

ORDERED.

Dated: January 11, 2023



Caryl E. Delano  
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re:

Antaramian Properties, LLC

Antaramian Family, LLC,  
Antaramian Family Trust,

Debtors.

James Richards, individually as a unit owner  
within the Naples Bay Resort West Parcel  
and as the representative of the members of the  
Naples Bay Resort West Parcel Property  
Owners Association, Inc.,

Plaintiff,

vs.

Naples Bay Resort Holdings LLC,  
et al.,

Defendants.

Case No. 2:14-bk-10145-FMD  
(Lead Case)

Case No. 2:14-bk-10146-FMD

Case No. 2:14-bk-10148-FMD  
(Jointly Administered Cases)

Adv. Pro. No. 2:20-ap-00528-FMD

**ORDER DENYING PLAINTIFF'S MOTION  
FOR ATTORNEY'S FEES AND COSTS DUE TO IMPROPER REMOVAL**

THIS PROCEEDING came before the Court without a hearing to consider Plaintiff's *Motion for Attorney's Fees and Costs Due to Improper Removal* (the "Motion")<sup>1</sup> and Defendants' response in opposition to the Motion.<sup>2</sup> For the reasons explained below, the Court denies the Motion.

## **I. BACKGROUND**

Plaintiff owns a unit in the Naples Bay Resort condominium development. In August 2020, Plaintiff sued Defendants in the Circuit Court for Collier County, Florida (the "State Court Action"), generally alleging that the condominium documents governing the unit owners' rights (the "Condominium Documents") were unconscionable and that Defendants had breached their duties under the Condominium Documents.<sup>3</sup>

On October 5, 2020, Defendants filed a Notice of Removal of the State Court Action to this Court. As the basis for removal, Defendants asserted that Antaramian Properties, LLC, n/k/a Naples Bay Properties, LLC ("Debtor") had filed a Chapter 11 case in 2014, that an Order Confirming Plan was entered in the Chapter 11 case on April 1, 2015, and that Plaintiff's State Court Action "implicates the discharge injunction provided for in the Confirmed Plan, the Confirmation Order and Section 1141(d) of the Bankruptcy Code."<sup>4</sup>

On December 22, 2020, Plaintiff filed a Second Amended Complaint in the removed proceeding.<sup>5</sup> Count I of the Second Amended Complaint is an action for a declaratory judgment that the Condominium Documents are unconscionable or contracts of adhesion; Count II is an action for breach of contract (specifically, the Condominium Documents); Count III is an action for breach of the implied covenant of good faith and fair dealing under the Condominium Documents; Count IV is an action for breach of fiduciary duty; and Count V is an action for usurpation of a business opportunity.

Defendants filed a motion to dismiss the Second Amended Complaint,<sup>6</sup> primarily contending (a) that the Condominium Documents were in place prior to Debtor's bankruptcy petition and prior to the Order Confirming Plan, (b) that Plaintiff was a scheduled creditor with notice of the bankruptcy case, (c) that the

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<sup>1</sup> Doc. No. 78.

<sup>2</sup> Doc. Nos. 81.

<sup>3</sup> Doc. No. 1, pp. 14-38.

<sup>4</sup> Doc. No. 1, ¶¶ 5-7.

<sup>5</sup> Doc. No. 41.

<sup>6</sup> Doc. No. 46.

Condominium Documents were “part and parcel” of the Chapter 11 plan and the Order Confirming Plan, and (d) that Plaintiff’s claims in the Second Amended Complaint are therefore “barred by the discharge and injunction provisions in the confirmed plan.”<sup>7</sup>

On January 22, 2021, the Court entered an order granting Defendants’ motion to dismiss the Second Amended Complaint without prejudice and allowing Plaintiff 21 days to file a third amended complaint.<sup>8</sup> Plaintiff did not file a third amended complaint within the time permitted, and on February 26, 2021, the Court entered an order dismissing the Second Amended Complaint with prejudice (the “Dismissal Order”).<sup>9</sup>

On March 4, 2021, Plaintiff timely filed a notice of appeal of the Dismissal Order to the District Court.<sup>10</sup> On November 4, 2022, the District Court entered an order affirming the Dismissal Order in part and reversing the Dismissal Order in part (the “Order on Appeal”). Specifically, the District Court affirmed this Court’s dismissal of Count I of the Second Amended Complaint, expressly finding that the Bankruptcy Court had subject matter jurisdiction over Count I.

