

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

In re:

Case No. 03-4926-3F7

BRUCE LEE JENNINGS,

\_\_\_\_\_  
Debtor.

Chapter 7

GREGORY K. CREWS, as Chapter 7 Trustee  
for the Estate of Bruce Lee Jennings,

Plaintiff,

vs.

Adv. No. 3:06-ap-84-PMG

QUARLES & BRADY, LLP,  
QUARLES & BRADY LLP d/b/a  
QUARLES & BRADY STREICH LANG LLP,  
and NED NASHBAN,

\_\_\_\_\_  
Defendants.

**ORDER ON (1) NOTICE OF INTENT TO COMPROMISE AND (2) MOTION FOR  
APPROVAL OR ENFORCEMENT OF SETTLEMENT AGREEMENT AND FOR ENTRY OF  
BAR ORDER**

**THIS CASE** came before the Court for hearing to consider the Notice of Intent to Compromise filed by Gregory K. Crews, as Trustee (the Trustee), in the main Chapter 7 case of Bruce Lee Jennings. (Doc. 1494). Objections to the Notice of Intent to Compromise were filed by Brandon James Maxfield, Linda Bullard, and Gary, Deborah, and Jacob Kramer (the Objecting Creditors). (Docs. 1495, 1496, 1497).

The case also came before the Court to consider the Motion for Approval or Enforcement of Settlement Agreement and for Entry of Bar Order filed by Quarles & Brady LLP, Quarles & Brady LLP d/b/a Quarles & Brady Streich Lang, LLP, and Ned Nashban (collectively, Quarles) in Adv. Pro. 06-84. (Adv. Doc. 237). The Trustee filed a written Reply to the Motion. (Adv. Doc. 240).

The Notice filed in the main case, and the Motion filed in the adversary proceeding, both relate to an Amended Mediated Settlement Agreement entered by the Trustee and Quarles on May 24, 2010. The Settlement provides, among other terms, for the entry of a Bar Order that enjoins creditors of the bankruptcy estate from bringing claims against Quarles, even though the creditors are not parties to the Settlement or the adversary proceeding. The Objecting Creditors contend that the Bar Order is impermissibly broad because it releases claims held by nonparties that are independent of the adversary proceeding.

### **Background**

Bruce Lee Jennings (Jennings) and ten related debtors filed petitions under Chapter 11 of the Bankruptcy Code on May 14, 2003. Quarles represented all of the debtors in connection with the filing of the bankruptcy cases.

Brandon Maxfield (Maxfield) is the primary creditor in Jennings' bankruptcy case. On December 29, 2004, Maxfield filed a Renewed Motion for Leave to Pursue Designated Claims on Behalf of the Estate. (Doc. 946). In the Motion, Maxfield requested permission to prosecute certain malpractice claims against Quarles for the benefit of Jennings' bankruptcy estate. The Motion was granted on March 24, 2005. (Doc. 1145).

On May 13, 2005, Maxfield filed a Complaint against Quarles in the Circuit Court for Duval County, Florida. The Complaint contained two Counts: an action for legal malpractice, and an action for breach of fiduciary duty.

On June 7, 2005, shortly after the Complaint had been filed in state court, Jennings' Chapter 11 case was converted to a case under Chapter 7.

The malpractice action that had been filed by Maxfield in state court was subsequently transferred to the Bankruptcy Court, and the Trustee was substituted for Maxfield as the plaintiff in the adversary proceeding.

On April 5, 2010, the Trustee filed a Motion for Leave to Amend the Complaint. (Doc. 205). Quarles opposed the Motion.

On May 24, 2010, the Trustee and Quarles entered an Amended Mediated Settlement Agreement. (Doc. 1494, Exhibit A). Generally, the Settlement provides for Quarles to withdraw its objection to the Trustee's Motion for Leave to Amend the Complaint, for the Trustee to file the Amended Complaint, and for Quarles to file an Answer and Affirmative Defenses to the Amended Complaint.

