ORDERED.

Dated: July 13, 2021

Caryl E. Delano
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
www.flmb.uscourts.gov

In re:

Benjamin H. Yormak,

Debtor.
_____/

Case No. 2:15-bk-04241-FMD
Chapter 7

ORDER GRANTING IN PART STEVEN R. YORMAK'S MOTION TO STAY AND/OR ABATE BANKRUPTCY PROCEEDINGS PURSUANT TO BANKRUPTCY RULE 8007
[Doc. No. 888]

THIS CASE came before the Court without a hearing to consider Claimant Steven R. Yormak's *Motion to Stay and/or Abate Bankruptcy Proceedings Pursuant to Bankruptcy Rule 8007* (the "Stay Motion"),[1] Debtor's response,[2] and Claimant's reply.[3]

[1] Doc. No. 888.
[2] Doc. No. 895.
[3] Doc. No. 902.

A. BACKGROUND

Claimant is a Canadian attorney who has never been licensed to practice law in the State of Florida. On April 24, 2015, Debtor, a Florida attorney and Claimant's son, filed a petition under Chapter 13 of the Bankruptcy Code, and on September 1, 2016, the Chapter 13 case was converted to a case under Chapter 7. Claimant timely filed Claim No. 4-2 (the "Claim") for $1,095,275.00 and other unliquidated amounts. The Claim was based on "services performed" by Claimant under consulting agreements with Debtor (the "Consulting Agreements"). Debtor objected to the Claim, asserting that the Consulting Agreements were unenforceable because they provided for Claimant's unlicensed practice of law (the "UPL Issue").

On February 3, 2021, after years of litigation and appeals, the Court entered an order on the parties' motions for summary judgment on the UPL Issue (the "SJ Order"). In the SJ Order, the Court found that the Consulting Agreements were unenforceable because they provided for the unlicensed practice of law, that Claimant's activities under the Consulting Agreements constituted the unlicensed practice of law, and that an unlicensed attorney is not entitled to quantum meruit fees for services performed under a void contract. The Court then denied Claimant's motion for summary judgment, granted Debtor's cross-motion for summary judgment, and disallowed Claimant's Claim.[4]

[4] Doc. No. 851.

Claimant timely moved for reconsideration[5] of the SJ Order, which the Court denied (the "Reconsideration Order").[6] In the Reconsideration Order, the Court found that Claimant had not stated any grounds to reconsider its ruling on the UPL Issue, and also found that Claimant was not entitled to compensation on the equitable ground of unjust enrichment. Claimant timely appealed from the SJ Order and the Reconsideration Order (the "SJ Order Appeal").[7] The appeal remains pending in the District Court.[8]

In addition, Claimant's appeals of three other orders of this Court are now pending in the District Court.[9] However, the Stay Motion appears to relate only to the SJ Order Appeal.[10]

After entry of the SJ Order, the following relevant record activity occurred in Debtor's bankruptcy case:

1. The Chapter 7 Trustee (the "Trustee") filed a *Renewed Motion to Approve Compromise of Controversy with Debtor* (the "Compromise Motion").[11] In the

[5] Doc. No. 853
[6] Doc. No. 859.
[7] Doc. No. 863.
[8] District Court Case No. 2:21-cv-156-JES.
[9] The three pending appeals relate to Claimant's appeal of (1) the Court's order approving a compromise of Debtor's claim to attorney's fees in a class action then pending in the District Court (Doc. No 775); (2) the Court's order denying Claimant derivative standing to prosecute an appeal of the District Court's ruling in that class action case (Doc. No. 776); and (3) the Courts order granting Debtor's motion for entry of discharge and denying Claimant's motion to extend time to object to discharge (Doc. No. 879).
[10] Doc. No. 888, ¶ 1.
[11] Doc. No. 876.

Compromise Motion, the Trustee reports that he is holding $558,313.37 and that the allowed claims against the estate (exclusive of Claimant's Claim) total $140,941.14. (Under these circumstances, the case would be considered a "surplus case," in which surplus funds, after payment of administrative expenses and creditors' allowed claims, are refunded to the debtor.)

