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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

BLANCA LAMAS,

Plaintiff and Appellant,

v.

INFINITY INSURANCE COMPANY,

Defendant and Respondent.

B233042

(Los Angeles County
Super. Ct. No. BC430496)

APPEAL from a judgment of the Superior Court of Los Angeles County, Holly Kendig, Judge. Dismissed.

Suzanne E. Rand-Lewis and Gary Rand for Plaintiff and Appellant.

Luce, Forward, Hamilton & Scripps, Peter H. Klee and Theona Zhordania for Defendant and Respondent.

Blanca Lamas appeals from the trial court's sustaining of Infinity Insurance Company's (Infinity) demurrer without leave to amend, and from discovery and sanction orders by the trial court. Lamas does not have standing to appeal, and we dismiss.

BACKGROUND

I. The litigation

Lamas filed a complaint in January 2010 against Infinity.¹ Infinity demurred, and the trial court sustained the demurrer with leave to amend on April 7, 2010. Lamas filed a first amended complaint in April 2010, and Infinity again demurred. The hearing on the second demurrer was taken off calendar after Lamas filed a second amended complaint on December 20, 2010.

The second amended complaint alleged that Lamas had purchased an auto insurance policy from Infinity through Daniel Sanchez, who was an authorized agent for Infinity and was also Lamas's insurance broker. In December 2007, Lamas purchased the policy through Sanchez for a 2007 Toyota Camry; Sanchez told her she did not have to list her recently licensed teenage daughter as a driver. In February 2008, Lamas's teenage daughter was involved in an accident which caused extensive damage to the car and to adjacent property. Lamas reported the accident to Infinity, which responded with a letter explaining that there was a question as to coverage as Lamas's daughter was not listed as a driver on the policy. Infinity subsequently rescinded the policy and returned Lamas's premium payments, on the basis that Lamas made material misrepresentations in her insurance application by failing to list her teenage daughter. The complaint alleged causes of action against Infinity for breach of oral and written contract, breach of the implied covenant of good faith and fair dealing, and violation of Business and Professions Code section 17200, and requested general and special damages, interest, punitive damages, and other relief.

¹ The complaint also named Pacific Network Insurance Services and Daniel Sanchez. Lamas has abandoned her appeal against these defendants.

Infinity filed a third demurrer. On April 11, 2011, the trial court sustained Infinity's demurrer without leave to amend. The trial court concluded that the allegations of the complaint showed no breach of contract, as Infinity was entitled to rescind because Lamas failed to disclose on her insurance application that her daughter was a resident in her household and a driver of the vehicle. The court also concluded that Sanchez acted as a broker on behalf of Lamas and the contents of the application were Lamas's responsibility. Lamas could not state a claim for breach of the implied covenant of good faith and fair dealing as Infinity did not withhold any policy benefits it owed. Finally, Lamas was not entitled to any remedy under Business and Professions Code section 17200. The court noted, "I think that the plaintiff's counsel is clearly competent enough to have pled this one of the three times they had a chance to. I can only conclude that it just simply cannot be pled."

During the course of the litigation, Infinity served Lamas with two sets of written discovery and with requests for admission. Infinity also noticed Lamas's deposition. After discovery disputes arose, Infinity filed two motions to compel and requested sanctions against Lamas and her counsel. The trial court granted both motions to compel, and ordered Lamas's counsel to pay a total of \$3,240 in sanctions.²

The trial court filed a judgment dismissing Infinity from the litigation on May 2, 2011. Lamas filed a notice of appeal on May 12, 2011, from the judgment and from the discovery orders and sanctions.³

² Infinity subsequently filed a third motion to compel contending that Lamas failed to respond to the court order granting the earlier motions to compel. The court declared this motion moot and took it off calendar when it sustained the demurrer without leave to amend.