The Settlement also provides for the entry of a Bar Order by the Court. According to the Settlement, the Bar Order "would prohibit and/or enjoin interested parties, including all known creditors of the Debtor and parties in interest, with notice of this settlement, from pursuing claims against [Quarles], whether directly or indirectly, based on the facts and circumstances set forth in the Trustee's Amended Complaint in the Adversary Proceeding."

After the Bar Order is entered and the adversary proceeding is dismissed, the Settlement provides for Quarles to pay the Trustee the sum of \$500,000.00, and the Trustee and Quarles “shall be deemed to have mutually released each other” from all claims between and among them.

On June 7, 2010, the Trustee filed an Amended Complaint, and Quarles filed an Amended Answer and Affirmative Defenses, in accordance with the terms of the Settlement. (Adv. Docs. 234, 235).

On June 10, 2010, the Trustee filed a Notice of Intent to Compromise, and asked the Court to approve the Settlement. (Doc. 1494).

Maxfield, Linda Bullard, and Gary, Deborah and Jacob Kramer (the Objecting Creditors) filed written Objections to the Settlement. (Docs. 1495, 1496, and 1497).

### **Discussion**

In their Objections, the Objecting Creditors do not generally oppose a resolution of the adversary proceeding, and do not oppose the amount that Quarles proposes to pay the Trustee to settle the claims asserted in the proceeding. (Doc. 1495, p. 2).

Instead, the Objecting Creditors object only to the entry of the Bar Order that the Trustee and Quarles requested as a component of the Settlement. According to the Objecting Creditors, they hold individual potential claims against Quarles that are independent of the malpractice action, and the release of those claims pursuant to the Bar Order is improper because they were not parties to the Settlement or the adversary proceeding. (Doc. 1495, p. 2).

The proposed Bar Order provides:

All parties with an interest in the Estate of Bruce Lee Jennings, including all creditors of the Estate of Bruce Lee Jennings, are hereby barred and/or enjoined from prosecuting, and are hereby held to have forever released and discharged, any claims against Quarles & Brady LLP, Quarles & Brady LLP d/b/a Quarles & Brady Streich Lang LLP, and

Ned R. Nashban, whether directly or indirectly, based upon, relating to, or arising out of the facts and circumstances set forth in the Amended Complaint filed by Crews on \_\_\_\_\_ (Adv. Doc. No. \_\_\_\_.)

(Doc. 1495, Exhibit B).

The sole issue raised by the Objections is whether the Court should enter the Bar Order, and thereby enjoin the Objecting Creditors from pursuing their individual claims against Quarles, in connection with the Court's approval of the Amended Mediated Settlement Agreement.

### **I. Subject matter jurisdiction**

A threshold issue is whether the Court has subject matter jurisdiction to enter the Bar Order. If entered, the Bar Order would enjoin creditors who are not parties to the adversary proceeding from pursuing claims against other nondebtors.

Section 1334(b) of title 28 provides that district courts shall have "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. §1334(b). The jurisdiction provided by §1334(b) is referred to the Bankruptcy Court pursuant to 28 U.S.C. §157(a).

By providing that district courts have jurisdiction of all civil proceedings that are "related to" bankruptcy cases, "Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected to the bankruptcy estate." Celotex Corp. v. Edwards, 514 U.S. 300, 308 (1995)(quoting Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984)). "The test for determining whether a civil proceeding is 'related-to' bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being

administered in bankruptcy.” Florida Development Associates Ltd. v. Knezevich and Associates, Inc., 2009 WL 393870, at 3 (Bankr. S.D. Fla.)(citing Pacor, Inc. v. Higgins, 743 F.2d at 994).

In In re Munford, 97 F.3d 449 (11<sup>th</sup> Cir. 1996), a Chapter 11 debtor had filed an action against multiple parties, but subsequently entered into a settlement agreement with only one of the defendants. The agreement provided for the entry of a bar order enjoining the nonsettling defendants from pursuing contribution claims against the settling defendant. In re Munford, 97 F.3d at 452. The Eleventh Circuit Court of Appeals found that the Bankruptcy Court had subject matter jurisdiction over the nonsettling defendants’ claims against the settling defendant, and therefore had jurisdiction to enter the bar order. Id. at 454.