The Trustee further reports that four contested matters remain pending between the Trustee and Debtor: (a) the Trustee's motion to determine that property received by Debtor postpetition but pre-conversion is property of the bankruptcy estate *if* the Court determines that Debtor converted his case from Chapter 13 to Chapter 7 in bad faith;[12] (b) the Trustee's objection to Debtor's claimed tenancy by the entireties exemption in a 2013 Volvo;[13] (c) the Trustee's motion to determine (i) that attorney's fees awarded to Debtor in a class action (the "CBL Class Action" and the "CBL Class Action Fees") are property of the estate, and (ii) the extent of the estate's interest in the CBL Class Action Fees;[14] and (d) the Trustee's motion for turnover of the CBL Class Action Fees that are now being held in trust by counsel for the Trustee.[15]

---

[12] Doc. No. 153. 11 U.S.C. § 348(f)(2) provides that if a debtor converts a case from Chapter 13 to Chapter 7 in bad faith, property of the estate is determined as of the conversion date (even though it is normally determined as of the date of the original petition under § 541). Claimant joined in the Trustee's motion (Doc. No. 163).

[13] Doc. No. 171.

[14] Doc. No. 365.

[15] Doc. No. 366.

Previously, the Court approved a resolution regarding the estate's interest in the CBL Class Action Fees as between the Trustee and Debtor, on the one hand, and Debtor's co-counsel in the CBL Class Action, on the other hand. Under this resolution, the Court determined that the CBL Class Action Fees to which Debtor and the estate were entitled was a combined $1.1 million.[16] However, on the record before it, the Court declined to approve the Trustee and Debtor's agreement to allocate the CBL Class Action Fees between them, with $698,500.00 to Debtor and $401,500.00 to the estate.

In the Compromise Motion, the Trustee again seeks to allocate $698,500.00 of the CBL Class Action Fees to Debtor and $401,500.00 to the estate.[17] The Trustee further seeks to establish the reasonableness of this allocation by showing that the estate would not receive more than the allocated amount *if* this Court were to determine that Debtor converted his case in bad faith, because (a) the uncollected fees from Debtor's prepetition clients would not materially change, and (b) the fees from Debtor's postpetition, pre-conversion clients would be "substantially less" than the amount allocated under the proposed compromise.[18] Claimant objected to the Compromise Motion,[19] which is set for preliminary hearing on July 27, 2021.[20]

---

[16] Doc. Nos. 733, 735, 751.
[17] Doc. No. 876, p. 7.
[18] Doc. No. 876, pp. 10-16.
[19] Doc. No. 890.
[20] Doc. No. 910.

2. Debtor's attorney filed a Bill of Costs as the prevailing party in the SJ Order;[21] under Fed. R. Bankr. P. 7054,[22] the Clerk of Court taxed costs against Claimant in the amount of $26,558.48.[23] Claimant timely filed a motion to set aside the award of costs.[24] At the Court's direction,[25] Claimant supplemented his motion to set aside the award of costs, Debtor filed a response to the supplement, and Claimant filed a reply to Debtor's response.[26]

3. Claimant filed a Bill of Costs for $11,377.50, asserting that he was the prevailing party in two partial summary judgment orders entered by the Court prior to the SJ Order.[27] Debtor objected to Claimant's Bill of Costs, and Claimant filed a response to Debtor's objection.[28]

4. Richard A. Greenberg, an attorney engaged by Claimant as an expert witness on the UPL Issue, filed a motion to compel Debtor to pay $7,525.00 for his time spent responding to Debtor's request for production and preparing for and attending his expert witness deposition.[29]

---

[21] Doc. No. 854.
[22] Fed. R. Bankr. P. 7054 ("The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides.").
[23] Doc. No. 882.
[24] Doc. No. 883.
[25] Doc. No. 887.
[26] Doc. Nos. 893, 899, 901.
[27] Doc. No. 892, referring to Doc. Nos. 88 and 586.
[28] Doc. Nos. 896, 900.
[29] Doc. No. 897.

B. THE STAY MOTION

In the Stay Motion, Claimant states that "[i]f the bankruptcy proceedings are permitted to proceed to distribution without [Claimant's] participation all funds would be exhausted with distribution to the other creditors and the surplus to debtor thereby rendering [Claimant's] appeal moot"[30] and that "an appeal reversal entirely changes the bankruptcy proceedings including but not limited to the pending the [sic] Compromise motion."[31] Claimant asks the Court "to stay and/or abate bankruptcy proceedings pursuant to Federal Rules of Bankruptcy Procedure, Rule 8007(a)(1)(A), including but not limited to any monetary claims against [Claimant] for costs or otherwise."[32]

Reading the Stay Motion as a whole, it is difficult to ascertain whether Claimant seeks a stay pending the SJ Order Appeal under Rule 8007(a)(1)(A)—asking the Court to stay the effect of the SJ Order and allow him to continue to participate in Debtor's bankruptcy case as a creditor—or whether Claimant seeks, under Rule 8007(e), to stay *all* proceedings in Debtor's Chapter 7 case.