³ This court lacks jurisdiction to consider appellant's appeal of the sanctions order because the sanctions were imposed exclusively against appellant's attorney, not appellant. Imposing sanctions, the trial court said, "The request for monetary sanctions is granted in part. The Court orders plaintiff's counsel to pay monetary sanctions in the amount of \$2,160.00 to the moving party within 10 days." An appellant cannot appeal sanctions imposed on his attorney—the appeal must be made by the sanctioned attorney. The court lacks jurisdiction to review a sanction ruling where the purported appeal is not

II. Lamas's bankruptcy

On March 3, 2011, two months before judgment, Lamas filed a Chapter 7 bankruptcy petition in federal bankruptcy court.⁴ The petition did not disclose the ongoing lawsuit. In her Statement of Personal Affairs, Lamas represented that she had not been a party to any suit within one year preceding the filing of the petition. She amended her schedule on May 4, 2011, and added Infinity as a creditor holding an unsecured nonpriority claim for a February 2009 judgment for \$25,000.⁵ The bankruptcy court discharged Lamas from bankruptcy and closed the case on June 2, 2011.

DISCUSSION

“As a general matter, upon the filing of a petition for bankruptcy, “all legal or equitable interests of the debtor in property” become the property of the bankruptcy estate and will be distributed to the debtor’s creditors. [11 U.S.C. section] 541(a)(1).’ [Citation.]” (*M & M Foods v. Pacific American Fish Co., Inc.* (2011) 196 Cal.App.4th 554, 561 (*M&M Foods*)). The property of the estate includes causes of action. (*Id.* at p. 562.) “In the context of bankruptcy proceedings, it is well understood that “a trustee, as the representative of the bankruptcy estate, is the real party in interest, and is the only party with standing to prosecute causes of action belonging to the estate once the

by the sanctioned attorney but by the party. (*Calhoun v. Vallejo City Unified School Dist.* (1993) 20 Cal.App.4th 39, 42.) In *Imuta v. Nakano* (1991) 233 Cal.App.3d 1570, defendants’ counsel was sanctioned by the trial court. (*Id.* at p. 1577.) In ruling that these sanctions were appealable only by the attorney, the court interpreted ““that party”” in the predecessor statute to Code of Civil Procedure section 904.1, subdivision (b) to “reference to the party against whom the sanction was imposed.” (*Id.* at p. 1585.) In other words, the appeal must be made by the sanctioned individual; if the attorney was sanctioned, but not the party, then the party may not otherwise appeal his attorney’s sanction.

⁴ We granted Infinity’s requests for judicial notice regarding Lamas’s bankruptcy filings in connection to an earlier motion by Infinity to dismiss this appeal, which we denied.

⁵ Both the original schedule and the amended schedule listed Toyota Financial Services as a creditor holding an unsecured nonpriority claim of \$12,500 for the 2007 Camry “involved in an auto accident and . . . a total loss,” with a date of March 2009.

bankruptcy petition has been filed.” [Citation.] The commencement of Chapter 7 bankruptcy extinguishes a debtor’s legal rights and interests in any pending litigation, and transfers those rights to the trustee, acting on behalf of the bankruptcy estate. *See* 11 U.S.C. § 541(a)(1) (indicating that a bankruptcy estate includes “all legal or equitable interests of the debtor in property”); *id.* § 323 (establishing the bankruptcy trustee as the “representative” of the estate with the “capacity to sue and to be sued” on its behalf.). Thus, “[g]enerally speaking, *a pre-petition cause of action is the property of the Chapter 7 bankruptcy estate*, and only the trustee in bankruptcy has standing to pursue it.” [Citations.]’ [Citation.]” (*M&M Foods*, at p. 562.)

Lamas’s lawsuit against Infinity was pending when she filed her chapter 7 bankruptcy petition in early March 2011. Lamas had filed her second amended complaint three months earlier, and Infinity’s demurrer to the second amended complaint was pending. Once Lamas filed for bankruptcy, her interest in this lawsuit was extinguished and the lawsuit became the property of the bankruptcy estate. Only the bankruptcy trustee, not Lamas, had standing to pursue the lawsuit by filing the appeal.