In reaching its conclusion, the Eleventh Circuit reaffirmed its earlier determination in Lemco Gypsum, Inc. that civil proceedings that are related to bankruptcy “need not . . . be against the debtor or against debtor’s property” in order for the Bankruptcy Court to have subject matter jurisdiction. Id.(quoting In re Lemco Gypsum, Inc., 910 F.2d 784, 788 (11<sup>th</sup> Cir. 1990) and Pacor, Inc. v. Higgins, 743 F.2d at 994). With respect to the specific proceeding before it, the Court found that the nonsettling defendants’ claims had a sufficient nexus to the bankruptcy case to confer subject matter jurisdiction, because the settling defendant would not have agreed to the settlement with the debtor unless the bar order was entered.

The parties do not dispute that without the district court entering the bar order in this case [the debtor] would have lost its “option” to settle its claims against [the settling defendant] and the right to receive \$350,000 for the estate. Because the nonsettling defendants’ assertion of their contribution and indemnification claims would have an effect on [the debtor’s] estate being administered in bankruptcy, we hold that a sufficient nexus exists between this title 11 adversary proceeding and the nonsettling defendants’ contribution and indemnity claims.

In re Munford, Inc., 97 F.3d at 454. In other words, the settlement agreement materially affected the bankruptcy estate, and the “nexus” of the settlement agreement to the nonsettling defendants’ claims therefore provided the Bankruptcy Court with subject matter jurisdiction to enter the bar order. Id.

The claims at issue in Munford were held by parties who had been named as defendants in an adversary proceeding filed by the debtor. In the case before the Court, the Objecting Creditors were not parties to the malpractice action settled by the Trustee. Despite this distinction, however, the Court finds that the principles applied by the Eleventh Circuit in Munford apply to the claims of the Objecting Creditors in this case, and that the Court has subject matter jurisdiction to enter the Bar Order requested by Quarles. See In re S&I Investments, 421 B.R. 569, 584 (Bankr. S.D. Fla. 2009).

First, it is clear that the Bar Order is a critical component of the Settlement Agreement. Paragraph 2 of the Settlement Agreement provides that Quarles will pay the sum of \$500,000.00 to the Trustee after the entry of the Bar Order. Paragraph 6 of the Settlement Agreement provides that the parties will file a motion to approve the Settlement Agreement and for entry of the Bar Order, and that the Settlement Agreement is subject to the Bankruptcy Court’s approval. (Doc. 1494, Exhibit A). Quarles asserts that the Settlement is conditioned on the entry of the Bar Order, and that it would not have entered into the Settlement Agreement without the provision for entry of the Bar Order. (Adv. Doc. 237, ¶ 23; Transcript, pp. 11, 19).

Consequently, the Bar Order has a sufficient nexus to the Settlement Agreement to confer subject matter jurisdiction on the Bankruptcy Court. In re Munford, 97 F.3d at 454. Without the entry of the Bar Order, the estate would lose its ability to settle a significant dispute and receive the sum of \$500,000.00 for the benefit of Jennings’ creditors. See also In re Van Diepen, 2007 WL 1577961, at

4(11<sup>th</sup> Cir.)(The Bankruptcy Court could enjoin a creditor's claims against nondebtors where the injunction was entered in connection with a settlement with the bankruptcy trustee that produced funds for the estate.).

Second, the Bar Order applies only to parties with an interest in Jennings' bankruptcy estate, including creditors in the case, and only to claims related to the facts and circumstances set forth in the Amended Complaint filed by the Trustee. (Doc. 1495, Exhibit B). Consequently, the injunction does not extend to strangers to the bankruptcy case, or to events and transactions that are unknown in the case.

