy laws has a statutory duty to disclose all assets, or potential assets to the bankruptcy court."¹⁴ Mr. Boston thus unquestionably had a duty at the time he filed his petition in 1998 to disclose any potential claims he may have had. The issue for the Court to determine, then, was whether at that time he intentionally hid his claim against the Diocese.

At the evidentiary hearing, after considering the reasons why Mr. Boston waited so long to seek to add his claim against the Diocese to his bankruptcy case, the Court determined that the case did not warrant application of judicial estoppel, and by no means did Mr. Boston act with the intent "to make a mockery of the judicial system." As an aside, the purpose of the evidentiary hearing was *not* to determine the truth or falsity of Mr. Boston's allegations against the Diocese or to prejudge the evidence to be considered by the Connecticut court. Rather, the purpose was to determine whether Mr. Boston intentionally and in bad faith withheld knowledge

¹¹ *New Hampshire v. Maine*, 532 U.S. 742, 749, 121 S.Ct. 1808, 1814 (2001).

¹² *Burnes v. Pemco Aeroplex, Inc.*, 291 F.3d 1282 (11th Cir. 2002).

¹³ *Moecker v. Greenspoon (In re Lentek Int'l, Inc.)*, 377 B.R. 396, 405 (Bankr. M.D. Fla. 2007).

¹⁴ *Robinson v. Tyson Foods, Inc.*, 595 F.3d 1269, 1274 (11th Cir. 2010) (citing 11 U.S.C. §§ 521(1), 541(a)(7)).

of his potential claims against the Diocese in order to personally benefit at the expense of his creditors when he filed his bankruptcy petition in 1998, such that he should now be judicially estopped from pursuing such claims. Nonetheless, the Court found Mr. Boston's testimony on every point very credible. Mr. Boston offered a compelling and tragic story explaining why he delayed in suing the Diocese for the injuries caused to him by one of its priests. Moreover, the testimony was corroborated by the testimony of his wife and was utterly believable given the other circumstantial evidence.

In short, Mr. Boston filed suit against the Diocese because he alleges he was sexually molested and violently raped by a Diocese priest four separate times during 1976-77, when he was 13-14 years old. Mr. Boston, fearing reprisal by the offending priest, never told anyone about the incidents when they happened. He did not understand he had any recourse against the priest, or, even more attenuated, a claim against the Diocese. Rather, his life spiraled into a haze of alcohol and drug abuse. Indeed, he kept this terrible secret to himself, telling no one, until 2007—even hiding it from his wife for nearly 20 years—when, on the same day, he finally told his Alcoholics Anonymous sponsor (also his best friend) and his wife.

As Mr. Boston explained during his testimony, he firmly believed his sexual abuse would remain a secret he took “to the grave,” until his sponsor convinced him that, as part of the Alcoholics Anonymous 12-step regimen, he needed to disclose and confront things in his past that could be causing his substance abuse. Upon hearing of Mr. Boston's abuse, his sponsor, trying to help him cope with the sexual abuse, put Mr. Boston in touch with the Survivors Network of those Abused by Priests (“SNAP”). Soon thereafter, SNAP told Mr. Boston he may have a claim against the Diocese. It was only at this point in 2007, almost ten years after this bankruptcy case was filed, that Mr. Boston first understood he had a possible claim against the Diocese.

Before he met with SNAP in 2007, Mr. Boston never considered suing the priest, much less the Diocese. In fact, he never intended to tell anyone about his sexual abuse until he was convinced by his Alcoholics Anonymous sponsor that talking about the sexual abuse was a necessary healing step in dealing with his substance abuse problems. The debtor's position that he was not aware of any claim in 1998 is buttressed by the gap of almost ten years between the time the debtor filed this bankruptcy case and the time he asserted the claim against the Diocese. No one would wait ten years to sue simply to avoid a judicial estoppel argument. The Court accordingly found that Mr. Boston clearly did not intentionally mislead anyone or make a "mockery" of the judicial system by not listing potential claims against the Diocese because he had no intention of suing the Diocese in 1998, and, indeed, had no knowledge of the potential claim.

To conclude, at the hearing on September 20, 2010, the Court found and here reiterates that judicial estoppel is completely inappropriate in this case. Mr. Boston did not intentionally hide his claim against the Diocese in 1998; he had no idea he had one. Instead, Mr. Boston's realization that he had a claim arose in 2007, when he finally started to gain some control over his substance abuse problems. Prior to SNAP's involvement, he had no idea he had this claim. The Diocese's suggestion that Mr. Boston has somehow made a mockery of the judicial system by failing to disclose any potential claims against it in 1998 is specious, disingenuous, and just plain sad.

Lastly, the Chapter 7 trustee, who testified at the hearing, is fully supportive of the debtor's claim. She has solicited or filed claims for all of the parties the debtor owed when he filed this bankruptcy case, and stands ready to administer any recovery she and the debtor obtain in the Connecticut litigation.

For the foregoing reasons, on September 23, 2010, the Court entered an Order Granting Motion to Vacate Order Reopening Case,¹⁵ which granted the Diocese's motion,¹⁶ vacated the Order Granting Motion to Reopen Chapter 7 Case,¹⁷ and again granted the debtor's Emergency Motion to Reopen Chapter 7 Case¹⁸ *nunc pro tunc* to April 26, 2010.

DONE AND ORDERED in Orlando, Florida, this 18th day of October, 2010.



KAREN S. JENNEMANN
United States Bankruptcy Judge

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¹⁵ Doc. No. 62.

¹⁶ Doc. No. 31.

¹⁷ Doc. No. 18.

¹⁸ Doc. No. 17.