Lamas argues that Infinity has waived any standing argument by failing to raise it in the trial court. We reject this argument. First, “[s]tanding to appeal is ‘jurisdictional and therefore cannot be waived.’” (*Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal.App.4th 289, 295.) Second, Infinity asserts that the first time Lamas informed Infinity about the bankruptcy filing was in July 2011, four months after the filing and three months after Lamas filed this appeal.⁶ On August 2, 2011, Infinity filed a notice of stay pending bankruptcy proceedings, advising the court that it had learned of Lamas’s bankruptcy filing and requesting the court vacate an upcoming hearing on Infinity’s cost memorandum, because it was subject to the automatic bankruptcy stay.⁷ The court took

⁶ Lamas did not file a reply brief, and hence does not dispute this assertion.

⁷ Lamas’s opposition to the motion to dismiss argues that it was improper for Infinity to invoke the automatic stay in August 2011, as her bankruptcy case had already been closed and Infinity had received notice of her discharge through a notice dated June 4, 2011. That notice presumably relates to a February 2009 judgment against Lamas

the hearing off calendar and found that an ex parte application by Lamas was improper because of the automatic stay.

Lamas also argues that she disclosed the lawsuit in her bankruptcy petition, but this is incorrect. Both the original schedule and the amended schedule listed Toyota Financial Services as a creditor holding an unsecured nonpriority claim of \$12,500 for the 2007 Camry “involved in an auto accident and . . . a total loss,” with a date of March 2009. Lamas’s amended schedule added Infinity as a creditor holding an unsecured nonpriority claim for a February 2009 judgment for \$25,000. None of these is a disclosure of Lamas’s lawsuit against Infinity, Sanchez, and Pacific Network Insurance Services, which Lamas filed in 2010, almost a year after the earlier creditors’ claims and a year before she filed her bankruptcy petition.

As Lamas did not disclose the lawsuit as an asset on her bankruptcy petition, no abandonment by the trustee would return the claim to her and confer on Lamas standing to pursue this appeal. “An outstanding legal claim that is abandoned by the trustee reverts back to the original debtor-plaintiff. [Citations.] . . . Whatever interest passed to the trustee when [the debtor] filed for Chapter 7 bankruptcy [is] extinguished when [the trustee] abandon[s] the cause of action [Citation]. In other words, “when property of the bankrupt is abandoned, the title reverts to the bankrupt *nunc pro tunc*, so that he is treated as having owned it continuously.” [Citation.]’ [Citation.]” (*M&M Foods, supra*, 196 Cal.App.4th at p. 563.) Nevertheless, “property not formally scheduled in the bankruptcy proceeding is *not abandoned* at the close of the bankruptcy proceeding, even if the trustee was aware of the existence of the property. [Citation.] [¶] . . . In a bankruptcy proceeding, the ‘bankruptcy code place[s] an affirmative duty on [the debtor] to schedule his assets and liabilities. [11 U.S.C.] § 521(1). If he fail[s] properly to

and in favor of Infinity, which as we explain above was listed in the amended bankruptcy petition as an unsecured nonpriority claim. The instant lawsuit, filed in 2010, was not listed in the petition. At any rate, whether Infinity should have invoked the automatic stay is irrelevant to whether Lamas has standing to appeal.

schedule an asset, including a cause of action, that asset continues to belong to the bankruptcy estate and [does] not revert to [the debtor].” (*M&M Foods*, at p. 563.)

Absent a proper listing of the lawsuit in her bankruptcy schedule and timely subsequent abandonment by the trustee, neither of which occurred in this case, Lamas does not have standing to pursue this appeal. And for the reason stated, this court lacks jurisdiction to consider Lamas’s appeal of the sanction order against his attorney. We therefore dismiss the appeal.

DISPOSITION

The appeal is dismissed. Costs are awarded to respondent.

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JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.