C. ANALYSIS

Under Rule 8007(a)(1)(A), a party may request the stay of a judgment or order pending an appeal.[33] The rule "authorizes stays of *specific orders* pending appeal,"[34] if

[30] Doc. No. 888, ¶ 2.
[31] Doc. No. 888, ¶ 6.
[32] Doc. No. 888, p. 1.
[33] Fed. R. Bankr. P. 8007(a)(1)(A).
[34] *In re Wellington*, 2021 WL 2020643, at *3, n. 3 (Bankr. M.D.N.C. May 20, 2021) (emphasis added).

the requirements for a stay are otherwise satisfied. Under Rule 8007(e), the bankruptcy court may "suspend or order the continuation of other proceedings in the case," or "issue any other appropriate orders during the pendency of an appeal to protect the rights of all parties in interest."[35] Rule 8007(e) allows the court, in its discretion, to suspend or continue other proceedings in the case, or even the entire bankruptcy case, pending an appeal.[36]

The legal standards for obtaining a stay under Rule 8007(a)(1)(A) and Rule 8007(e) are the same; the moving party must satisfy the traditional four-part test for injunctive relief by showing that (1) he is likely to prevail on the merits of the appeal; (2) he will suffer irreparable injury if the stay or other injunctive relief is not granted; (3) other parties will suffer no substantial harm if the stay is granted; and (4) the issuance of a stay will serve, rather than disserve, the public interest implicated in the case.[37] The moving party bears the burden of establishing the four requirements.[38]

1. The Likelihood of Success on Appeal

To establish the likelihood of success on appeal, the moving party must generally show that the bankruptcy court's decision was clearly erroneous.[39] Here,

---

[35] Fed. R. Bankr. P. 8007(e).
[36] *In re Wellington*, 2021 WL 2020643, at *3, n. 3; *In re Moore*, 2020 WL 5633081, at *4 (Bankr. S.D. Ga. Aug. 27, 2020).
[37] *In re Wellington*, 2021 WL 2020643, at *3; *In re Moore*, 2020 WL 5633081, at *4; *In re F.G. Metals, Inc.*, 390 B.R. 467, 471-72 (Bankr. M.D. Fla. 2008).
[38] *In re Moore*, 2020 WL 5633081, at *5; *In re F.G. Metals*, 390 B.R. at 472.
[39] *Robles Antonio v. Barrios Bello*, 2004 WL 1895123, at *1 (11th Cir. 2004) (citing *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986)).

the Court finds that Claimant has not met his burden of proving that he is likely to prevail in the SJ Order Appeal.

It appears that Claimant's primary ground for appealing the SJ Order is his assertion that the Court, prior to entry of the SJ Order, made rulings that deprived him of access to evidence in the case.[40]

But in the SJ Order, the Court directly addressed Claimant's assertion that (a) Debtor had withheld evidence from him in discovery, and (b) that the Court had considered the previously undisclosed evidence in making its ruling. The Court noted that Debtor had attached 108 exhibits to his summary judgment motion; that the exhibits were Bates-stamped documents that Debtor had produced to Claimant in discovery; and that emails submitted as exhibits by Debtor were primarily emails between Claimant and Debtor or between Claimant and third-party attorneys.[41]

In the Reconsideration Order, the Court summarized the evidence that it considered in determining the UPL Issue, including (a) the report prepared by Claimant's expert; (b) email communications between Claimant and Debtor; (c) the Consulting Agreements; (d) Claimant's statement of the services that he performed as "consultant;" (e) Claimant's own affidavit filed in District Court regarding the 1500 hours in legal services that he performed in connection with the CBL Class Action;

[40] Doc. No. 888, ¶ 10; Doc. No. 864, Statement of Issues Presented on Appeal, pp. 56-58.
[41] Doc. No. 851, pp. 4-6.

and (f) Claimant's original state court complaint against Debtor in which he identified himself as a member of an oral partnership with Debtor to conduct a law practice.[42]

Based upon this evidence, most of which had originated from Claimant himself, the Court concluded that Claimant had engaged in the unlicensed practice of law, that the Consulting Agreements were unenforceable, and that, under the circumstances of this case, Claimant was not entitled to compensation on the equitable ground of unjust enrichment.[43]

The Court concludes that the SJ Order is supported by undisputed evidence, and Claimant has not met his burden of proving that the SJ Order is clearly erroneous and that he is likely to prevail on the merits of his appeal.