[T]he Bankruptcy Court was clearly correct in finding that Count I “related to” the prior bankruptcy proceedings, thereby establishing subject matter jurisdiction in the Bankruptcy Court as to Count I.

The Confirmed Plan and the Order of Confirmation rely extensively on the validity and enforceability of the original contract documents. Many of the definitions in the contracts are adopted in the Confirmed Plan. The ability of creditors to assert and enforce a claim, and the amount of the claim, are defendant [sic] upon the validity and enforceability of the original contract documents. A claim which asserts that portions of the original contracts are unenforceable would cause extensive turmoil in the Confirmed Plan and the bankruptcy estate. Thus, it is clear that the outcome of Count I “could alter the debtor’s rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.” (Citation omitted). Additionally, the Bankruptcy Court maintained jurisdiction as the court that issued the injunction. (Doc. #2-68; Doc. #12-2, p. 201.) *Alderwoods Group, Inc. v. Garcia*, 682 F.3d 958 (11th Cir. 2012).<sup>11</sup>

However, the District Court reversed this Court’s dismissal of Counts II through V of the Second Amended Complaint and remanded the matter to this Court with instructions to further remand Counts II through V to the

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<sup>7</sup> Doc. No. 46, ¶ 2.

<sup>8</sup> Doc. No. 52.

<sup>9</sup> Doc. No. 59.

<sup>10</sup> Doc. No. 61.

<sup>11</sup> Doc. No. 75, pp. 23-24.

Circuit Court for Collier County.<sup>12</sup> On November 8, 2022, this Court entered an order remanding Counts II through V to the Circuit Court.<sup>13</sup>

On December 9, 2022, Plaintiff filed the Motion seeking an award of attorney's fees and costs under 28 U.S.C. § 1447(c).<sup>14</sup> Plaintiff asserts that Defendants' removal of his State Court Action to this Court was unnecessary because the state court could have decided the issue of whether his claims were barred by the Order Confirming Plan.<sup>15</sup>

## II. DISCUSSION

Under 28 U.S.C. § 1447(c), an order remanding a case “*may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.*”<sup>16</sup> An award of fees and costs under § 1447(c) is within the Court's discretion.<sup>17</sup> In *Martin v. Franklin Capital Corporation*,<sup>18</sup> the United States Supreme Court established the standard for determining whether a court should exercise its discretion to award fees and costs under the statute:

Absent unusual circumstances, courts may award attorney's fees under § 1447(c) only where the removing party lacked *an objectively reasonable basis for seeking removal*.<sup>19</sup>

Courts have consistently applied the standard to deny an award of fees and costs in cases where the removing party acted reasonably in seeking an adjudication in the bankruptcy court.<sup>20</sup>

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<sup>12</sup> Doc. No. 75, pp. 28-29.

<sup>13</sup> Doc. No. 76.

<sup>14</sup> 28 U.S.C. § 1447(c) does not provide a deadline for filing a motion for attorney's fees and costs. However, some Courts treat an order of remand as a judgment under Fed. R. Civ. P. 54 and hold that a motion for attorney's fees and costs must be filed within 14 days after entry of the remand order under Fed. R. Civ. P. 54(d)(2)(B). *BHCMC, LLC v. Pom of Kansas, LLC*, 2022 WL 392291 (D. Kan. Feb. 9, 2022). Here, Plaintiff included a request for attorney's fees in his *Motion to Remand Removed Case* filed on October 27, 2020 (Doc. No. 18), but he did not file the Motion until 35 days after the Order on Appeal and 31 days after this Court's order remanding Counts II through V to state court. Therefore, the Motion may be untimely.

