

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION  
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In re: Case No. 9:11-bk-09671-FMD  
Chapter 13

Shirley M. Kwiatkowski,

Debtor.

**MEMORANDUM OPINION  
AND ORDER GRANTING  
SECOND MOTION BY SPECIAL  
COUNSEL FOR CLARIFICATION OF  
CONFIRMATION ORDER (DOC. NO. 126)<sup>1</sup>**

Debtor's confirmed Chapter 13 plan provided that she would prosecute a bad faith claim against her insurance company and commit the proceeds of the litigation to the payment of creditors in her case. When the insurance company prevailed in the litigation after serving Debtor with a proposal for settlement, it sought to recover its fees and costs from Debtor under Federal Rule of Civil Procedure 54(d)(1). The Court finds that because Debtor brought the cause of action against her insurance company on behalf of the bankruptcy estate, fees or costs awarded to the insurer are recoverable only against the bankruptcy estate and not against Debtor individually.

**FACTS**

On May 20, 2011, Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code.<sup>2</sup> Helen and Ray Clasen timely filed a proof of claim in the amount of \$2,000,000, representing damages they claimed against Debtor in connection with a

prepetition automobile accident.<sup>3</sup> Debtor objected to the claim.<sup>4</sup>

Debtor thereafter amended her Schedule B to include a potential, contingent, and unliquidated cause of action against Allstate Insurance Company ("Allstate") for its alleged bad faith refusal to settle the Clasens' claim (the "Bad Faith Action").<sup>5</sup> Debtor's Second Amended Chapter 13 Plan (the "Plan")<sup>6</sup> provided for Debtor to make monthly plan payments to the Chapter 13 Trustee and for the preservation and litigation of the Bad Faith Action. The Plan stated that all proceeds from the Bad Faith Action shall be "dedicated to the Plan as determined by law." The Plan vested the net proceeds of the Bad Faith Action in Debtor's estate.

The Court confirmed the Plan, providing in its Order Confirming Plan (the "Confirmation Order")<sup>7</sup> that any monies received from the Bad Faith Action would be promptly turned over to the Chapter 13 Trustee. The Court also authorized Debtor to retain special counsel ("Special Counsel") to pursue her claims against Allstate.<sup>8</sup> Several years later, in 2015, Debtor completed the payments under the Plan, and the case was closed.<sup>9</sup> As of the date the case was closed, the Bad Faith Action, pending in the United States District Court for the Middle District of Florida, Fort Myers Division,<sup>10</sup> had not yet been concluded.

Several months after the bankruptcy case was closed, Special Counsel moved to reopen the case<sup>11</sup> and filed an emergency motion for clarification of the Confirmation Order (the "Clarification Motion").<sup>12</sup> In the Clarification Motion, Special Counsel sought clarification as to whether Debtor or the Trustee was the party in interest in the Bad Faith Action and whether it was the Trustee or Debtor

<sup>1</sup> On June 8, 2017, the Court orally announced its ruling granting the *Second Motion by Special Counsel for Clarification of Confirmation Order* (Doc. No. 126). This Memorandum Opinion and Order supplements the Court's oral ruling.

<sup>2</sup> Doc. No. 1.

<sup>3</sup> Claim No. 8-1.

<sup>4</sup> Doc. No. 30.

<sup>5</sup> Doc. No. 29.

<sup>6</sup> Doc. No. 77.

<sup>7</sup> Doc. No. 97.

<sup>8</sup> Doc. No. 108.

<sup>9</sup> Doc. No. 115.

<sup>10</sup> *Kwiatkowski v. Allstate Insurance Co.*, 2:14-cv-575-FtM-PAM-CM.

<sup>11</sup> Doc. No. 116.

<sup>12</sup> Doc. No. 117.

who was authorized to make decisions with respect to litigation and settlement issues.

This Court reopened the case and, at a December 17, 2015 hearing that was attended by Allstate's counsel,<sup>13</sup> granted the Clarification Motion. In its February 3, 2016 Order Granting Motion by Special Counsel for Clarification of Confirmation Order (the "Clarification Order"),<sup>14</sup> the Court ruled that Debtor controlled the litigation and that Special Counsel was to take direction from Debtor and not the Trustee. The Court further ordered that under Federal Rule of Bankruptcy Procedure 9019 and the Confirmation Order, the Court had the authority to approve settlements that involve property of the estate, including the Bad Faith Action. The Clarification Order specifically stated that Debtor would not be liable for attorney's fees or court costs arising from the rejection of any settlement, proposal for settlement, or offer of judgment from Allstate. Allstate did not appeal the Clarification Order.