2. Irreparable Injury to the Moving Party

To establish irreparable injury if a stay is not granted, the moving party must typically show that "legal remedies (i.e., money damages) are inadequate to protect it during the pendency of the appeal."[44] But as the bankruptcy court explained in *In re Wolf*,[45] distributions to creditors while a claim allowance dispute is on appeal may constitute irreparable harm:

> In the bankruptcy context, courts have held that distributions to creditors, while a claim allowance dispute is on appeal, may constitute irreparable harm because it will dissipate the only assets available to satisfy the claim. (Citations omitted). The authorities cited above suggest

[42] Doc. No. 859, pp. 2-4.
[43] Doc. No. 851, pp. 39-48; Doc. No. 859, pp. 5-10.
[44] *In re F.G. Metals*, 390 B.R. at 477 (citations omitted); *In re Wellington*, 2021 WL 2020643, at *7-8.
[45] 558 B.R. 140 (Bankr. E.D. Pa. 2016).

> that when an existing fund has been dedicated to satisfaction of competing claims, distribution of the fund before the court's determination is final and no longer subject to modification or reversal on appeal may constitute irreparable harm to the appellant.[46]

In *In re Wolf*, the court found these principles compelling, stayed the order disallowing a claim, and directed the debtor's attorney to retain funds in his escrow account.[47]

Here, if the Court were to grant the Compromise Motion without considering Claimant's objection, Claimant may suffer irreparable injury for two reasons. First, the Court might approve the Compromise Motion as unopposed, which could result in the Court's determination that the estate's interest in Debtor's earned fees, including the CBL Class Action Fees and Debtor's postpetition contingency fees, is the $401,500.00 allocation provided for in the Compromise Motion, rather than some greater amount. And second, if the Court were to approve the Compromise Motion, the Trustee would likely be authorized to immediately disburse $698,500.00 of the CBL Class Action Fees to Debtor.

The Court's analysis is different, however, with respect to Claimant's request that the Court stay matters relating to the parties' pending Bills of Costs. First, a court may award costs to the prevailing party despite a pending appeal.[48] And second, if the Court awards costs against Claimant and he were to prevail in the SJ Order

---

[46] *In re Wolf*, 558 B.R. at 145.
[47] *Id*.
[48] *In re Terry Manufacturing Co., Inc*., 2007 WL 1491086, at *4 (Bankr. M.D. Ala. May 21, 2007).

Appeal, Claimant would have an available legal remedy to recover from Debtor any amounts that he paid to Debtor on account of the costs awarded. Likewise, there would be no irreparable injury to Claimant if the Court allows or disallows the costs he has requested in Claimant's Bill of Costs.

Consequently, the Court finds that Claimant has met his burden to prove that he will be irreparably injured if the Court (a) does not permit Claimant to participate in Debtor's bankruptcy case as a creditor, and (b) stay the Trustee from disbursing funds from the bankruptcy estate or the CBL Class Action Fees until the District Court has ruled on the SJ Order Appeal.

3. Harm to Other Parties

Generally, the third requirement for a stay under Rule 8007—that other parties will suffer no substantial harm if the stay is granted— is not established in cases where the entry of a stay will delay distribution to creditors.[49] And, here, in addition to the impact of a stay on creditors, Debtor will be affected by any delay in the Trustee's payment to Debtor of any surplus funds in the bankruptcy estate or Debtor's approved share of the CBL Class Action Fees.

[49] In *In re Scrub Island Development Group Limited*, 523 B.R. 862, 878-79 (Bankr. M.D. Fla. 2015), the bankruptcy court held that "delaying distributions to creditors under a chapter 11 plan is a substantial harm that warrants denial of a stay pending appeal." But in that case, the party moving for the stay pending appeal had failed to demonstrate that it would suffer irreparable harm, and the court found that the moving party, the debtors' secured lender, had secretly conspired with an employee of the debtors and its request for a stay "was the latest in a long line of bad-faith attempts to keep the Debtors from successfully restructuring their business." *Id.* at 864.

But Debtor commenced this case by filing a voluntary Chapter 13 petition, and then voluntarily converting the case to a Chapter 7 case, thereby subjecting his assets to the jurisdiction of the Court. In addition, the SJ Order Appeal is now fully briefed and awaiting decision, and the bankruptcy estate's assets and the CBL Class Action Fees are all secure while the appeal is concluded. Under these circumstances, the Court finds the harm to Debtor or other creditors from any delay in distribution to be minimal in comparison to the potential injury to Claimant if a stay is not granted.