<sup>15</sup> Doc. No. 78, p. 3.

<sup>16</sup> 28 U.S.C. § 1447(c) (emphasis added).

<sup>17</sup> *In re Solyndra, LLC*, 2016 WL 836925, at \*2 (Bankr. D. Del. Mar. 3, 2016) (citing *Martin v. Franklin Capital Corporation*, 546 U.S. 132, 136 (2005)).

<sup>18</sup> 546 U.S. 132, 126 S. Ct. 704, 163 L. Ed. 2d 547 (2005).

<sup>19</sup> *Martin v. Franklin Capital Corporation*, 546 U.S. at 141 (emphasis added).

<sup>20</sup> See, e.g., *In re Providence Wireless, LLC*, 587 B.R. 858, 865 (Bankr. E.D.N.C. 2018); *In re Solyndra, LLC*, 2016 WL 836925, at \*2; and *In re Reyes*, 2015 WL 4624156, at \*9 (Bankr. S.D.N.Y. Aug. 4, 2015).

Here, Plaintiff stated in his Second Amended Complaint that all of his causes of action arose out of his claims under the Condominium Documents.<sup>21</sup> Count I was a claim for a declaratory judgment that the Condominium Documents are unconscionable.

In the Order on Appeal, the District Court found that this Court clearly had “related to” subject matter jurisdiction over Plaintiff’s claim in Count I, because the Order Confirming Plan relied heavily on the enforceability of the Condominium Documents, and the outcome of Plaintiff’s claim would therefore affect Debtor’s rights and obligations under the Order Confirming Plan.<sup>22</sup>

In addition, the District Court recognized that this Court – as the Court that entered the Order Confirming Plan – possessed jurisdiction over the issue of whether Plaintiff’s claim in Count I was discharged under the Order Confirming Plan.<sup>23</sup> In *Alderwoods Group, Inc. v. Garcia*,<sup>24</sup> the Eleventh Circuit Court of Appeals considered the issue of which court has jurisdiction to determine whether a debt was discharged under a bankruptcy order, and ruled that “the court that issued the injunctive order alone possesses the power to enforce compliance with” the order.<sup>25</sup>

In conclusion, Plaintiff’s claims against Defendants in the State Court Action arose under the Condominium Documents. This Court had subject matter jurisdiction to determine the validity and enforceability of the Condominium Documents under the Order Confirming Plan, and also had jurisdiction to enforce compliance with its Order Confirming Plan. Therefore, the Court determines that Defendants had an objectively reasonable basis for removing the State Court Action to this Court and will exercise its discretion to deny Plaintiff’s Motion for an award of attorney’s fees and costs under 28 U.S.C. § 1447(c).

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<sup>21</sup> Doc. No. 41, ¶ 21 (“Moreover, it is expressly stated that all causes of action and claims for damages set forth in this Second Amended Complaint arise out of [Plaintiff’s] claims for enforcement of property rights vested in him by the Master Declaration of Restrictive Covenants, Conditions, Reservations and Easements for the Naples Bay Resort West Parcel (‘Master Declaration – West Parcel’).”).

<sup>22</sup> Doc. No. 75, pp. 23-24.

<sup>23</sup> Doc. No. 75, p. 24.

<sup>24</sup> 682 F.3d 958, (11th Cir. 2012).

<sup>25</sup> *Alderwoods Group, Inc. v. Garcia*, 682 F.3d at 961, 970.

Accordingly, it is

**ORDERED** that Plaintiff's *Motion for Attorney's Fees and Costs Due to Improper Removal* (Doc. No. 78) is **DENIED**.

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