The only three creditors that remain in the case are the Objecting Creditors, (Adv. Doc. 240, ¶ 5; Transcript, pp. 16-17)), and the Objecting Creditors have each filed Proofs of Claim seeking distribution from the estate. (Maxfield Claim Nos. 1-1, 10-1, 16-1; Bullard Claim No. 11-1; Kramer Claim No. 7-1). Further, the claims against Quarles that the Objecting Creditors seek to preserve arise from the same attorney-client relationship that is the subject of the Settlement Agreement with the Trustee.

Accordingly, this case is unlike the situation presented to the Court in In re Arter & Hadden, LLP, 373 B.R. 31 (Bankr. N.D. Ohio 2007). In Arter & Hadden, the Court found that it lacked subject matter jurisdiction to enter a bar order that enjoined claims among nondebtors because the proposed bar order was too broad. Specifically, the bar order proposed in that case sought to prohibit claims by "any person," and was not limited to interested parties or creditors in the bankruptcy case. Additionally, the broad scope of the proposed bar order prevented the Court from evaluating whether the enjoined claims



were related to the claims being settled in the bankruptcy case. In re Arter & Hadden, 373 B.R. at 37-39.

In the case before the Court, the Bar Order is a critical component of an agreement that settles an action prosecuted by the Trustee for the benefit of the estate, and Quarles would not enter the Settlement or pay the settlement amount to the estate unless the Bar Order is entered. The Bar Order is limited to parties with an interest in the bankruptcy estate, including creditors, and to claims arising from the allegations set forth in the Trustee's Amended Complaint. Under these circumstances, the Court finds that the claims enjoined by the proposed Bar Order have an effect on Jennings' bankruptcy estate and are therefore related to the bankruptcy case. Florida Development Associates Ltd. v. Knezevich and Associates, 2009 WL 393870, at 3(citing Pacor v. Higgins, 743 F.2d at 994). The Court has subject matter jurisdiction to enter the Bar Order.

## **II. Authority to enter the Bar Order**

After determining that the Bankruptcy Court has subject matter jurisdiction over the Objecting Creditors' claims against Quarles, the next issue is whether the Court has the authority to enter the Bar Order. In Munford, the Eleventh Circuit held that §105(a) of the Bankruptcy Code and Rule 16(c)(2)(I) of the Federal Rules of Civil Procedure "authorize bankruptcy courts to enter bar orders where such orders are integral to settlement in an adversary proceeding." In re Munford, 97 F.3d at 455.

Section 105(a) of the Bankruptcy Code provides in part that the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. 11 U.S.C. §105(a). Rule 16 of the Federal Rules of Civil Procedure, as made applicable to this proceeding by Rule 7016 of the Federal Rules of Bankruptcy Procedure, relates to pretrial conferences,

pretrial case management, and other matters in advance of trial. Rule 16(c)(2)(I) provides that Courts may consider settling the case prior to trial, and “using special procedures to assist in resolving the dispute when authorized by statute or local rule.” Fed.R.Civ.P. 16(c)(2)(I).

According to the Eleventh Circuit, §105(a) and Rule 16(c)(2)(I) “taken together provide ample authority” for the entry of a bar order. Id. Subsequent decisions have recognized the Court’s authority to enter a bar order pursuant to §105(a), as long as the conditions set forth in Munford are satisfied.

In In re Sentinel Funds, Inc., 380 B.R. 902, 905 (Bankr. S.D. Fla. 2008), for example, the Court acknowledged that “the entry of bar orders which preclude third parties from pursuing independent claims is permitted under 11 U.S.C. §105,” although such bar orders should be entered only if they are integral to the underlying settlement. Additionally, in In re Grau, 267 B.R. 896, 899 (Bankr. S.D. Fla. 2001), the Court overruled a creditor’s objection to a settlement that prohibited the creditor from pursuing a separate claim against the debtor. According to the Court, the prohibition in that case was appropriate based on the Eleventh Circuit’s decision in Munford that such injunctions are authorized by §105(a) and Rule 16, as long as the injunction is integral to the settlement and the bar order is fair and equitable.