Over a year later, on March 23, 2017, Special Counsel filed a Second Motion for Clarification (the "Second Clarification Motion"). The Second Clarification Motion states that in January 2017, the District Court entered summary judgment in favor of Allstate in the Bad Faith Action,<sup>15</sup> and Allstate then filed its bill of costs against Debtor personally, not against the bankruptcy estate.<sup>16</sup> On March 27, 2017, the District Court entered its Memorandum and Order establishing Allstate's taxable costs and referring to this Court the issue of whether those costs are taxable against Debtor personally or against the estate.<sup>17</sup>

On April 20, 2017, and June 8, 2017, this Court held hearings to determine whether Allstate's costs are payable by Debtor or the estate. At the completion of the June 8, 2017 hearing, this Court announced its ruling granting the Second Clarification Motion.

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<sup>13</sup> Doc. No. 123.

<sup>14</sup> Doc. No. 123.

<sup>15</sup> 2:14-cv-575-FtM-PAM-CM (Doc. No. 69).

<sup>16</sup> 2:14-cv-575-FtM-PAM-CM (Doc. Nos. 71 and 72).

<sup>17</sup> 2:14-cv-575-FtM-PAM-CM (Doc. No. 87); the Order granted taxable costs in the amount of \$1,306.80.

## DISCUSSION

At the time a bankruptcy petition is filed, an estate is created that comprises of all the debtor's legal and equitable interest in property.<sup>18</sup> The debtor's legal and equitable interests include all causes of action that the debtor had before filing for bankruptcy.<sup>19</sup> A trustee in Chapter 13 bankruptcy "succeeds to all causes of action held by the debtor at the time the bankruptcy petition is filed."<sup>20</sup> Under Federal Rule of Bankruptcy Procedure 6009, the "trustee or debtor in possession may . . . prosecute any action or proceeding in behalf of the estate before any tribunal." The Eleventh Circuit has recognized that, in accordance with Rule 6009, a debtor under Chapter 13 of the Bankruptcy Code "retains standing to pursue legal claims on behalf of the estate."<sup>21</sup>

Here, there is no dispute that the Bad Faith Action was property of the bankruptcy estate. The plain language of the Confirmation Order evidences that Debtor was required to bring the Bad Faith Action for the benefit of the bankruptcy estate, not herself. Allstate had the opportunity to object to confirmation of the Plan or the Confirmation Order, but did not.

Moreover, the Clarification Order specifically provides that Debtor did not have any authority to accept settlement proposals without Bankruptcy Court approval and would not be liable for "any attorney's fees or court costs arising from the rejection of any offer of settlement, proposal for settlement or offer of judgment. . . ."<sup>22</sup> Allstate had the opportunity to seek reconsideration of or appeal the Clarification Order, but did not do so. Both the Confirmation Order and the Clarification Order are final and binding upon Allstate.<sup>23</sup>

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<sup>18</sup> 11 U.S.C. § 541(a).

<sup>19</sup> *Parker v. Wendy's Int'l, Inc.*, 365 F.3d 1268, 1272 (11th Cir. 2004).

<sup>20</sup> *Jones v. Harrell*, 858 F.2d 667, 669 (11th Cir. 1988).

<sup>21</sup> *Crosby v. Monroe Cty.*, 394 F.3d 1328, 1331, n. 2 (11th Cir. 2004) (noting that Chapter 13 debtors retain standing to pursue claims on behalf of the bankruptcy estate) (citing *In re Mosley*, 260 B.R. 590, 595 (Bankr. S.D. Ga. 2000)).

<sup>22</sup> Doc. No. 123.

<sup>23</sup> See *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 269 (2010).

## CONCLUSION

The Bad Faith Action was brought for the sole benefit of the estate. The Court finds that any costs awarded to Allstate in the Bad Faith Action are taxable only against the estate (which is closed and has no assets) and not against Debtor, individually.

Accordingly, it is

**ORDERED** that the Second Motion for Clarification is GRANTED. Allstate may not recover its taxable costs in the Bad Faith Action against Debtor, individually.

**DATED:** September 22, 2017.

/s/ Caryl E. Delano

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Caryl E. Delano  
United States Bankruptcy Judge

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