For these reasons, the Court finds that Claimant has met his burden of proving the third requirement for a stay of the SJ Order, and that other parties will suffer no substantial harm if a stay is granted until the District Court has ruled on the SJ Order Appeal.

4. Public Interest

The final element of a stay under Rule 8007—that the issuance of a stay will serve the public interest—relates to whether the stay has "consequences beyond the immediate parties."[50] Here, a stay will primarily affect the immediate parties, Claimant, Debtor, and the Trustee, and will have no impact on the administration of other bankruptcy cases or members of the public.

[50] *In re Wellington*, 2021 WL 2020643, at *9; *In re Moore*, 2020 WL 5633081, at *8.

D. CONCLUSION

Under Rule 8007, the Court may stay a judgment or order pending an appeal, or may suspend other proceedings in the case or issue any other appropriate orders during the pendency of the appeal to protect the rights of all interested parties. In considering a motion for stay pending appeal, the first factor — the likelihood of success in the appeal — is ordinarily the most important. However, if the moving party is unable to establish the first factor, he may nevertheless obtain a stay by establishing "that the three remaining factors for stay relief, the 'equities,' tend strongly in [his] favor."[51] This equitable approach is consistent with Rule 8007, which "provide[s] the Court with discretionary power when determining whether to grant a stay upon appeal . . . with its more flexible language authorizing a court to uniquely tailor relief to the circumstances of the case."[52]

Here, although Claimant did not establish that he is likely to succeed on the merits of his appeal, he has established that he will be irreparably harmed if the Court does not grant a stay pending appeal as outlined herein. The Court has also found that the harm to Debtor is minimal if the stay is granted, and that the public interest is not implicated in this case.

---

[51] *Robles Antonio v. Barrios Bello*, 2004 WL 1895123, at *1 (citing *Garcia-Mir v. Meese*, 781 F.2d at 1453, and *Gonzalez v. Reno*, 2000 WL 381901, at *1 (11th Cir. Apr. 19, 2000)).

[52] *In re Westwood Plaza Apartments, Ltd.*, 150 B.R. 163, 165 (Bankr. E.D. Tex. 1993) (quoted in *In re Quade*, 496 B.R. 520, 531 (Bankr. N.D. Ill. 2013)). *See also In re Kendall*, 510 B.R. 356, 364 (Bankr. D. Colo. 2014) and *In re Gregorakos*, 2009 WL 6499240, at *1 (Bankr. N.D. Ga. Oct. 14, 2009)).

Consequently, the Court will stay the effect of the SJ Order until the District Court rules on the SJ Order Appeal, meaning that Claimant may participate and be heard on the pending issues in this Chapter 7 case as though the Court has not disallowed his Claim. Specifically, the Court will conduct a hearing on the Compromise Motion, at which time the Trustee, Debtor, Claimant, and any other interested parties may assert their positions with respect to the proposed compromise.

In addition, the Court will consider (1) Claimant's motion to set aside the Clerk's award of costs in favor of Debtor, (2) Claimant's Bill of Costs, and (3) Mr. Greenberg's motion to compel payment of his fees. Because those matters have been fully briefed, the Court will likely rule on the papers, but may determine to set a hearing.

Accordingly, it is

ORDERED:

1. Steven R. Yormak's *Motion to Stay and/or Abate Bankruptcy Proceedings Pursuant to Bankruptcy Rule 8007* (Doc. No. 888) is **GRANTED IN PART** as set forth in this Order, pending the District Court's ruling on the SJ Order Appeal (District Court Case No. 2:21-cv-156-JES).

2. The Court will conduct a preliminary hearing on July 27, 2021, at 3:30 p.m. to consider the *Trustee's Renewed Motion to Approve Compromise of Controversy with Debtor* (Doc. No. 876), and Claimant's objection (Doc. No. 890). Debtor, the

Trustee, Claimant, and any other interested parties may appear and be heard at the July 27 hearing.

3. Until the District Court has ruled on the SJ Order Appeal (District Court Case No. 2:21-cv-156-JES) or further order of this Court, the Trustee is stayed from disbursing any funds.

4. The Court will separately consider Claimant's motion to set aside the Clerk's award of costs in favor of Debtor (Doc. No. 883), Claimant's Bill of Costs (Doc. No. 892), and Richard A. Greenberg's Motion to Compel Debtor to Pay Expert Witness Fee (Doc. No. 897).

The Clerk's office is directed to serve a copy of this Order on interested parties via CM/ECF.