As shown above, the Bar Order in this case is integral to the Settlement Agreement between the Trustee and Quarles. The Settlement Agreement provides that Quarles will pay the settlement funds to the Trustee after the entry of the Bar Order. (Doc. 1494, Exhibit A). The Settlement is conditioned on the entry of the Bar Order, and Quarles would not have entered the Settlement without the provision for the Bar Order. (Adv. Doc. 237, ¶ 23).

The entry of the Bar Order in this case is authorized pursuant to §105(a) of the Bankruptcy Code and Rule 16(c)(2)(I) of the Federal Rules of Civil Procedure.

### **III. Fair and equitable**

Finally, in determining whether to enter a bar order in a particular case, the Court “must make a reasoned determination that the bar order is fair and equitable.” In re Munford, 97 F.3d at 455. In this case, the Court determines that the Bar Order is fair and equitable for at least three reasons.

#### **A. The barred claims**

First, the Objecting Creditors have not articulated the individual causes of action against Quarles that they claim to hold and seek to preserve. In his Objection to the Settlement, Maxfield asserts that he “has a direct right of action under California law against Quarles & Brady and Mr. Nashban for their participation with Bruce Jennings, or any of his 10 associated bankruptcy debtors, in defrauding Mr. Maxfield.” (Doc. 1495, ¶9). The Objecting Creditors apparently contend that Jennings fraudulently converted nonexempt assets to exempt assets prior to filing his bankruptcy petition, and that Quarles assisted or participated in the fraudulent transfers. (Transcript, pp. 20-22).

The Objecting Creditors have not described the transfers, however, and have not provided any details regarding Quarles’ alleged facilitation of the transfers. In fact, it is apparently conceded that “nobody knows” whether Quarles played a role in any fraudulent transfers, or if the fraudulent transfers exist. (Transcript, pp. 20-21).

Additionally, the Objecting Creditors have not provided any legal authority to support their claim that they hold a direct cause of action against Quarles under nonbankruptcy law. Quarles is a law firm.

Jennings was Quarles' client. The Objecting Creditors are creditors of Quarles' former client, but do not assert that they had any contractual or other direct relationship with Quarles.

Generally, a law firm owes no independent duty to creditors of its client. In re TOCFHBI, Inc., 413 B.R. 523, 538-39 (Bankr. N.D. Tx. 2009). Further, although an attorney for a bankruptcy debtor may have a general duty to the bankruptcy estate, the duties do not extend to particular creditors in the case. In re Count Liberty, LLC, 370 B.R. 259, 281 n.43 (Bankr. C.D. Cal. 2007). See also Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc., 131 Cal.App.4<sup>th</sup> 802, 32 Cal.Rptr.3d 325 (Cal.App. 6 Dist. 2005)(An attorney for a bankruptcy debtor does not owe a duty of care “directly to the creditors or any one of them.”).

The Objecting Creditors in this case have not presented any case or statutory authority showing a theory of liability under which Quarles would be accountable to them, as individual creditors, for services provided to Quarles' client.

In determining whether a bar order is fair and equitable, Courts may consider the likelihood that the nonsettling party will prevail on the barred claim. In re Munford, 97 F.3d at 455. In this case, the Court cannot determine that the Objecting Creditors would likely prevail in any future litigation against Quarles, because the Objecting Creditors have not articulated either the factual basis or legal theory for the claims that they seek to preserve.

## **B. Prior litigation**

Second, the bankruptcy case has been pending for more than seven years, and has involved litigation by creditors against Quarles in at least two highly-contested proceedings.

In the main case, for example, Maxfield sought and obtained an Order disqualifying Quarles from representing Jennings, disallowing any compensation to Quarles for legal services provided in the case, and requiring Quarles to disgorge its prepetition retainer. (Docs. 889, 890).

