

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION  
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In re: Case No. 9:15-bk-04241-FMD  
Chapter 7

Benjamin H. Yormak,  
  
Debtor.

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**ORDER DENYING STEVEN YORMAK'S  
MOTION FOR SUMMARY JUDGMENT  
PURSUANT TO THE DOCTRINE OF  
CONTRACTUAL ESTOPPEL  
(Doc. No. 575)**

THIS CASE came on for consideration of *Creditor Steven R. Yormak's Motion for Summary Judgment Pursuant to the Doctrine of Contractual Estoppel* (Doc. No. 575) (the "Motion for Summary Judgment"), Debtor's response (Doc. No. 580), and Creditor's reply (Doc. No. 583). For the following reasons, the Court will deny the Motion for Summary Judgment.

1. Steven Yormak contends that Debtor's objections to Steven Yormak's proof of claim must be overruled by operation of law because there is no genuine issue for trial and because, by virtue of Debtor's having entered into consulting agreements with Steven Yormak (the "Consulting Agreements"), having operated under the Consulting Agreements; and, having benefitted from the Consulting Agreements, Debtor is estopped from objecting to Steven Yormak's claim for breach of the Consulting Agreements.

2. Debtor argues the existence of factual disputes and that Steven Yormak has raised the issue of contractual estoppel for the first time in this, his seventh, motion for summary judgment. The

Court has reviewed Steven Yormak's response to Debtor's objection to claim (Doc. No. 458) (the "Response"). Although the term "contractual estoppel" does not appear in the Response, the estoppel defense is implicit in the Response's factual allegations.<sup>1</sup> The Court finds that the issue of contractual estoppel was raised in the Response.

3. Under Federal Rule of Civil Procedure 56, incorporated by Federal Rule of Bankruptcy Procedure 7056, a moving party is entitled to summary judgment if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."<sup>2</sup> A factual issue is genuine if the evidence is such that the fact finder could return a verdict for the nonmovant. Facts are material if, under applicable law, they would affect the outcome of the suit.<sup>3</sup>

4. The moving party bears the initial burden of showing the absence of a genuine issue of material fact by identifying portions of the pleadings, depositions, answers to interrogatories, admissions, and affidavits that support the motion.<sup>4</sup> In deciding whether the movant has met this burden, the court must view all record evidence and draw all reasonable inferences in favor of the nonmoving party.<sup>5</sup> If the movant makes such an affirmative showing, the burden then shifts to the nonmoving party to go beyond the pleadings and to designate specific facts showing there is a genuine issue of material fact.<sup>6</sup>

5. Legal and factual issues preclude the Court from granting the Motion for Summary Judgment. These include the nature of the "consulting services" provided by Steven Yormak to Debtor's law practice, and whether those "consulting services" constitute the unlicensed practice of law; whether the Consulting Agreements are void as a matter of public policy as providing for the unlicensed practice of law; whether Steven Yormak's proof of claim includes a claim for liquidated damages that is unenforceable as a

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<sup>1</sup> See Doc. No. 458, paragraphs 18, 21, 25, 41, and 46.

<sup>2</sup> Fed. R. Civ. P. 56(a).

<sup>3</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

<sup>4</sup> *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

<sup>5</sup> *In re Harwell*, 628 F.3d 1312, 1316-17 (11th Cir. 2010) (citing *Loren v. Sasser*, 309 F.3d 1296, 1301-02 (11th Cir. 2002)).

<sup>6</sup> *United of Omaha Life Ins. Co. v. Sun Life Ins. Co. of America*, 894 F.2d 1555 (11th Cir. 1990); *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112 (11th Cir. 1993).

penalty; and whether the contingencies of two of the Consulting Agreements were satisfied prior to the termination of the Consulting Agreements.

Accordingly, for the foregoing reasons, it is

**ORDERED** that the Motion for Summary Judgment is **DENIED**.

**DATED:** June 6, 2019.

/s/ Caryl E. Delano

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Caryl E. Delano  
United States Bankruptcy Judge