Additionally, Maxfield obtained permission from the Bankruptcy Court to file a malpractice action against Quarles (Doc. 1145), and thereafter filed the initial Complaint against Quarles for legal malpractice and breach of fiduciary duty.

Further, throughout the bankruptcy case, Maxfield has repeatedly raised the issue of whether Jennings had fraudulently transferred property to avoid the claims of his creditors. See, for example, Objection to Debtor's Claim of Exemptions (Doc. 84), Motion to Convert Case from Chapter 11 to Chapter 7 (Doc. 275), Motion for Leave to Pursue Designated Claims on Behalf of the Estate (Doc. 559), and Complaint to Deny the Debtor's Discharge (Adv. 03-337).

In other words, Maxfield has already engaged in years of litigation against Quarles, all related to Quarles' representation of Jennings, at the same time that he was alleging that Jennings had made fraudulent transfers. The extent of the prior litigation against Quarles, by or on behalf of creditors of the estate, is a factor that indicates the fairness of barring further claims arising out of the same client relationship between Quarles and the Debtor.

### **C. Expense of further litigation**

Third, if the Bar Order is not entered and the Settlement is withdrawn, it is clear that the continued litigation between the Trustee and Quarles will diminish the resources of the settling parties. In re Munford, 97 F.3d at 455.

The Settlement is conditioned on the entry of the Bar Order. If the Bar Order is not entered and the malpractice action is resumed, the Trustee and Quarles will be required to address significant and time-consuming issues that are pending in the proceeding. The issues include the scope and applicability of the attorney-client privilege, for example, and whether the Trustee may waive the Debtor's privilege. In Commodity Futures Trading Commission v. Weintraub, 471 U.S. 343 (1985), the United States Supreme Court left open the question of whether a trustee in the case of an individual debtor may assert or waive the debtor's attorney-client privilege.

Additionally, the Trustee in this case has filed an Amended Complaint, and Quarles has asserted that the claims set forth in the Amended Complaint are barred by the statute of limitations. Quarles' defense that the new claims are time-barred is unresolved. Finally, the Amended Complaint and Answer are likely to generate extensive discovery requests by the Trustee and Quarles regarding the new factual allegations and legal claims. (Adv. Doc. 237, pp. 9-11).

The expense of further litigation, which is virtually assured in this case if the Settlement is not concluded, is a factor indicating that entry of the Bar Order is fair and equitable.

### **Conclusion**

The sole issue before the Court is whether the Bar Order should be entered in connection with the Court's approval of the Amended Mediated Settlement Agreement. The Court has subject matter jurisdiction to enter the Bar Order pursuant to 28 U.S.C. §1334(b), and is authorized to enjoin the Objecting Creditors from pursuing claims against Quarles pursuant to §105(a) of the Bankruptcy Code and Rule 16 of the Federal Rules of Civil Procedure. The Bar Order at issue in this case is integral to the Settlement Agreement, and is fair and equitable. Consequently, the Amended Mediated Settlement Agreement should be approved, and the Bar Order should be entered.

Accordingly:

**IT IS ORDERED** that:

1. The Objections to the Trustee's Notice of Intent to Compromise filed by Brandon James Maxfield, Linda Bullard, and Gary, Deborah, and Jacob Kramer are overruled, and the Amended Mediated Settlement Agreement entered by Gregory K. Crews, as Chapter 7 Trustee, and Quarles & Brady, LLP, Quarles & Brady LLP d/b/a Quarles & Brady Streich Lang LLP, and Ned Nashban, is approved.

2. The Motion for Approval or Enforcement of Settlement Agreement and for Entry of Bar Order, filed by Quarles & Brady LLP, Quarles & Brady LLP d/b/a Quarles & Brady Streich Lang, LLP, and Ned Nashban, is granted, and the parties may submit a separate proposed Order Approving Settlement

and Entering Bar Order in accordance with the Amended Mediated Settlement Agreement.

**DATED** this 15 day of October, 2010.

**BY THE COURT**

Paul M. Glenn

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PAUL M. GLENN  
Chief Bankruptcy Judge